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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 273, and 281

[FNS–2009–0019]

RIN 0584–AD97

Supplemental Nutrition Assistance Program (SNAP): Updated Trafficking Definition and Supplemental Nutrition Assistance Program—Food Distribution Program on Indian Reservations Dual Participation

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is changing the Supplemental Nutrition Assistance Program (SNAP or Program) regulations pertaining to SNAP client benefit use, participation of retail food stores and wholesale food concerns in SNAP, and SNAP client participation in the Food Distribution Program on Indian Reservations (FDPIR). These changes to SNAP regulations address mandatory provisions of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 (hereinafter referred to as ''the 2008 Farm Bill'') to allow for the disqualification of a SNAP client who intentionally obtains cash by purchasing, with SNAP benefits, products that have container deposits, subsequently discarding the product, and returning the container(s) in exchange for cash refund of deposit(s); or who intentionally resells or exchanges products purchased with SNAP benefits for purposes of obtaining cash and/or other non-eligible items.

Through existing authority under the Food and Nutrition Act of 2008, FNS is also stipulating penalties for certain Program abuses committed by retailers. These abuses include stealing of SNAP benefits, by retailers, without client complicity, and other forms of trafficking through complicit arrangements between the retailer and the SNAP client. Examples of the latter would be the purchase, by retailers, of products originally purchased by clients with SNAP benefits and re-sold to stores in exchange for cash or other non-eligible items; or retailers taking possession of SNAP client cards and PINs, using the SNAP benefits to purchase stock for the store, and subsequently returning the card and PIN to the client with cash or other non-eligible items provided in exchange for having used the SNAP benefit.

FNS is also addressing the mandatory 2008 Farm Bill provisions requiring disqualification in SNAP when an individual is disqualified from FDPIR, and under existing authority, clarifying the prohibition against dual participation in SNAP and FDPIR.

DATES: *Effective date:* March 25, 2013.

FOR FURTHER INFORMATION CONTACT: Andrea Gold, Director, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Ms. Gold can also be reached by telephone at 703–305–2434 or by email at *Andrea.Gold@fns,usda.gov* during regular business hours (8:30 a.m. to 5:30 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of Regulatory Action

The rule codifies nondiscretionary SNAP eligibility disqualification provisions and FDPIR provisions of the 2008 Farm Bill and addresses retailer Program violations.

This final regulation will allow the Department to take appropriate action against retailers who are stealing SNAP benefits from clients or colluding with clients to traffic benefits, and will allow State agencies to take appropriate action against violating clients. The regulations will also ensure that clients who commit intentional Program violations (IPVs) in FDPIR are not able to participate in SNAP while serving their FDPIR disqualification, and will ensure that no client is able to dually participate in SNAP and FDPIR.

II. Major Provisions

This rule updates the definition of SNAP trafficking to encompass the intentional acquisition of cash by purchasing with SNAP benefits containers with deposits, discarding the product, and returning the containers to obtain cash refund deposits; the intentional sale of products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; the intentional purchase of products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food; and the stealing of SNAP benefits.

Further, this rule corrects the existing regulatory citation related to the requirement that State SNAP agencies ensure that dual participation in FDPIR and SNAP not be permitted.

Finally, this rule requires that State SNAP agencies not allow a client who has been disqualified from FDPIR for an intentional program violation to participate in SNAP until the disqualification period has expired.

III. Cost and Benefits

This final rule will primarily codify mandatory provisions of the statute. The Department anticipates that the rule will have a nominal cost impact on States that pursue clients who are defrauding the Program in the ways described. As the Department has an existing process for managing retailer compliance, the cost of pursuing retailers who violate Program rules in the manner described is also nominal. The problems being addressed in the rule are extremely unusual and the Department has no data on which to base an estimate of their frequency or the amount of benefits that might be involved. The final rule also updates the existing definition of trafficking, and as such there are no incremental cost or benefit repercussions.

State SNAP and FDPIR agencies will be required to perform checks for dual participation in their Programs and to ensure that clients disqualified from either SNAP or FDPIR are not allowed to participate in the alternate program. Cross-program checks for duplicate participation in SNAP and FDPIR are already required and checks for ensuring that clients disqualified from SNAP or FDPIR are not participating in the alternate program should follow a similar process; therefore the checks will not significantly impact administrative costs.

This rulemaking codifies provisions in the Food and Nutrition Act of 2008 that improve Program integrity, thereby enhancing the Program's ability to serve those who are truly in need, and helping to ensure that SNAP benefits are used as intended.

Background

In this final rule, the Department is revising SNAP regulations in accordance with Section 4131 (Eligibility Disqualification) of the 2008 Farm Bill to update the definition of trafficking to include certain Program abuses by clients. The Department is also taking this opportunity to address certain retailer abuses of the Program. These types of abuse are not specifically addressed in the current definition of trafficking.

This rule also addresses Section 4211 (Assessing the Nutritional Value of the Food Distribution Program on Indian Reservations (FDPIR) Food Package) of the 2008 Farm Bill which requires, among other things, reciprocal disqualification in SNAP when an individual is disqualified from FDPIR. These regulatory changes codify the mandatory statutory requirement to make reciprocal SNAP disqualification mandatory in instances of disqualification from FDPIR.

Dual participation in SNAP and FDPIR is prohibited under existing authority in the Food and Nutrition Act of 2008 and is codified in existing regulations. The Department is making a technical correction to existing regulations regarding this mandatory prohibition.

This rule was proposed on June 20, 2011, at 76 FR 35787, and public comments were invited through August 19, 2011. Comments have been considered and adjustments made to the final rule.

Summary of Comments and Explanation of Revisions

Twenty-five comments were received from various stakeholders and are available for public inspection on line at *www.regulations.gov.*

In general, commenters supported the regulations as proposed. Several commenters however, expressed concern that lacking further specificity, this regulation could result in States acting to administratively disqualify clients without sufficient cause. Commenters noted that client violations should be treated as IPVS rather than trafficking. Commenters further noted that defining client violations as ''intentional'' and providing specific examples of when client actions would be considered violations is critical. One commenter suggested that specific examples of non-violations be included in the trafficking definition. Commenters requested that the Department provide the specific legal standard necessary for taking client action in instances of indirect trafficking and beverage dumping. One commenter noted that the final rule should make clear that neither eligibility workers nor fraud investigators may summon recipients to be questioned about, or respond to accusations concerning, use of their SNAP benefits for authorized foods.

The Department notes that intentional Program violations, as defined in 7 U.S.C. 2015 of the statute and 7 CFR 273.16, include SNAP benefit trafficking. Throughout the Program's history, trafficking has been defined as ''* * * the exchange of SNAP benefits for cash or consideration other than food * * *'' While intentionally discarding beverages for purposes of collecting cash deposits, or intentionally purchasing items with SNAP benefits for purposes of re-selling those items for cash constitute an indirect exchange, the intent—i.e. exchanging SNAP benefits for cash—is the same and the activity constitutes trafficking. This regulation is intended to target egregious and intentional Program Violations. Penalties and processes that States must follow when pursuing IPVs (including trafficking violations) are defined and regulated in 7 CFR 273.16—''Disqualification for intentional Program Violations''; these penalties and processes remain unchanged.

Several commenters noted that under 7 U.S.C. 2015 [Section 6(p)] of the statute, disqualification for discarding beverages is only appropriate when at least four distinct conditions are met: (1) The recipient purchased products in containers carrying deposits with SNAP benefits; (2) the recipient made that purchase with the intent of obtaining cash by disposing of the contents and returning the container; (3) the recipient did in fact dispose of the contents; and (4) the recipient did in fact return the container. One commenter further noted that the statute also authorizes the Department to further limit the scope of these disqualifications by establishing additional requirements for the disqualification and that this would allow the Department to narrow, but not broaden, these elements to ensure that this penalty is not misapplied. The commenter suggests that the final rule should lay out each of these elements separately, numbered distinctly, so that investigators can clearly see that they must have evidence of each of them before proceeding. Further, this commenter notes that if the Department does not add further specificity, an environmental impact study should be conducted to assess any negative impacts on bottle returns as a result of this rule.

The Department has incorporated further specificity into the final rule. The Department has concluded that an environmental impact study is not warranted.

A commenter further noted that trafficking violations are subject to claims and that advocates in several states report that State investigators routinely allege, and Administrative Law Judges find, that all benefits received in a month, or even in a certification period, when there is a finding of trafficking should be subject to a claim, regardless of the actual amount trafficked. The commenter contends that this has no support in the statute, and it obliterates distinctions between small mistakes and egregious abuse. To prevent a similar phenomenon with these new disqualifications, the commenter suggests that the final rule explicitly state that only the amount misspent or trafficked may be treated as a claim.

The Department concurs on the basis of trafficking-related claims regulations at 7 CFR 273.18(c)(2), ''Trafficking-related claims. Claims arising from trafficking-related offenses will be the value of trafficked benefits as determined by: (i) The individual's admission; (ii) adjudication; or (iii) the documentation that forms the basis for the trafficking determination.''

One commenter notes that in addressing these new violations, the statute allows disqualifications based only on criminal convictions, civil judgments, or decisions in administrative disqualification hearings and, as such, no waivers should be allowed. The commenter further suggests that, if disqualification waivers are allowed, the Department should clarify that the State agency does not have sufficient evidence to warrant scheduling a hearing, within the meaning of 7 CFR 273.16(f)(1)(i), unless it has evidence that each of the elements necessary for disqualification (i.e., found to have obtained cash by intentionally purchasing products with SNAP benefits that have containers that require return deposits, intentionally discarding the product, and intentionally returning the container for the deposit amount, or found to have intentionally sold any food that was purchased using SNAP benefits) is met.

The Department considers waivers integral to the administrative, civil, and criminal process. Waivers can assist

clients in avoiding a criminal charge on their permanent record. It is acknowledged however, that States should not offer a waiver to a client unless the State has sufficient evidence to warrant an administrative hearing or referral for civil or criminal prosecution, as provided in 7 CFR 273.16(f).

States expressed concern regarding their ability to monitor and take action against individual clients who commit violations such as purchasing and then intentionally discarding beverages in order to collect cash deposits, or indirectly trafficking benefits. One commenter suggested that States maintain responsibility only for client eligibility oversight and that investigation of acts outside of the realm of client eligibility fall to the purview of the Department.

The Department recognizes the resource challenges faced by State and local governments. However, the 7 U.S.C. 2015 of the statute and regulations at 7 CFR 273.16 bestow responsibility for broad client oversight to State Agencies. Violators damage the integrity of the Program and must be subject to appropriate consequences; this rule gives States the ability to take action when intentional violations are discovered.

Two commenters noted that the term ''consideration'' in the definition of trafficking should be removed as consideration can be an intangible item that does not have a specific price or value. The Department is aware of instances in which clients have exchanged or attempted to exchange SNAP benefits for services that would fit the definition of ''consideration other than eligible food'' (e.g., bartered services) and for purposes of Program integrity has therefore opted not to make this adjustment.

Commenters suggested that clients whose SNAP benefits are stolen should receive replacement benefits when there is clear evidence of theft. One commenter suggested that, at a minimum, revised regulations should allow for the replacement of benefits when a household makes a formal report of stolen benefits to the SNAP office and to the local law enforcement agency, and when a review of Electronic Benefit Transfer (EBT) transactions show that the household's benefits were redeemed through keyed, rather than swiped, transactions. The Department acknowledges this concern. However, because all interested parties did not have an opportunity to consider this change, the Department may propose changes to the regulations guiding replacement in a future rulemaking. Keyed transactions still require both a card and personal identification number (PIN) and, in general, if the PIN number is secured and/or a stolen card is reported immediately, benefits will not be lost.

One commenter suggested that client penalties only apply when the violations were committed by a household member or an authorized representative of the household. The determination as to whether the client should bear responsibility for violations will depend upon the circumstances of the case and is therefore a determination to be made by State hearing officials. We are unable to address every situation in these regulations. However, the Department holds retailers responsible for ensuring that all store employees know and understand Program rules and abide by those rules; when employees commit violations, SNAP authorized retailers bear responsibility. Similarly, clients are responsible for ensuring that anyone who is freely given access to their SNAP benefits, whether a household member, formally recognized authorized representative or informal authorized representative, uses those benefits appropriately.

One commenter requested that USDA explicitly state that allowing a non-household member access to the EBT card and PIN should not be treated as a trafficking offense, unless there is other clear and convincing evidence of fraudulent activity in connection with the card and PIN use. The Department acknowledges that giving a non-household member access to EBT benefits for purposes of assisting the household with shopping activities is not trafficking. However, as noted, the head of household maintains responsibility and is subject to penalties for fraudulent activity conducted by any person given access to EBT benefits by a household member, whether a formally documented authorized representative or a non-household member that is assisting the household.

One commenter is concerned about the improper disqualification of SNAP clients who provide incorrect or misleading information on their SNAP application or recertification form or who fail to timely report a change but without fraudulent intent. This commenter requested that the Department clarify the IPV legal standard associated with these issues. The Department acknowledges these comments, but notes that they fall outside of the scope and intent of this rulemaking.

One commenter noted the difficulties retailers have in tracking clients who purchase beverages and intentionally discard those beverages and return to stores for the cash deposits. The Department acknowledges the challenges associated with this activity and does not expect SNAP authorized retailers to take responsibility for monitoring bottle returns. Instead, the Department is providing States an avenue for taking action on clients who are violating Program rules in this manner.

One commenter was confused by the term ''discard.'' Trafficking applies when beverages are intentionally discarded—i.e. disposed of by the purchaser, rather than consumed—for purposes of returning the containers for the cash deposit. Further, it has come to our attention that at least one individual has, in fact, taken steps to get the deposit back without emptying the contents of the deposit bottle. Since this is contrary to the intent of this provision in the statute, the Department is treating such situations as the equivalent of discarding the contents, and is expanding coverage to include those who collect deposits without taking steps to consume the product.

One commenter suggested that clients be prevented from purchasing water to mitigate the issue of having beverages be intentionally discarded so the containers may be returned for cash. One commenter implied that this rulemaking is an indirect attempt to prohibit purchase of soft drinks with SNAP benefits, and another commenter believed any indirect impact that would reduce the purchase of sugary drinks is positive. Prohibiting purchase of specific products falls outside the authority of this rule. SNAP eligible foods are defined in Section 3 of the Food and Nutrition Act and cannot be amended by regulation.

One commenter asked the Department to specify that trafficking in farmers' market scrip is equivalent to indirectly trafficking SNAP benefits. The Department considers the trafficking of farmers' market scrip to be the equivalent of trafficking by purchasing a product and reselling it for cash or consideration other than eligible food. The Department does not believe that further specificity is necessary in this regulation.

Two commenters noted that the definition of trafficking as written in the proposed rule is a run-on sentence and therefore lacks clarity. The Department has reviewed the definition to assess clarity and ensure it meets legal formatting requirements. The definition has been adjusted to adopt statutory language and thereby clarify client violations, but no additional formatting changes have been made.

One commenter noted that a national system for checking duplicate participation or IPV disqualifications is practically necessary if States are to be held accountable for prohibiting dual participation and implementing reciprocal disqualification with FDPIR. The Department acknowledges the challenges associated with operations when such a national database is unavailable. This rule gives States the ability to prohibit dual participation and invoke reciprocal disqualifications based on available information.

Finally, one commenter urged the Department to ensure that Indian Tribal Organizations (ITO) staffs are fully integrated in the consultation and coordination of planning and decisions regarding administrative systems, certification monitoring, and developing Memorandums of Understanding (MOUs)—especially where USDA and state agencies control access to information, administrative resources and capacity; and that the Department provide meaningful and timely responses to ITO concerns regarding changes. The Department acknowledges this comment and notes that at USDA tribal consultations held in fiscal year 2011, this rule was discussed. Feedback from those consultations is incorporated in the section of this rule titled Executive Order 13175.

Regulatory Impact Analysis

This rule has been designated as non-significant by the Office of Management and Budget; therefore, no Regulatory Impact Analysis is required.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this final rule will not have a significant economic impact on a substantial number of small entities. Departmental Field, Regional, and Area Offices, retailers and other firms participating or applying to participate in the Supplemental Nutrition Assistance Program, State agencies that distribute Supplemental Nutrition Assistance Program benefits and State agencies and ITOs that administer Food Distribution of Indian Reservations, are the entities affected by this change.

Public Law 104–4

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have Federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of the Executive Order 13132. The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule will have preemptive effects with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effects. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. Each session was fully transcribed and the comments received relative to this regulation follow:

One commenter expressed general concern regarding the disparity in benefit value as a result of the increase in SNAP benefits following the American Recovery and Reinvestment and Act (ARRA); FDPIR benefits were not subject to an ARRA increase.

One commenter noted that County level SNAP office staff should have been in attendance at this consultation; if county level staff is not aware of the prohibition relative to dual participation, then they will not abide by that prohibition. This was reiterated by a second commenter who noted that county level SNAP staff should be in the

communication loop and receive training. The Department noted that a process of notifying all stakeholders would occur once this regulation is finalized. A third commenter made a procedural recommendation requiring that SNAP certification staff contact the ITO to ensure that applicant clients are not dually participating in FDPIR.

One commenter expressed support for the reciprocal SNAP disqualification that would be based on an intentional program violation in FDPIR.

One commenter noted that direct access to county level SNAP staff would be beneficial; currently the ITO calls the county level office and is subject to an automated message when checking dual participation.

Several commenters noted that access to an automated system for checking dual participation and reciprocal disqualification is practically necessary to make the process work, and that the current process of checking paper printouts is not practical. The Department noted that some ITO's have successfully executed an MOU with the State SNAP agency or county SNAP offices that allow them view-only access to State certification systems for these kinds of checks. Some participating ITO's noted difficulties in getting such MOU's in place. The Department committed to assist ITO's with this process in Oklahoma, and more broadly, to seek examples of successfully executed MOU's and provide those to appropriate stakeholders.

USDA committed to responding in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country. No additional comments were received during the proposed rule comment period.

We are unaware of any current Tribal laws that could be in conflict with this rule. No concerns in this regard were expressed in the proposed rule comment period.

Civil Rights Impact Analysis

The Department has reviewed this rule in accordance with Departmental Regulations 4300–4, ''Civil Rights Impact Analysis,'' and 1512–1, ''Regulatory Decision Making Requirements.'' After a careful review of the rule's intent and provisions, the Department has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals to receive SNAP benefits on the basis of their race, color, national origin, sex, age, disability, religion or political belief nor will it have a differential impact on minority owned or operated business establishments, and women owned or operated business establishments that participate in SNAP.

The regulation affects or may potentially affect the retail food stores and wholesale food concerns that participate in (accept or redeem) SNAP. The only retail food stores and wholesale food concerns that will be directly affected, however, are those firms that violate SNAP rules and regulations. The Department does not collect data from retail food stores or wholesale food concerns regarding any of the protected classes under Title VI of the Civil Rights Act of 1964. As long as a retail food store or wholesale food concern meets the eligibility criteria stipulated in the Food and Nutrition Act of 2008 and SNAP regulations, they can participate in SNAP. Also, the Department specifically prohibits retailers and wholesalers that participate in SNAP from engaging in actions that discriminate based on race, color, national origin, sex, age, disability, religion, or political belief. This rule will not change any requirements related to the eligibility or participation of protected classes or individuals, minority-owned or operated business establishments, or women-owned or operated business establishments in SNAP. As a result, this rule will have no differential impact on protected classes of individuals, minority-owned or operated business establishments, or women-owned or operated business establishments.

Further, the Department specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of the program administration is prohibited by these regulations, according to the Act. Enforcement may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.'' Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

This rule will not affect the reporting and recordkeeping burden and does not contain additional burden requirements subject to OMB approval other than those that have been previously approved in OMB# 0584–0064, expiration date 03/31/2013, by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

Lists of Subjects

7 CFR Part 271

Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs—social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income, (SSI), wages.

7 CFR Part 281

Administrative practice and procedure, Food stamps, Grant programs—Social programs, Indians.

Accordingly, 7 CFR parts 271, 273 and 281 are amended as follows:

■ 1. The authority citation for 7 CFR parts 271, 273 and 281 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. In part 271:
■ a. Except in § 271.5, remove the words ''the Food Stamp Program'', ''the food stamp program'', The Food Stamp Program'', or ''FSP'' wherever they appear and add, in their place, the word ''SNAP'';
■ b. Remove the words ''a food stamp program'' or ''a Food Stamp Program'' wherever they appear and add, in their place, the words ''a supplemental nutrition assistance program'';
■ c. Remove the words ''Food Stamp Act of 1977'' and add in their place the words ''Food and Nutrition Act of 2008'' wherever they appear, except in the definition of ''Food Stamp Act'' in § 271.2;
■ d. Remove the words ''Food Stamp Act'' and add in their place the words ''Food and Nutrition Act of 2008'' wherever they appear, except in the definition of ''Food Stamp Act'' in § 271.2;
■ e. Remove the words ''food stamps'' wherever they appear and add, in their place, the words ''SNAP benefits'';
■ f. Remove the words ''food stamp'' wherever they appear and add, in their place, the word ''SNAP'';
■ 3. In § 271.2, the definition of *Trafficking* is revised to read as follows:

§ 271.2 Definitions.

* * * * *

Trafficking means:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;

(3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

* * * * *

■ 4. In § 271.5, remove the words ''the food Stamp program'' wherever they appear and add, in their place, the words ''the supplemental nutrition assistance program'';

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 5. In § 273.11:
■ a. Remove the words ''the Food Stamp Program'' or ''the food stamp program'' wherever they appear and add, in their place, the word ''SNAP'';
■ b. Remove the words ''food stamps'' wherever they appear and add, in their place, the words ''SNAP benefits'';
■ c. Remove the words ''food stamp'' wherever they appear and add, in their place, the word ''SNAP'';
■ d. Add two new sentences at the end of paragraph (k) introductory text.
■ e. Add a new sentence to the end of paragraph (k)(6).

The additions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(k) * * * In the case of disqualification from the Food Distribution Program on Indian Reservations (FDPIR) for an intentional program violation as described under § 253.8 of this chapter, the State agency shall impose the same disqualification on the member of the household under SNAP. The State agency must, in cooperation with the appropriate FDPIR agency, develop a procedure that ensures that these household members are identified.

* * * * *

(6) * * * In instances where the disqualification is a reciprocal action based on disqualification from the Food Distribution Program on Indian Reservations, the length of disqualification shall mirror the period prescribed by the Food Distribution Program on Indian Reservations.

* * * * *

PART 281—ADMINISTRATION OF SNAP ON INDIAN RESERVATIONS

■ 6. Revise the heading of part 281 to read as set forth above.
■ 7. In part 281:
■ a. Remove the words ''the Food Stamp Program'' wherever they appear and add, in their place, the word ''SNAP'';
■ b. Remove the words ''Food Stamp Act of 1977'' wherever they appear and add, in their place, the words ''Food and Nutrition Act of 2008'';
■ c. Remove the words ''1977 Food Stamp Act'' wherever they appear and add, in their place, the words ''Food and Nutrition Act of 2008'';
■ 8. In § 281.1(c) remove the regulatory reference ''§ 283.7(e)'' and add, in its place, the regulatory reference ''§ 253.7(e)''.

Dated: February 4, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–04044 Filed 2–20–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0036; Directorate Identifier 2009–NM–077–AD; Amendment 39–17362; AD 2013–04–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports of cracks in the skin and surrounding structure under the number 3 very high frequency (VHF) antenna on the lower external surface of the airplane at buttock line 0.0, aft of the main landing gear wheel well. This AD requires inspecting for cracking and corrosion under the number 3 VHF antenna, and corrective actions if necessary; and, for certain airplanes, replacing bonded skin panels with solid skin panels if not previously accomplished. This AD also provides an optional preventive modification (which would terminate the inspection requirements for certain airplanes). We are issuing this AD to detect and correct cracks and corrosion of the skin and surrounding structure under the number 3 VHF antenna, which could result in separation of the antenna from the airplane, and rapid depressurization of the airplane.

DATES: This AD is effective March 28, 2013.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the AD as of March 28, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6447; fax: (425) 917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on March 16, 2012 (77 FR 15640). The original NPRM (75 FR 19564, April 15, 2010) proposed to require inspections for cracking and corrosion under the number 3 VHF antenna, and corrective actions if necessary; and, for certain airplanes, replacing bonded skin panels with solid skin panels if not previously accomplished. The SNPRM proposed to add an optional preventive modification, which would terminate the inspection requirements for certain airplanes; change certain repairs; and add inspections.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM (77 FR 15640, March 16, 2012) and the FAA's response to each comment.

Support for the SNPRM (77 FR 15640, March 16, 2012)

The Boeing Company supports the SNPRM (77 FR 15640, March 16, 2012).

Request To Clarify Required Actions

United Airlines requested that we revise paragraph (g) of the SNPRM (77 FR 15640, March 16, 2012) to more clearly indicate what actions are mandated. United Airlines explained that paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, provides information in a tabular format that can be easily misinterpreted, and that for the initial inspection, the reader can potentially use two of the initial inspection options without knowing that the third inspection is also required. As an example, United Airlines explained that in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, the first action is to perform external visual inspections, but that action also directs operators to paragraph 3.B.3.a., which requires external detailed and external high frequency eddy current (HFEC) inspections.

We agree to clarify. We have eliminated unnecessary repeated phrasing (e.g., external detailed, HFEC) from paragraph (g) of this final rule to indicate those actions that are mandated.

The second row, first column of table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, identifies that the action specified in the second, third, and fourth row, second column, is to be done on all airplanes, and are not optional. All airplanes listed in the Applicability section of this AD are required to have those actions completed.

Also, the reference to the Work Instructions paragraphs (e.g., 3.B.3.a., 3.B.5.a.) direct operators where to find those specific actions in the Accomplishment Instructions of the service bulletin.

Request To Delete Requirement

Southwest Airlines requested that we remove paragraph (h)(2) from the supplemental NPRM (77 FR 15640, March 16, 2012). That paragraph proposed to require that operators comply with section 121.1109(c)(2) or section 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(c)(2)) and obtain an approved damage tolerance evaluation for any repair installed. Southwest Airlines considered that paragraph (h)(2) of the supplemental NPRM contradicts the following statement in the preamble of the supplemental NPRM:

> Table 10 in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010; and Part 8 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010; specify post-repair/modification inspections at the number 3 VHF antenna location, which may be used in support of compliance with section 121.1109(c)(2) or 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 129.109(c)(2)), but this supplemental NPRM does not propose to require those post-repair/modification inspections.

Southwest Airlines reasoned that the requirement to have a damage tolerance assessment is already mandated by 14 CFR 121.1109, and it is not necessary to require this in the supplemental NPRM.

We agree with the commenter's request. We have added new paragraph (i) to this final rule and deleted paragraph (h)(2) of the supplemental NPRM (77 FR 15640, March 16, 2012)) to clarify that the post-repair/modification inspections are not required by this AD. We also removed the reference to Table 10 of paragraph 1.E., Compliance, of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, and clarified that Part 8 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, is the appropriate reference for the damage tolerance inspections. We have also changed 129.109(c)(2) to 129.109(b)(2) in Note 1 to paragraph (i) of this final rule.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the supplemental NPRM (77 FR 15640, March 16, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the supplemental NPRM (77 FR 15640, March 16, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 629 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of U.S.-registered airplanes	Cost on U.S. operators
Inspection	Up to 13 work-hours × $85 per hour = Up to $1,105 per inspection cycle.	None	Up to $1,105 per inspection cycle.	629	Up to $695,045 per inspection cycle.
Concurrent replacement for Group 2 and Group 7 airplanes [1].	2,112 work-hours × $85 per hour = $179,520.	$35,000	$214,520	387	$83,019,240.

[1] The concurrent modification for Group 2 and Group 7 airplanes required by this AD is already required by AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990). AD 90–06–02 mandated the skin replacement within 20 years of the manufacture date of the airplane. All Group 2 and Group 7 airplanes have exceeded the 20-year threshold.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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, and

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

List of Subjects in 14 CFR Part 39

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

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):

2013–04–05 The Boeing Company: Amendment 39–17362; Docket No. FAA–2010–0036; Directorate Identifier 2009–NM–077–AD.

(a) Effective Date

This AD is effective March 28, 2013.

(b) Affected ADs

AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990), affects this AD.

(c) Applicability

This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks of the skin and surrounding structure under the number 3 very high frequency (VHF) antenna on the lower external surface of the airplane at buttock line 0.0, aft of the main landing gear wheel well. We are issuing this AD to detect and correct cracks and corrosion of the skin and surrounding structure under the number 3 VHF antenna, which could result in separation of the antenna from the airplane, and rapid depressurization of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections

Except as required by paragraph (j)(1) of this AD, at the applicable times specified in tables 1 through 9 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Do the applicable inspections (external detailed; external high frequency eddy current (HFEC); and internal detailed and HFEC) for cracks and corrosion in the skin, support, frames, stringers, or antenna, as applicable. Do the inspections in accordance with Parts 1, 3, 4, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, except as required by paragraphs (j)(2) and (j)(3) of this AD. Repeat the applicable

inspections thereafter at the applicable times specified in tables 1 through 9 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, until the actions specified in paragraph (k) of this AD are done.

(h) Repair

If any crack or corrosion is found during any inspection required by paragraph (g) of this AD: Repair before further flight, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, except as required by paragraphs (j)(2) and (j)(3) of this AD. Repair of any crack or corrosion terminates the repetitive inspection requirements of paragraph (g) of this AD for the repaired area only.

(i) No Post Repair/Modification Inspections

The post-repair/modification inspections specified in Part 8 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, are not required by this AD.

Note 1 to paragraph (i) of this AD: The damage tolerance inspections specified in Part 8 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The actions specified in Part 8 of the Accomplishment Instructions and corresponding figures of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, are not required by this AD.

(j) Exceptions

(1) Where Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, specifies contacting Boeing for inspection or repair instructions: Do the applicable action using a method approved in accordance with the procedures specified in paragraph (n) of this AD.

(3) For Group 7 airplanes, as identified in paragraph 1.A., ''Effectivity,'' of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Use the applicable instructions for Group 2, Configuration 1, 2, or 3 airplanes, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010.

(k) Optional Terminating Action

For Groups 1, 2, 3, 4, 6, and 7 airplanes, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Except as provided by paragraphs (j)(2) and (j)(3) of this AD, accomplishment of the preventive modification, including all applicable HFEC and detailed inspections for cracking or corrosion inside or outside the repair skin cutout area, in the frame fastener holes, or in the support channel; and all applicable repairs or replacements; as specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010, terminates the repetitive inspection requirements of paragraph (g) of this AD.

(l) Concurrent Skin Panel Replacement

For Groups 2 and 7 airplanes, as identified in Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010: Before or concurrently with accomplishing the requirements of paragraph (g) of this AD, do the replacement of the bonded skin panels with solid skin panels, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1042, Revision 9, dated July 25, 1991, except as required by paragraph (j)(3) of this AD. The actions specified in paragraph (l) of this AD are also required by AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990).

(m) Credit for Previous Actions

(1) This paragraph provides credit for the replacement required by paragraph (l) of this AD, if the replacement of bonded skin panels with solid skin panels was performed before the effective date of this AD using the service information identified in paragraphs (m)(1)(i), (m)(1)(ii), (m)(1)(iii), and (m)(1)(iv) of this AD.

(i) Boeing Service Bulletin 737–53A1042, Revision 5, dated October 5, 1984.

(ii) Boeing Service Bulletin 737–53A1042, Revision 6, dated August 10, 1989.

(iii) Boeing Service Bulletin 737–53A1042, Revision 7, dated October 19, 1989.

(iv) Boeing Service Bulletin 737–53A1042, Revision 8, dated July 19, 1990.

(2) This paragraph provides credit for the inspections required by paragraph (g) of this AD, if the inspections were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–53–1287, dated March 11, 2009.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(o) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 737–53–1287, Revision 1, dated November 15, 2010.

(ii) Boeing Service Bulletin 737–53A1042, Revision 9, dated July 25, 1991.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on February 1, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–03901 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0624; Directorate Identifier 2010–NE–11–AD; Amendment 39–17358; AD 2013–04–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211–524 series turbofan engines. That AD currently requires removal and repair of certain thrust reverser units (TRUs) prior to reinstallation. This AD requires the same actions for an expanded population of TRUs and extends the compliance time for repairing certain TRUs. This AD was prompted by additional engineering evaluation of TRUs, as a result of a translating cowl gearbox stubshaft failure and subsequent repair. We are issuing this AD to prevent failure of the attachment rivets, which may result in release of the TRU from the engine.

DATES: This AD is effective March 8, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 8, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication as of August 12, 2011, (76 FR 40217, July 8, 2011).

We must receive any comments on this AD by April 8, 2013.

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

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

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936, or email: *http://www.rolls-royce.com/contact/civil_team.jsp*. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *Robert.Green@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On June 8, 2011, we issued AD 2011–13–01, Amendment 39–16724 (76 FR 40217, July 8, 2011), for all RR plc RB211–524 series turbofan engines. That AD required removal and repair of certain TRUs prior to reinstallation. That AD resulted from an investigation into the loss of a TRU during landing. The investigation revealed that the incident was preceded by the detachment of the TRU's fixed structure front ring rivet lines on the rear flange. It was determined that the loss of rivet lines was directly associated with a previous translating cowl gearbox stubshaft fracture and the repair of the fixed structure to Engine Manual repair No. FRS5887. At the time, the repair instructed the replacement of the damaged section of the structure but did not require the rivets adjacent to the repair to be replaced. Subsequent analysis has shown that the rivets may have weakened as a result of the translating cowl gearbox stubshaft failure.

Actions Since AD Was Issued

Since we issued AD 2011–13–01, (76 FR 40217, July 8, 2011), engineering evaluation by RR has concluded that the compliance time for repairing TRUs that had only Engine Manual repair No. FRS5887 incorporated as a result of a translating cowl gearbox stubshaft failure, can be extended. RR also concluded that TRUs previously repaired at the front ring with additional rivets using Engine Manual repair No. FRS5887 Part 2, and that have not had Engine Manual repair Nos. FRS4976 and FRS6669 applied to the rear ring at the No. 2 or No. 3 gearbox position, constitute a new population that must be removed and repaired during the next scheduled engine removal. The European Aviation Safety Agency (EASA) has notified us of this same unsafe condition, and corrective actions described in EASA AD 2012–0255, dated November 30, 2012.

Relevant Service Information

We reviewed RR Alert Non-Modification Service Bulletin (NMSB) No. RB.211–78–AG084, Revision 7, dated November 23, 2012. The NMSB describes procedures for removal, repair, and reinstallation of affected TRUs.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires removal and repair of TRUs that experienced a cowl gearbox stubshaft failure with subsequent repair of the fixed structure to Engine Manual repair No. FRS5887. This AD also requires removal and repair of TRUs previously repaired at the front ring with additional rivets using Engine Manual repair No. FRS5887 Part 2, and that have not had Engine Manual repair Nos. FRS4976 and FRS6669 applied to the rear ring at the No. 2 or No. 3 gearbox position.

FAA's Justification and Determination of the Effective Date

The FAA has found that notice and comment prior to adoption of this rule is unnecessary because no engines are used on U.S. registered airplanes. Therefore, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any

written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the Docket No. FAA–2011–0624 and Directorate Identifier 2010–NE–11–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will not affect any engines installed on airplanes of U.S. registry. Therefore, we estimate the cost of this AD to U.S. operators to be $0.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

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 part 39 of the Federal Aviation Regulations (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 removing airworthiness directive (AD) 2011–13–01, Amendment 39–16724 (76 FR 40217, July 8, 2011) and adding the following new AD:

2013–04–01 Rolls-Royce plc: Amendment 39–17358; Docket No. FAA–2011–0624; Directorate Identifier 2010–NE–11–AD.

(a) Effective Date

This AD is effective March 8, 2013.

(b) Affected ADs

This AD supersedes AD 2011–13–01, Amendment 39–16724 (76 FR 40217, July 8, 2011).

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211–524D4–19, –524D4–B–19, –524D4–39, –524D4–B–39, –524D4X–19, –524D4X–B–19, –524H–36, –524H2–19, –524H–T–36, –524H2–T–19, –524G2–19, –524G3–19, –524G2–T–19, and –524G3–T–19 turbofan engines with thrust reverser units (TRUs) that have a part number (P/N) specified in paragraph 1.A. of RR Alert Non-Modification Service Bulletin (NMSB) No. RB.211–78–AG084, Revision 7, dated November 23, 2012, installed.

(d) Unsafe Condition

This AD was prompted by additional engineering evaluation of TRUs, as a result of a translating cowl gearbox stubshaft failure and subsequent repair. We are issuing this AD to prevent failure of the attachment rivets, which may result in release of the TRU from the engine.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) If no repairs were performed as a result of a stubshaft failure, no further action is necessary.

(2) If before December 14, 2009, the TRU has incorporated Engine Manual repair No. FRS5887 and incorporated either Engine Manual repair No. FRS4976 or No. FRS6669 as a result of a translating cowl gearbox stubshaft failure, then repair the TRU before further flight. Use the procedures in Section 3., Accomplishment Instructions, of RR Alert NMSB No. RB.211–78–AG084, Revision 5, dated February 4, 2011, to do the repair.

(3) If before December 14, 2009, the TRU has incorporated Engine Manual repair No. FRS4976, or No. FRS6669 as a result of a translating cowl gearbox stubshaft failure, and it is not known whether Engine Manual repair No. FRS5887 was incorporated concurrently, then repair the TRU within 200 engine flight cycles after the effective date of this AD. Use the procedures in Section 3., Accomplishment Instructions, of RR Alert NMSB No. RB.211–78–AG084, Revision 5, dated February 4, 2011, to do the repair.

(4) If before December 14, 2009, the TRU has incorporated only Engine Manual repair No. FRS5887 as a result of a translating cowl gearbox stubshaft failure, then repair the TRU within 1,150 engine flight cycles after the effective date of this AD. Use the procedures in Section 3., Accomplishment Instructions, of RR Alert NMSB No. RB.211–78–AG084, Revision 7, dated November 23, 2012, to do the repair.

(5) If the TRU has previously been repaired at the front ring with additional rivets using Engine Manual repair No. FRS5887 Part 2, and has not had Engine Manual repair Nos. FRS4976 and FRS6669 applied to the rear ring at the No. 2 or No. 3 gearbox position:

(i) Remove the TRU from the engine during the next scheduled engine removal after the effective date of this AD; and

(ii) Before returning the TRU to service, repair the TRU using the procedure in Section 3.A.(4), Accomplishment Instructions, of RR Alert NMSB No. RB.211–78–AG084, Revision 7, dated November 23, 2012.

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

(1) Actions performed before the effective date of this AD using RR Alert NMSB No. RB.211–78–AG084, Revision 4, dated December 22, 2009, or RR Alert NMSB No. RB.211–78–AG084, Revision 3, dated November 24, 2009, satisfy the requirements of paragraphs (e)(2) and (e)(3) of this AD.

(2) Actions performed before the effective date of this AD using RR Alert NMSB No. RB.211–78–AG084, Revision 6, dated November 16, 2012, or Revision 5, dated February 4, 2011, or Revision 4, dated December 22, 2009, or Revision 3, dated November 24, 2009, satisfy the requirements of paragraph (e)(4) of this AD.

(3) Actions performed before the effective date of this AD using RR Alert NMSB No. RB.211–78–AG084, Revision 6, dated

November 16, 2012, satisfy the requirements of paragraph (e)(5)(ii) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) Refer to EASA Airworthiness Directive 2012–0255, dated November 30, 2012, for related information.

(2) Contact Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *Robert.Green@faa.gov,* for more information about this AD.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rolls-Royce plc Alert Non-Modification Service Bulletin No. RB.211–78–AG084, Revision 7, dated November 23, 2012.

(ii) Reserved.

(3) The following service information was approved for IBR on August 12, 2011, (76 FR 40217, July 8, 2011).

(i) Rolls-Royce plc Alert Non-Modification Service Bulletin No. RB.211–78–AG084, Revision 5, dated February 4, 2011.

(ii) Reserved.

(4) For Rolls-Royce plc service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936, or email: *http://www.rolls-royce.com/contact/civil_team.jsp.*

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(6) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202 741 6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on February 7, 2013.

Robert J. Ganley,

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

[FR Doc. 2013–03708 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1274; Directorate Identifier 2012–CE–042–AD; Amendment 39–17359; AD 2013–04–02]

RIN 2120–AA64

Airworthiness Directives; Reims Aviation S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Reims Aviation S.A. Model F406 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as improper material used in nose landing gear (NLG) attachment brackets could lead to failure of the NLG bracket with consequent damage to the airplane while landing. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective March 28, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 28, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Reims Aviation Industries, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone + 33 3 26 48 46 65; fax + 33 3 26 49 18 57; email: *stephan.lapagne@reims-aviation.fr;* Internet: *www.geciaviation.com/en/f406.html.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 5, 2012 (77 FR 72252). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During the manufacturing process, RAI found that some of the nose landing gear (NLG) attachment brackets, Part Number (P/N) 6013119–1, were made of aluminum alloy, instead of steel. The results of the investigations showed that some of these aluminum alloy brackets are likely to be installed on aeroplanes currently in service.
>
> This condition, if not detected and corrected, could lead to failure of the NLG attachment bracket and jamming of the NLG extension/retraction mechanism, possibly resulting in a runway excursion and consequent damage to the aeroplane and injury to the occupants.
>
> For the reasons described above, this AD requires inspection of the NLG attachment bracket P/N 6013119–1 and, depending on findings, replacement with a serviceable bracket made of steel.
>
> In addition, as some aluminum alloy P/N 6013119–1 NLG attachment brackets may have been supplied as spares, this AD also requires determination that the part is made of steel, prior to installation.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 72252, December 5, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 72252, December 5, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the (77 FR 72252, December 5, 2012).

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with

the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $42.50, or $297.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $500, for a cost of $755 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

Examining the AD Docket

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

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 AD:

2013–04–02 Reims Aviation S.A.: Amendment 39–17359; Docket No. FAA–2012–1274; Directorate Identifier 2012–CE–042–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Reims Aviation S.A. F406 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by reports of improper material used in nose landing gear (NLG) attachment brackets that could lead to failure of the NLG bracket with consequent damage to the airplane while landing. We are issuing this AD to ensure the proper NLG attachment bracket is installed.

(f) Actions and Compliance

Unless already done, do the following actions following the Accomplishment Instructions numbers 1 through 5 in Reims Aviation Industries Service Bulletin No. F406–74, dated September 26, 2012:

(1) Within the next 25 hours time-in-service (TIS) after March 28, 2013 (the effective date of this AD) or within the next 30 days after March 28, 2013 (the effective date of this AD), whichever occurs first, inspect the nose landing gear (NLG) attachment brackets, part number (P/N) 6013119–1, to verify if they are made of steel and not aluminum alloy.

(2) If during the inspection required in paragraph (f)(1) of this AD, you find that a NLG attachment bracket made of aluminum alloy is installed, before further flight, replace with an airworthy steel NLG attachment bracket, P/N 6013119–1.

(3) As of March 28, 2013 (the effective date of this AD), do not install any NLG attachment bracket P/N 6013119–1 unless it is made of steel.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2012–0202, dated October 1, 2012; and Reims Aviation Industries Service Bulletin No. F406–74, dated September 26, 2012, for related information.

(i) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Reims Aviation Industries Service Bulletin No. F406–74, dated September 26, 2012.

(ii) Reserved.

(3) For Reims Aviation Industries service information identified in this AD, contact Reims Aviation Industries, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone + 33 3 26 48 46 65; fax + 33 3 26 49 18 57; email: *stephan.lapagne@reims-aviation.fr;* Internet: *www.geciaviation.com/en/f406.html.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on February 12, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–03704 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0509; Airspace Docket No. 12–ANM–15]

Amendment of Class E Airspace; Casper, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace areas at Casper, Natrona County International Airport, Casper, WY, to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to the airport. Decommissioning of the Muddy Mountain VOR Omnidirectional Range Tactical Air Navigation (VORTAC) has made reconfiguration necessary for the safety and management of aircraft operations at the airport.

DATES: Effective date, 0901 UTC, May 2, 2013. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA, 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On November 14, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Casper, WY (77 FR 67782). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraphs 6004, 6005 and 6006, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface, to facilitate vectoring of IFR traffic from en route airspace to the airport, due to the decommissioning of the Muddy Mountain VORTAC at Casper, Natrona County International Airport, Casper, WY. This action also amends Class E en route domestic airspace extending upward from 1,200 feet above the surface by removing the exclusionary language in the regulatory text. This action enhances the safety and management of aircraft operations within the National Airspace System.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Casper, Natrona County International Airport, Casper, WY.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6004 Class E airspace Designated as an Extension to a Class D Surface area.

* * * * *

ANM WY E4 Casper, WY [Modified]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from the surface within 4.3 miles each side of the 036° bearing of the Natrona County International Airport extending from the airport to 13.7 miles northeast of the airport, and within 4.3 miles each side of the 216° bearing of the Natrona County International Airport extending from the airport to 15 miles southwest of the airport, and within 2.7 miles each side of the 269° bearing of the Natrona County International Airport extending from airport to 13.5 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Casper, WY [Modified]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from 700 feet above the surface within a 24-mile radius of the Natrona County International Airport; that airspace extending upward from 1,200 feet above the surface within a 38-mile radius of the Natrona County International Airport.

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM WY E6 Casper, WY [Modified]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from 1,200 feet above the surface within an 85-mile radius of Natrona County International Airport.

Issued in Seattle, Washington, on February 1, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–03981 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0087]

Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Sitcum Waterway Security Zone in Commencement Bay, Tacoma, Washington from 6 a.m. on February 23, 2013, through 11:59 p.m. on March 4, 2013, unless cancelled sooner by the Captain of the Port. This action is necessary for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. Entry into this zone is prohibited unless otherwise exempted or excluded under 33 CFR 165.1321 or unless authorized by the Captain of the Port or his Designated Representative.

DATES: The regulations in 33 CFR 165.1321 will be enforced from 6 a.m. on February 23, 2013, through 11:59 p.m. on March 4, 2013, unless cancelled sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Nathaniel P. Clinger, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6045, email *SectorPugetSound WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will activate and enforce the Sitcum Waterway Security Zone set forth in 33 CFR 165.1321(c)(2) on February 23, 2013, from 6 a.m. through 11:59 p.m. on March 4, 2013, unless cancelled sooner by the Captain of the Port or Designated Representative. Under the provisions of 33 CFR 165.1321, the Coast Guard published a final rule for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. (See 69 FR 52600, Aug. 27, 2004). When activated, this regulation provides for the regulation of vessel traffic in the vicinity of military cargo loading facilities in the navigable waters of the United States. The security zones also exclude persons and vessels from the immediate vicinity of these facilities during military cargo loading and unloading operations. In addition, the regulation establishes requirements for all vessels to obtain permission of the COTP or Designated Representative, including the Vessel Traffic Service (VTS), to enter, move within, or exit these security zones when they are enforced. Entry into this zone is prohibited unless otherwise exempted or excluded under 33 CFR 165.1321 or unless authorized by the Captain of the Port or Designated Representative.

This notice is issued under authority of 33 CFR 165.1321 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via marine information broadcasts and on-scene assets.

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

Dated: February 9, 2013.

S.J. Ferguson,

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

[FR Doc. 2013–03917 Filed 2–20–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–SLBE–12083; PPMWSLBES0–PPMPSPD1Z.YM0000]

RIN 1024–AE11

Special Regulations; Areas of the National Park System, Sleeping Bear Dunes National Lakeshore, Bicycling

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates the Sleeping Bear Heritage Trail currently under construction within Sleeping Bear Dunes National Lakeshore as a route for bicycle use. The approximately 27-mile-long trail will generally parallel major state highways and offer visitors safe, non-motorized access to the park. National Park Service general regulations require promulgation of a special regulation to designate new routes for bicycle use outside developed areas or off park roads.

DATES: The rule is effective March 25, 2013.

FOR FURTHER INFORMATION CONTACT: Tom Ulrich, Deputy Superintendent, Sleeping Bear Dunes National Lakeshore, Telephone: 231–326–5135.

SUPPLEMENTARY INFORMATION:

Background

Sleeping Bear Dunes National Lakeshore (SLBE or Lakeshore) was established in 1970 ''for the benefit, inspiration, education, recreation, and enjoyment of the public.'' (16 U.S.C. 460x). SLBE's enabling legislation requires the National Park Service (NPS) to ''administer and protect [the Lakeshore] in a manner which provides for recreational opportunities consistent with the maximum protection of the natural environment within the area.'' (16 U.S.C. 460x). The 71,000-acre Lakeshore is located in the northwest portion of Michigan's Lower Peninsula and encompasses a 35-mile stretch of Lake Michigan's eastern coastline as well as North Manitou and South Manitou islands. The mainland portion is located within Benzie and Leelanau Counties. The Manitou Islands, in Leelanau County, are located to the northwest in Lake Michigan, about seven miles from the shore. The nearest city is Traverse City, Michigan (population 15,000), located 30 miles east of the Lakeshore. Smaller communities such as Empire, Glen Arbor, and Frankfort are closer.

Named after a complex of coastal sand dunes, the Lakeshore features white sand beaches, steep bluffs reaching as high as 450 feet above Lake Michigan, thick maple and beech forests, and clear inland lakes. The Lakeshore's most notable feature—the ancient sand dunes—are products of wind, ice, and water action over thousands of years. The high, perched dunes afford spectacular views across Lake Michigan and of other glacially formed landscapes. The contrast between the open, sunny environment of the dunes and the adjacent lush beech-maple forests is striking.

A lighthouse, three former U.S. Life-Saving Service/Coast Guard stations, several coastal villages, and picturesque farmsteads reflect the Lakeshore's rich maritime, agricultural, and recreational history. The region surrounding the Lakeshore is a popular vacation and summer home destination. SLBE offers visitors recreational activities such as hiking, backpacking, kayaking, cross-country skiing, backcountry camping, hunting, fishing, and boating.

Over 1.1 million people visit the Lakeshore annually. SLBE's main visitor attractions include the Dune Climb (330,000+ visitors/year), Pierce Stocking Scenic Drive (430,000 visitors/year), and the Visitor Center (130,000+ visitors/year). Traffic and parking congestion are a concern at these locations. A multi-use trail connecting the main visitor destinations would help relieve these traffic concerns while simultaneously enhancing visitor access to a variety of recreational activities.

History of Bicycle Use

Currently, bicycling within SLBE is allowed only on a lane shared with motor vehicles on Pierce Stocking Scenic Drive, on the road shoulders of state highways (M–22 and M–109), and on county roads that run through the Lakeshore.

The Sleeping Bear Heritage Trail

The Sleeping Bear Heritage Trail (SBHT) will be a hard-surfaced, approximately 27-mile-long trail from the southern Leelanau County line at Manning Road to County Road 651 at Good Harbor Beach. The trail will be separated from the roadway wherever possible, providing a safe, non-motorized route connecting the Lakeshore's main visitor destinations with neighboring communities in Glen Arbor and Empire. Construction of the first segment of the trail was completed in June 2012, with the remainder to be constructed over a period of approximately 10 years. The route will generally parallel state highways M–22 and M–109, but will occasionally depart from these rights-of-way to take advantage of other existing corridors, such as old logging trails and a narrow gauge railbed. By using these and other disturbed areas whenever feasible, the location of the SBHT will minimize disturbance to and protect Lakeshore resources. The SBHT will be located entirely on public lands within the Lakeshore.

Moving bicycle traffic off roads used by motor vehicles will reduce safety hazards and enhance opportunities for non-motorized enjoyment of the Lakeshore. It will also encourage the use of alternate means of transportation by park employees and park visitors to access these extremely popular areas. The SBHT will give bicyclists, walkers, runners, wheelchair users, rollerbladers, and cross-country skiers a safe, enjoyable, and healthy way to access and explore the Lakeshore.

Maps depicting the planned trail route including the completed first segment are available for review in the office of the Superintendent and on the Lakeshore's Web site at *http://www.nps.gov/slbe/parkmgmt/planning.htm*.

Trail Planning and Environmental Analyses

The idea for a multi-use trail came from the Leelanau Scenic Heritage Route Committee (LSHR), which was created by the State of Michigan to preserve the historical integrity and safety of state highways M–22, M–109, and M–204. The LSHR is a broad partnership with representatives from 12 municipalities, the Lakeshore, the Michigan Department of Transportation, the Grand Traverse Band of Ottawa and Chippewa Indians, the Leelanau Conservancy, the Leelanau County Road Commission, the Leelanau County Planning Commission, chambers of commerce, interested organizations, and citizens.

Planning for the trail began in 2005 when the LSHR suggested the concept to the NPS. In 2006, the LSHR created a Trailway Work Group to develop a multi-use trail along the M–22 and M–109 corridor in the Lakeshore. The Work Group included representatives of SLBE, the Michigan Department of Transportation, local townships and villages, and other interested groups and citizens. Through the LSHR, the public had many opportunities for involvement in planning the SBHT. The public provided input and review at various meetings and events, including over 25 LSHR Committee meetings and 15 Trailway Work Group meetings from 2005 to 2008, and Port Oneida Days at the Lakeshore in August 2006 and 2007. In 2006 the LSHR staff also made introductory presentations to local governments, with follow-up presentations made in 2008.

The multi-use trail concept, including bicycle use, and the trail route were considered in the preferred alternative of SLBE's October 2008 Final General Management Plan/Wilderness Study/Environmental Impact Statement (GMP/EIS) and Record of Decision (ROD) signed by the NPS SLBE Superintendent and NPS Mid-West Regional Director in January 2009. In March 2009, SLBE published the Leelanau Scenic Heritage Route Trailway Plan and Environmental Assessment (EA), which evaluated the environmental impacts of a no-action alterative and two action alternatives, including one identified as the preferred alternative.

The Leelanau Scenic Heritage Trailway route was named the Sleeping Bear Heritage Trail, and in August 2009, the NPS SLBE Superintendent and NPS Mid-West Regional Director signed a Finding of No Significant Impact (FONSI). The FONSI identified the preferred alternative as the selected action and concluded that the construction of the multi-use trail, which would include bicycle use, would not have a significant effect on the human environment. The GMP/EIS, ROD, EA, FONSI, and related documents may be viewed on the Lakeshore's planning Web site at

http://www.nps.gov/slbe/parkmgmt/planning.htm.

Final Rule

The SBHT will generally be constructed in M–22/M–109 and county road rights-of-way, and primarily within developed area zones as described in the Lakeshore's GMP. However, the trail route will occasionally deviate from the highway corridor and outside of developed areas to provide access to natural, cultural, and recreation resources, and to promote a broader variety of experiences for the trailway user. Therefore, a special regulation is required by the NPS general regulation pertaining to bicycles found at 36 CFR 4.30.

Accordingly, this final rule adds a new paragraph to 36 CFR 7.80, designating the 27-mile-long SBHT as a route for bicycle use. The rule also grants the Superintendent the authority to impose closures or restrictions upon bicycle use on designated trails after taking into consideration public health and safety, resource protection, and other management activities and objectives, provided public notice is given under 36 CFR 1.7.

Notice of Proposed Rulemaking

On October 15, 2012, the NPS published a Notice of Proposed Rulemaking for the designation of the Sleeping Bear Heritage Trail as a route for bicycle use (77 FR 62476). The proposed rule was available for a 60-day public comment period, from October 15, 2012 through December 14, 2012.

Summary of and Responses to Public Comment

Comments were accepted by email and through the Federal eRulemaking Portal: *http://www.regulations.gov*. The NPS received four public comments during the comment period. All of the comments were from individuals and expressed clear support for the proposed rule and specific goals for the bicycle trail as detailed in the public planning documents that led to its construction (GMP/EIS and EA). Commenters also cited support for the manner in which the bicycle trail and the associated rule will provide for safe enjoyment of the Lakeshore; safe travel routes to nearby communities; a new, healthful, recreational opportunity in the Lakeshore; and finally, the anticipated reduction in vehicle traffic, congestion, and emissions.

One commenter suggested adding lane designations to the trail to separate bicycle and pedestrian traffic.

NPS Response: The trail has been designed to allow for flexibility in management, including the addition of lane delineation in the future, if trail use warrants such an action.

Changes From the Proposed Rule

After consideration of the public comments, the park has decided that no changes are necessary in the final rule.

Compliance With Other Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report entitled ''Cost-Benefit and Regulatory Flexibility Analyses Leelanau Scenic Heritage Route Trailway, Sleeping Bear Dunes National Lakeshore'' (NPS Environmental Quality Division—May 2012), available for review at *http://www.nps.gov/slbe/parkmgmt/planning.htm*.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule would not require fees, or involve other measures that would increase costs to visitors or, businesses. Rather, this rule would reasonably increase Lakeshore visitation and thereby generate benefits for businesses through increased visitor spending.

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. The rule will not deny any property owner beneficial uses, or reduce the value, of their land. No taking of property will occur as a result of this rule. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of NPS administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Representatives of the five Indian tribes affiliated with SLBE were consulted during the evaluation of the trail concept and route in the preparation of the GMP/EIS. Representatives of the nearest affiliated tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, are members of the LSHR that proposed the trail and helped to prepare the EA.

Paperwork Reduction Act (PRA)

This rule does not contain information collection requirements, and a submission under the PRA is not required.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because we reached a FONSI. The GMP/EIS, EA, FONSI, and related documents may be viewed on the Lakeshore's planning Web site *http://www.nps.gov/slbe/parkmgmt/planning.htm.*

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Drafting Information

The primary authors of this regulation were Tom Ulrich, Deputy Superintendent, Sleeping Bear Dunes National Lakeshore, Michael Tiernan, Office of the Solicitor, U.S. Department of the Interior, Washington, DC, A.J. North, Jay P. Calhoun, and Rose Wilkinson, NPS Regulations and Special Park Uses, Washington, DC.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, D.C. Code 10–137 (2001) and D.C. Code 50–2201 (2001).

■ 2. In § 7.80 add paragraph (c) to read as follows:

§ 7.80 Sleeping Bear Dunes National Lakeshore.

* * * * *

(c) *Bicycling.* (1) The Sleeping Bear Heritage Trail, approximately 27 miles in length from the southern Leelanau County line at Manning Road to County Road 651 at Good Harbor Beach, is designated as a route for bicycle use.

(2) The Superintendent may open or close designated routes, or portions thereof, or impose conditions or restrictions for bicycle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives. (i) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(ii) Violating a closure, condition, or restriction is prohibited.

Dated: February 11, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–04047 Filed 2–20–13; 8:45 am]

BILLING CODE 4132–EJ–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[HI 126–NBK; FRL–9712–2]

Approval and Promulgation of Implementation Plans; State of Hawaii; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by the State of Hawaii that are incorporated by reference (IBR) into the Hawaii State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State of Hawaii and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: *Effective Date:* This rule is effective on February 21, 2013.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave. NW., Washington, DC 20460; and

National Archives and Records Administration (NARA).

If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: 202–566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On August 4, 2005 (70 FR 44852), as corrected on August 23, 2005 (70 FR 49377), EPA published a document in the **Federal Register** beginning the new IBR procedures for the State of Hawaii.

On April 23, 2012 (77 FR 24148) and April 27, 2012 (77 FR 25084) EPA published updates to the IBR material for the State of Hawaii.

II. EPA Action

In this action, EPA is doing the following:

A. Announcing an update to the IBR material as of December 20, 2012; and

B. Revising the entries in paragraphs 52.620(b) and (c) to reflect this update.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Statutory and Executive Order Reviews

A. General Requirements

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.

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

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Hawaii SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' reorganization update action for the State of Hawaii.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: July 19, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Editorial Note: This document was received at the Office of the Federal Register on February 14, 2013.

Part 52, chapter I, title 40 of the Code of Federal Regulations are 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 M—Hawaii

■ 2. Section 52.620 is amended revising paragraphs (b) and (c) to read as follows:

§ 52.620 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) and (d) of this section with an EPA approval date prior to May 1, 2012, was 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 notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after May 1, 2012, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region IX certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially

promulgated State rules/regulations which have been approved as part of the State implementation plan as of May 1, 2012.

(3) Copies of the materials incorporated by reference may be inspected at the Region IX EPA Office at 75 Hawthorne Street, San Francisco, CA 94105; Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave. NW., Washington, DC; or 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/cfr/ibr-locations.html*.

(c) EPA approved regulations.

EPA-APPROVED STATE OF HAWAII REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
Department of Health, Public Health Regulations, Chapter 43, Air Pollution Control Regulations				
Section 22	Hearings and Appeals	12/26/1972	05/14/1973, 38 FR 12711	See also 74 FR 11037 (March 16, 2009).
Section 23	Application	03/28/1972	05/31/1972, 37 FR 10842	See also 74 FR 11037 (March 16, 2009).
Department of Health, Title 11, Chapter 60, Air Pollution Control Regulations				
11–60–18	Control of open burning	11/29/1982	08/18/1983, 48 FR 37403	
11–60–21	Agricultural burning, ''no burn'' days.	11/29/1982	08/18/1983, 48 FR 37403	
11–60–23	Agricultural burning, action on applications.	11/29/1982	08/18/1983, 48 FR 37403	
11–60–26	Fugitive dust	11/29/1982	08/18/1983, 48 FR 37403	
11–60–27	Incineration	11/29/1982	08/18/1983, 48 FR 37403	
11–60–28	Bagasse-burning boilers	11/29/1982	08/18/1983, 48 FR 37403	
11–60–29	Process industries	11/29/1982	08/18/1983, 48 FR 37403	
Department of Health, Title 11, Chapter 60.1, Air Pollution Control, Hawaii Administrative Rules				
11–60.1–1	Definitions	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–1.
11–60.1–2	Prohibition of air pollution	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–17.
11–60.1–3	General conditions for considering applications.		04/23/2012, 77 FR 24148	Supersedes 11–60–04, 11–60–11, 11–60–13, 11–60–14.
11–60.1–4	Certification	11/14/2003	4/27/2012, 77 FR 25084	New regulation.
11–60.1–5	Permit conditions		04/23/2012, 77 FR 24148	New regulation.
11–60.1–7	Transfer of permit		04/23/2012, 77 FR 24148	Supersedes 11–60–09.
11–60.1–8	Reporting discontinuance	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–10.
11–60.1–11	Sampling, testing, and reporting methods.	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–15 and 11–60–6.
11–60.1–12	Air quality models		04/23/2012, 77 FR 24148	New regulation.
11–60.1–14	Public access to information	11/14/2003	4/27/2012, 77 FR 25084	New regulation.
11–60.1–15	Reporting of equipment shutdown.	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–16.
11–60.1–16	Prompt reporting of deviations	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–16.
11–60.1–17	Prevention of air pollution emergency episodes.	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–35.
11–60.1–19	Penalties and remedies		04/23/2012, 77 FR 24148	Supersedes 11–60–37.
11–60.1–20	Severability	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–38.
11–60.1–32	Visible emissions	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–24.
11–60.1–34	Motor vehicles	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–25.
11–60.1–40	Volatile organic compound water separation.	11/14/2003	4/27/2012, 77 FR 25084	New regulation.
11–60.1–41	Pump and compressor requirements.	11/14/2003	4/27/2012, 77 FR 25084	New regulation.
11–60.1–42	Waste gas disposal	11/14/2003	4/27/2012, 77 FR 25084	New regulation.
11–60.1–51	Definitions	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–1.
11–60.1–53	Agricultural burning: Permit requirement.	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–19.
11–60.1–54	Agricultural burning: Applications.	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–20.
11–60.1–56	Agricultural burning: Recordkeeping and monitoring.	11/14/2003	4/27/2012, 77 FR 25084	Supersedes 11–60–22.
11–60.1–81	Definitions		04/23/2012, 77 FR 24148	New regulation.
11–60.1–82	Applicability		04/23/2012, 77 FR 24148	Supersedes 11–60–02.
11–60.1–83	Initial covered source permit application.		04/23/2012, 77 FR 24148	Supersedes 11–60–03, 11–60–05, 11–60–07, 11–60–08, 11–60–12.
11–60.1–84	Duty to supplement or correct permit applications.		04/23/2012, 77 FR 24148	New regulation.
11–60.1–91	Temporary covered source permits.		04/23/2012, 77 FR 24148	New regulation.

EPA-APPROVED STATE OF HAWAII REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA approval date	Explanation
11–60.1–92	Covered source general permits.		04/23/2012, 77 FR 24148	New regulation.
11–60.1–93	Federally-enforceable permit terms and conditions.		04/23/2012, 77 FR 24148	New regulation.
11–60.1–99	Public participation		04/23/2012, 77 FR 24148	New regulation.
11–60.1–103	Applications for minor modifications.		04/23/2012, 77 FR 24148	New regulation.
11–60.1–104	Applications for significant modifications.		04/23/2012, 77 FR 24148	New regulation.

* * * * *

[FR Doc. 2013–03842 Filed 2–20–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–223, DA 02–2231]

Radio Broadcasting Services; Avalon, California

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules published in the **Federal Register** on November 20, 2002. The final rules modified the TV Table of Allotments.

DATES: The amendment to 47 CFR 73.622(b) published in the **Federal Register** at 67 FR 70018, November 20, 2002, is effective February 21, 2013.

FOR FURTHER INFORMATION CONTACT: For additional information contact John Norton, 202 418–2120, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: The Commission published a Report and Order, MB Docket No. 02–223, released September 17, 2002 at 67 FR 70018, November 20, 2002. The final rule amended § 73.622(b), Table of Allotments, under California by adding Avalon, DTV channel 47c. The document stated the amendment will become effective 60 days after the concurrence of the Mexican government is obtained. The Mexican clearance was granted on June 7, 2004.

Federal Communications Commission.

Michelle Carey,

Deputy Chief, Media Bureau.

[FR Doc. 2013–03930 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; FCC 04–103]

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules published in the **Federal Register** on June 23, 2004. The final rules revised broadcast and multichannel video programming distributor (MVPD) equal employment opportunity (EEO) requirements.

DATES: The amendments to 47 CFR 73.3612 and 76.1802, published in the **Federal Register** at 69 FR 34950, June 23, 2004, are effective February 21, 2013.

FOR FURTHER INFORMATION CONTACT: For additional information contact Lewis Pulley, 202–418–1450, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: In a Third Report and Order in MM Docket No. 98–204; FCC 04–103, published in the **Federal Register**, 69 FR 34950, June 23, 2004, the Commission adopted rules which contained information collection requirements subject to the Paperwork Reduction Act. The document stated that the rule changes requiring OMB approval would become effective after OMB approval and announcement in the **Federal Register**.

On July 22, 2004, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR Sections 73.3612 and 76.1802. The information collections are assigned to OMB Control No. 3060–0390 and 3060–0095, respectively.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03939 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215, FCC 94–286]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules published in the **Federal Register** on December 6, 1994. The final rules revised to provide cable operators with additional incentives to expand their facilities and services in a way that both ensures that cable rates are reasonable and expands the opportunities for cable programmers to reach viewers.

DATES: The amendments to 47 CFR 76.922(e)(1) and (2) published in the **Federal Register** at 59 FR 62614, December 6, 1994, are effective February 21, 2013.

FOR FURTHER INFORMATION CONTACT: For additional information contact John Norton, 202–418–2120, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: In a Sixth Order on Reconsideration and Fifth Report and Order in MM Docket Nos. 92–266 and 93–215; FCC 94–286, published in the **Federal Register**, 59 FR 62614, December 6, 1994, the Commission adopted rules which contained information collection requirements subject to the Paperwork Reduction Act. The document stated that the rule changes requiring OMB approval would become effective after OMB approval and announcement in the **Federal Register**. On February 21,

1995, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 76.922(e)(1) and (2). The information collection is assigned to OMB Control No. 3060–0607.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03932 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266, FCC 95–397]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules published in the **Federal Register** on October 5, 1995. The Commission simplified rules affecting cable operators' rates and provided cable operators with an additional option for adjusting their rates.

DATES: The amendments to 47 CFR 76.922(c), (d), (g) through (m) and additions of 47 CFR 76.922(e) and (f) and 76.933(h) published in the **Federal Register** at 60 FR 52106, October 5, 1995, are effective February 21, 2013.

FOR FURTHER INFORMATION CONTACT: For additional information contact John Norton, *John.Norton@fcc.gov,* 202–418–2120, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: In a Thirteenth Order on Reconsideration released on September 22, 1995, FCC 95–397, and published in the **Federal Register** on October 5, 1995, 60 FR 52106, the Commission adopted rules which contained information collection requirements subject to the Paperwork Reduction Act. The document stated that the rule changes requiring OMB approval would become effective upon announcement in the **Federal Register** of OMB approval. On December 15, 1995, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 76.922 and 76.933. This information collection is assigned to OMB Control No. 3060–0685.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03933 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–46, FCC 96–334]

Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of rules published in the **Federal Register**, 61 FR 43160, August 21, 1996. The final rules modified rules and policies concerning Open Video Systems.

DATES: The amendments to 47 CFR 76.1505(d) and 76.1506(d), (l)(3), and (m)(2) published in the **Federal Register** at 61 FR 43160, August 21, 1996, are effective February 21, 2013.

FOR FURTHER INFORMATION CONTACT: For additional information contact John Norton, 202–418–2120, Media Bureau, Policy Division.

SUPPLEMENTARY INFORMATION: In a Third Report and Order and Second Order on Reconsideration released on August 8, 1996, FCC 96–334, and published in the **Federal Register** on August 21, 1996, 61 FR 43160, the Commission adopted rules which contained information collection requirements subject to the Paperwork Reduction Act. The document stated that the rule changes requiring OMB approval would become effective after OMB approval and announcement in the **Federal Register**. On October 24, 1996, the Office of Management and Budget (OMB) approved the information collection requirements contained in 47 CFR 76.1505(d) and 76.1506(d), (l)(3), and (m)(2). This information collection is assigned to OMB Control No. 3060–0700.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03945 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2012–0066; FF09M21200–123–FXMB1231099BPP0L2]

RIN 1018–AY70

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2013 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2013 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that go into effect on April 2, 2013, and expire on August 31, 2013.

DATES: The amendments to subpart A of 50 CFR part 92 are effective March 25, 2013, and the amendments to subpart D of 50 CFR part 92 are effective April 2, 2013, through August 31, 2013.

FOR FURTHER INFORMATION CONTACT: Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2013. This rule establishes a list of migratory bird season openings and closures in Alaska by region.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, was originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on March 26, 2012 (77 FR 17353). Recent **Federal Register** documents, which are all final rules setting forth the annual harvest regulations, are available at *http://alaska.fws.gov/ambcc/regulations.htm* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service is establishing migratory bird subsistence harvest regulations in Alaska for the 2013 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2013 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 17, 2012 (77 FR 23094), to amend 50 CFR part 20. While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2013 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 17, 2012, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 11–12 and May 9, 2012, to develop recommendations for changes to take effect during the 2013 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee (SRC) at the committee's meeting on July 25 and 26, 2012.

On September 21, 2012, we published in the **Federal Register** (77 FR 58732) a proposed rule that provided our proposed migratory bird subsistence harvest regulations in Alaska for the 2013 season. Regulations presented in that proposed rule were identical to those for the 2012 harvest season.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. Highly-populated, roaded areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

What is different in the region-specific regulations for 2013?

Regulations established in this rule are identical to those for the 2012 harvest season. However, at the April 2012 Co-Management Council meeting, the North Slope Borough requested that the provision that enables yellow-billed loons inadvertently caught in subsistence fishing to be kept for subsistence use be added permanently to the consent agenda from 2013 regulations forward. The request eliminates the need for the North Slope Borough to resubmit the loon proposal annually and eliminates the requirement for the SRC to review and decide on the proposal at each subsequent July meeting. The motion passed with unanimous consent by the Co-Management Council.

In 2011, the North Slope Borough Wildlife Department conducted harvest surveys in Barrow, Atqasuk, and Nuiqsut. They identified 125 fishermen and cabin owners from those 3 communities involved. Of the 125, only 3 refused to participate in the survey, so we had 97 percent participation. The resultant estimate was 25 yellow-billed loons entangled, of which 7 were released; 4 were used to make headdresses for traditional, ceremonial dances; and the remainder used for other subsistence purposes.

In the Co-Management Council's discussion of the North Slope Borough's proposal to eliminate the requirement for annual submission and review, the State of Alaska Representative stated that the North Slope Borough had done a very good job of putting together a loon harvest survey in those areas where yellow-billed loons and fishing co-exist, documenting the current levels of inadvertent take. At this meeting, the North Slope Borough committed to continue collecting this information for 2 more years (through 2013) to provide additional inadvertent take numbers to the SRC. On July 26, 2012, the SRC supported removal of the requirement for annual review and approval of the yellow-billed loon provision for the North Slope.

How will the service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of candidate species or species listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Spectacled and Steller's Eiders

Spectacled eiders *(Somateria fischeri)* and the Alaska-breeding population of Steller's eiders *(Polysticta stelleri)* are listed as threatened species; their

migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals continue to be challenging, they are not irreconcilable, provided the regulations continue to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals in mind, the Service, working with North Slope partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect taking of any threatened eider species.

This rule continues to focus on the North Slope from Barrow to Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These regulations are designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This rule also describes how the Service's existing authority of emergency closure will be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species, as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The regulations pertaining to bag checks and possession of illegal birds are deemed necessary to verify that no closed eider species are taken during the legal subsistence hunt.

The Service is aware of and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot in the last 3 years, even though Steller's eiders nested in the Barrow area from 2010 through 2012. The Service acknowledges progress made with the other eider conservation measures including partnering with the North Slope Migratory Bird Task Force for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. Our primary strategy to reduce the threat of shooting mortality of threatened eiders is to continue working with North Slope partners to conduct education, outreach, and harvest monitoring. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. During 2009 through 2012, no Steller's eiders were reported being taken on the North Slope, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. Based on these successes, the 2012 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each receives. Specifically, local communities have continued to develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and based on last year's observations local hunters have demonstrated greater compliance with hunting regulations.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulation at 50 CFR 92.32, carried over from the past 3 years, clarifies that we would take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-Billed Loon and Kittlitz's Murrelet

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris)* are candidate species for listing under the Endangered Species Act. Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated that harvest of yellow-billed loons on the North Slope and St. Lawrence Island does occur. Most of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will continue outreach efforts in both areas in 2013, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule will continue through 2013 the provisions originally established in 2005, to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important to the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons will be allowed to be kept if found entangled in fishing nets in 2013, under this provision. This provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities.

Definition Clarification

We are adding a definition of harvest season ''closure'' to the existing definitions list at 50 CFR 92.4. This change to the regulations clarifies our use of this term. This addition was requested by members of the public who expressed some confusion as to whether or not egg gathering is also prohibited during harvest closures. Under our new definition, we clarify that a season ''closure'' means that the season is closed to all forms of harvest, including hunting and egg gathering, unless specified otherwise.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to ''review other programs administered by him and utilize such programs in furtherance of the purposes of the Act'' and to ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *'' We conducted an intra-agency consultation with the Fairbanks Fish and Wildlife Field Office on this harvest as it will be managed in accordance with this final rule and the conservation measures. The consultation was completed with a biological opinion dated January 24, 2013, that concluded the final rule and conservation measures are not likely to jeopardize the continued existence of Steller's eider, spectacled eider, yellow-billed loon, or Kittlitz's murrelet, or result in the destruction or adverse modification of designated critical habitat for Steller's eider or spectacled eider.

Summary of Public Involvement

On September 21, 2012, we published in the **Federal Register** a proposed rule (77 FR 58732) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the 2013 subsistence season. The proposed rule provided for a public comment period of 60 days, ending November 20, 2012. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council's Internet homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media Statewide in Alaska. Additionally, all documents were available on *http://www.regulations.gov*. The Service received three responses, all from individuals.

Response to Public Comments

Comment: We received one general comment on the overall regulations that expressed strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

Service Response: For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The Canada and Mexico migratory bird treaties were amended for the express purpose of allowing subsistence hunting for migratory birds during the spring and summer. The amendments indicate that the Service should issue regulations allowing such hunting as provided in the Migratory Bird Treaty Act; see 16 U.S.C. 712(1). See also **Statutory Authority** section, below, for more details.

Comment: We received one comment that it is unnecessary and time consuming to have the migratory bird harvest season subject to annual review and approval.

Service Response: At 50 CFR 92.30, we explain that the Co-Management Council will have the opportunity to review the harvest regulations on an annual basis, working within the schedule of the late-season regulations for migratory game bird hunting. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the harvesting of migratory birds is prohibited unless regulations are established ensuring the protection of the various populations of migratory birds. Development of these regulations involves annual data gathering to determine bird population status and trends, habitat conditions, harvest trends, and other factors that may have an impact on the effects of the harvest. The Service therefore proposes annual regulations for public comment for 50 CFR part 92, subpart D.

Comment: One commenter stated that the Service violated the language of the Migratory Bird Treaty Act by permitting the taking of birds for cultural purposes, namely the taking of yellow-billed loons for use in traditional dance regalia.

Service Response: The commenter correctly points out that ''the Secretary of the Interior is authorized to issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs * * *'' (16 U.S.C. 712(1)). While the commenter does not believe that traditional dance regalia is an essential need, the regulations issued by the Secretary of the Interior at 50 CFR 92.6 state that nonedible byproducts of migratory birds may be used for other purposes. Traditional dance regalia is such a purpose.

Comment: One commenter stated that the Service did not provide adequate notice as required by the Administrative Procedure Act (5 U.S.C. 551 et seq.) for its proposal to permanently add to the consent agenda the provision enabling yellow-billed loons inadvertently caught on subsistence fishing to be kept for subsistence use. The commenter further contends that the Service did not make the North Slope Borough loon survey report part of the administrative record available with the proposed rule, denying the public access to review and comment if it was sufficient. In addition, they requested that Service should reopen the comment period for the proposed rule to make available the loon survey report and allow the public an opportunity to comment on it.

Service Response: The proposed rule included the provision allowing yellow-billed loons that are inadvertently entangled in fishing nets to be kept for subsistence uses. Thus, the Service provided the legally-required notice that it intended to include this provision in the final rule. The consent agenda and the North Slope Borough loon survey report pertain to the development of the Service's regulatory proposal. The loon survey report was available and was discussed at the April 11–12, 2012, meeting of the Co-Management Council in Anchorage, which was a publicized public meeting. In addition, any referenced documents were and are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. During the 60-day public comment period for the proposed rule, interested members of the public had further opportunities to request and receive the loon survey report and to submit comments on it.

Comment: The Service relied on limited, uncertain data when addressing the proposal to permanently add to the consent agenda the provision enabling yellow-billed loons inadvertently caught in subsistence fishing to be kept for subsistence use, such that the Service violated the Administrative Procedure Act by not supplying sound facts to support the decision.

Service Response: The North Slope Borough's survey methodology was reviewed and approved in advance by both the Service and the Alaska Department of Fish and Game. By targeting registered subsistence fishermen from villages where their fishing activities overlap with the breeding range of yellow-billed loons, the survey focused on the users that could inadvertently catch yellow-billed loons in their fishing nets. The survey was voluntary, and cannot be legally mandated, so a 97 percent response rate was exceptional. Consequently, the Service considers the survey to be a comprehensive and valid means of documenting the current levels of inadvertent take.

Comment: The Service's proposal to allow 20 yellow-billed loons to be kept for subsistence purposes when inadvertently caught in subsistence fishing nets is an arbitrary and

capricious number with no record evidence to support it.

Service Response: In the face of uncertainty, the SRC, on July 29, 2004, proposed 20 as the maximum number of yellow-billed loons that could be inadvertently caught and retained annually in the North Slope Region. The number 20 was chosen as a trigger point that if the inadvertent harvest remained below that, it was deemed not a significant threat to the local breeding population; however if the harvest exceeded that, then any continuation of this provision would have to be carefully re-evaluated by the SRC. During the following 7 years, the SRC required annual re-evaluation of this provision to monitor the amount of yellow-billed loons actually being caught and retained, and to allow the Service to work with the North Slope Borough on outreach efforts to encourage safe release of loons inadvertently caught in the fishing nets, when possible. Since that time, there has been no indication that the numerical cap should change. Thus, the SRC did not see the need to adjust the numerical cap on the number of loons salvaged.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more. It legalizes and regulates a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that will be regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this final rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this final rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This final rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This final rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this final rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The final rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this final rule does not have significant takings implications. This final rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this final rule does not have sufficient federalism implications to

warrant the preparation of a federalism summary impact statement. We discuss effects of this final rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this final rule, has determined that it does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), ''Consultation and Coordination with Indian Tribal Governments'', and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), we emailed or sent letters to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we emailed or sent letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2013 migratory bird subsistence harvest regulations. We received 4 responses, of which 2 requested consultation. One respondent was confused as to the process and was actually just seeking more information, and one respondent did not want to consult after also receiving clarification of the process. We conducted 2 consultations, one with a tribe and one with a corporation, on November 14, 2012. All contacts were happy with the information provided and did not have any comments on the regulations. One contact did suggest a change in the public distribution of the regulations, requesting that tribal offices receive extra copies of the public booklet.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the letter of submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They will develop recommendations for among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

Paperwork Reduction Act

This final rule has been examined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and does not contain any new collections of information that require Office of Management and Budget (OMB) approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires April 30, 2013. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.) Consideration

The annual regulations and options are considered in the environmental assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2013 Spring/Summer Harvest,'' September 12, 2012. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov* under docket number FWS–R7–ES–2012–0066.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it allows only for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest. Further, this final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

For the reasons set out in the preamble, we are amending title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

■ 2. Amend § 92.4 by adding, in alphabetical order, a definition for ''*Closure*'' to read as follows:

§ 92.4 Definitions.

* * * * *

Closure means the season is closed to all forms of harvest, including hunting and egg gathering, unless specified otherwise.

* * * * *

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 3. Add § 92.31 to subpart D to read as follows:

§ 92.31 Region-specific regulations.

The 2013 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.*

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.*

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council

President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay Region.*

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.*

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.*

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.*

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ W and south of the latitude line 70°45′ N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area consists of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W and north of the latitude line 70°45′ N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland);

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area (Harvest area: Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier:

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR Part 100.3(a)):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay):

(i) Season: glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 4. Add § 92.32 to subpart D to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders *(Polysticta stelleri),* the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: February 12, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–03999 Filed 2–20–13; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 78, No. 35

Thursday, February 21, 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.

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2011–BT–STD–0031]

RIN 1904–AC54

Energy Efficiency Program for Commercial and Industrial Equipment: Commercial and Industrial Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The comment period for the notice of public meeting and availability of the Framework Document pertaining to the development of energy conservation standards for commercial and industrial pumps published on February 1, 2013, is extended to May 2, 2013.

DATES: The comment period for the notice of public meeting and availability of the Framework Document relating to commercial and industrial pumps is extended to May 2, 2013.

ADDRESSES: Any comments submitted must identify the Framework Document for commercial and industrial pumps and provide docket number EERE–2011–BT–STD–0031 and/or RIN number 1904–AC54. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal at http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* to *Pumps2011STD0031@ee.doe.gov.* Include EERE–2011–BT–STD–0031 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for commercial and industrial pumps, EERE–2011–BT–STD–0031, 1000 Independence Avenue SW., Washington, DC 20585– 0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. Email: *pumps@ee.doe.gov.*

In the office of the General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) published a request for information to solicit comments, data and information on, among other things, the energy use and potential means to improve the energy efficiency of commercial and industrial pumps. (76 FR 34192, June 13, 2011). DOE subsequently published a notice of public meeting and availability of the Framework Document in the **Federal Register** (78 FR 7304, Feb. 1, 2013) to solicit public input and facilitate the process of considering energy conservation standards for commercial and industrial pumps. The notice requested public comment from interested parties regarding specific as well as general questions and provided for the submission of comments by March 18, 2013. Thereafter, the Hydraulic Institute (HI) requested, on behalf of itself and its members, a 30-day extension of the public meeting and an additional 30-day extension of the comment period following the public meeting. HI stated that the additional time is necessary in order to review the 126 page document, gather the requisite information, and respond to the 110 questions DOE presented in the framework document. HI noted that the framework document addresses ''innumerable issues and complexities'' and that ''DOE is requesting well-informed and technical responses.'' HI asserts that there is insufficient time before the February 20, 2013 hearing date to gather information and respond.

DOE declines to delay the public meeting. DOE notes that a public meeting on commercial and industrial fans is scheduled for February 21, 2013, the day after the meeting scheduled for pumps. Given the similarities in DOE's approach to and the issues presented by these equipment types, and in consideration of the travel schedules of participants who wish to attend the public meetings in person, DOE is retaining the scheduled February 20, 2013 public meeting date for pumps. However, based on HI's request, DOE believes that extending the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is extending the comment period until May 2, 2013 to provide interested parties additional time to prepare and submit comments. Accordingly, DOE will consider any comments received by May 2, 2013 to be timely submitted.

Issued in Washington, DC, on February 12, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–03996 Filed 2–20–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0371; Airspace Docket No. 12–ANM–11]

Proposed Modification of Class D and Class E Airspace; Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D airspace and the Class E airspace areas at Pueblo Memorial Airport, Pueblo, CO. Controlled airspace is necessary to accommodate aircraft using VHF Omni-Directional Radio

Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedures at Pueblo Memorial Airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations in the vicinity of the Pueblo Memorial Airport. This action also would make an adjustment to the geographic coordinates of the airport.

DATES: Comments must be received on or before April 8, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0371; Airspace Docket No. 12–ANM–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0371 and Airspace Docket No. 12–ANM–11) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0371 and Airspace Docket No. 12–ANM–11''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class D airspace, Class E airspace designated as surface area, Class E airspace designated as an extension to Class D surface area, and Class E airspace extending upward from 700 feet above the surface, at Pueblo, CO. The additional airspace is necessary to accommodate aircraft using VOR/DME standard instrument approach procedures at Pueblo Memorial Airport, Pueblo, CO. The geographic coordinates of the airport for the Class D and Class E airspace areas also would be updated to coincide with the FAA's aeronautical database. This action would enhance the safety and management of aircraft operations at the airport.

Class D and Class E airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR Part 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Pueblo Memorial Airport, Pueblo, CO.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM CO D Pueblo, CO [Modified]

Pueblo Memorial Airport, CO
(Lat. 38°17′21″ N., long. 104°29′47″ W.)

That airspace extending upward from the surface to and including 7,200 feet MSL within a 5.6-mile radius of the Pueblo Memorial Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM CO E2 Pueblo, CO [Modified]

Pueblo Memorial Airport, CO
(Lat. 38°17′21″ N., long. 104°29′47″ W.)

Within a 5.6-mile radius of the Pueblo Memorial Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ANM CO E4 Pueblo, CO [Modified]

Pueblo Memorial Airport, CO
(Lat. 38°17′21″ N., long. 104°29′47″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Pueblo Memorial Airport 269° bearing extending from the 5.6-mile radius of the airport to 7 miles west of the airport, and within 3.5 miles each side of the Pueblo Memorial Airport 080° bearing extending from the 5.6-mile radius of the airport to 11.4 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Pueblo, CO [Modified]

Pueblo Memorial Airport, CO
(Lat. 38°17′21″ N., long. 104°29′47″ W.)

That airspace extending upward from 700 feet above the surface within 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing of the airport; that airspace extending upward from 1,200 feet above the surface within a 60-mile radius of Pueblo Memorial Airport.

Issued in Seattle, Washington, on February 1, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–03982 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2013–01]

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Parole Commission proposes to revise its rules describing the conditions of release set for persons on supervision. The revision is part of our ongoing effort to make our rules easier to understand for those persons affected by the rules and other interested persons and organizations. We also propose to add new procedures for imposing special conditions for sex offenders, and to fill a gap left by an earlier rule change in 2003 regarding the administrative appeals that may be filed by District of Columbia offenders on supervised release.

DATES: Submit comments on or before April 22, 2013.

ADDRESSES: Submit your comments, identified by docket identification number USPC–2013–01 by one of the following methods:

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

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, attention: USPC Rules Group, 90 K Street, NE., Washington, DC 20530.

3. *Fax:* (202) 357–1083.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, U.S. Parole Commission, 90 K Street, NE., Washington, DC 20530, telephone (202) 346–7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Parole Commission is responsible for paroling those federal and District of Columbia offenders serving parole-eligible sentences and for monitoring the supervision of paroled offenders and DC offenders whose sentences require supervised release after serving their prison terms. We impose conditions of release for parolees and releasees pursuant to the authority granted by statutory law. For federal parolees, that authority is found at 18 U.S.C. 4209. For District of Columbia parolees, we are required to comply with the parole laws of the District of Columbia (DC Code 24–131(c)), and the parole law at DC Code 24–404(a) states that the Commission may parole a prisoner ''upon such terms and conditions as the Commission shall from time to time prescribe.'' For District of Columbia offenders on supervised release, our authority to impose release conditions is derived from both DC and federal law. DC Code 24–403.01(b)(6) (referencing 18 U.S.C. 3583(d)–(i)).

Through the conditions of release we provide guides for the offender's conduct while under supervision. Some conditions are required by law. We impose other conditions based on policy determinations using the criteria set by the statutes cited above. We impose and enforce the release conditions primarily to protect the public from a recurrence of criminal activity by the offender and to encourage the offender's successful re-entry into the community. The conditions are listed on a certificate of release given to the offender at the outset of the supervision term. If we change the conditions of release while the offender is on parole or supervised release, we advise the offender of the new condition by a notice of action. The offender's supervision officer is responsible for the day-to-day implementation of the release conditions. If the offender violates the release conditions, the consequences may range from an informal reprimand from the supervision officer to the offender's return to prison through the revocation process. Given the serious consequences that may follow from a violation of release conditions and the

societal benefit from the offender's successful re-entry into the community, release conditions should give clear directions to the offender of the rules he must follow under supervision. On the other hand, the offender has the responsibility of asking for guidance from his supervision officer when the offender has questions concerning the application of a particular condition to his conduct.

The conditions of release may be divided into three broad categories: (1) Conditions that facilitate the monitoring and supervision of the offender; (2) conditions that prohibit certain activities; and (3) conditions that are intended to assist the offender in reintegrating into the community and acting as a law-abiding citizen. Conditions on periodic reporting by the offender to the supervision officer and the reporting of a change of residence or employment fall into the first category. The second category includes warnings not to engage in criminal activity, use illegal drugs or possess a weapon. Examples of conditions in the third category are conditions that the offender must participate in a domestic violence prevention program, work regularly if able to do so and pay any court-ordered financial obligations. These general conditions of release all meet the requirements of statutory law that the conditions must be reasonably related to the offender's crime or personal history and characteristics, or the need to safeguard the public welfare. In addition to these general conditions of release, we frequently impose one or more special conditions that again must be consistent with our statutory authority. Such a special condition may be a requirement to temporarily reside in a community corrections center, a restriction from certain employment or a requirement that the offender participate in substance abuse treatment. In imposing a special condition for a DC supervised releasee, we must consider whether the condition poses no greater deprivation of liberty than is reasonably necessary to satisfy the goals of deterrence, protection of the public and offender rehabilitation. Though this same requirement is not present for setting a special condition of release for parolees, we acknowledge that this analysis is beneficial for these offenders as well.

We may impose a special condition of release before the offender's release from custody or sometime thereafter. In some cases, a change of circumstances or a deterioration of the offender's progress under supervision calls for a modification of release conditions during the supervision period. Unless an immediate implementation of the new condition is required to protect the public or assist the offender, the offender has a 10-day period to object in writing to a special condition requested by the supervision officer and we will postpone implementation of the condition until we consider the objections. In the proposed rules, we provide additional procedures when we are considering special conditions of release for some sex offenders on parole or supervised release. For an offender convicted of a sex offense, we may impose a special condition for sex offender evaluation and treatment after using the notice and 10-day comment period noted above. If the person has not been convicted of a sex offense and there is information that indicates an evaluation for sex offender treatment is reasonably necessary to protect the public, deter the offender from further crimes or give the offender appropriate care, we may first impose a special condition for sex offender evaluation after using the notice and 10-day comment period procedure. Following the evaluation, if we determine that sex offender treatment may be necessary and the offender objects to the proposed treatment, we will conduct a hearing for the offender to review the need for sex offender treatment. At the hearing, the offender will have the right to counsel, the opportunity to testify and present witnesses and evidence, and, in some cases, the right to confront and cross-examine a person who has given information regarding the proposed imposition of the treatment condition. We will determine whether the opportunity for confrontation and cross-examination should be granted to the offender on a case-by-case basis. In every case, we will expect that the supervision officer who requests the special condition on sex offender treatment, or an appropriate substitute officer, will be present at the hearing for possible questioning. After the hearing, we will make written findings concerning the decision on imposing the treatment condition. There may be other circumstances in which we may follow the same hearing procedure if we intend to impose a particular condition of release for a sex offender.

The proposed rules provide that any offender—whether on parole or supervised release, or serving a DC Code or U.S. Code sentence—has the right to appeal the modification of release conditions to the Commission within 30 days of the notice of action, with the limits set out in the proposed rules (*i.e.,* appeal is not available if the offender accepted an expedited revocation offer or asked for the modified conditions). The proposed rules thereby expand the availability of an administrative appeal to DC parolees regarding post-release modifications of release conditions. The opportunity for this appeal is not required by statutory law. We are limiting the availability of the appeal for D.C parolees to post-release modifications so that we do not invite more appeals than the Commission can reasonably process. For a DC offender on supervised release, the proposed rules clarify that the supervised releasee has the procedural right of appeal that is guaranteed by DC Code 24–403.01(b)(6)(A) for imposing or modifying release conditions. This procedural right for a DC supervised releasee was not addressed in our last rulemaking on release conditions in 2003.

Executive Order 13132

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

The rules will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

These rules are not ''major rules'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency

practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Proposed Rules

Accordingly, the U. S. Parole Commission proposes to adopt the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.40 paragraph (b)(1) to read as follows:

§ 2.40 Conditions of Release.

* * * * *

(b) *Special conditions of release.* (1) The Commission may impose a condition other than a condition described in § 2.204(a)(3)–(6) if it decides that the condition is reasonably related to: the nature and circumstances of the offense and the releasee's history and characteristics; or the need to deter the releasee from criminal conduct; or the need to protect the public from further crimes; or the need to provide the releasee with training or correctional treatment or medical care. In choosing a condition the Commission will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation.

* * * * *

■ 3. Revise § 2.85 paragraphs (b) and (c) to read as follows:

§ 2.85 Conditions of release.

* * * * *

(b) *Special conditions of release.* The Commission may impose a condition other than a condition described in § 2.204(a)(3)–(6) if it decides that the condition is reasonably related to: the nature and circumstances of the offense and the releasee's history and characteristics; or the need to deter the releasee from criminal conduct; or the need to protect the public from further crimes; or the need to provide the releasee with training or correctional treatment or medical care. In choosing a condition the Commission will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation.

(c) *Changing conditions of release.* The provisions of § 2.204(c) apply to post-release modifications in release conditions, including an appeal under the procedures of § 2.26. Appeal is not available for the original imposition of conditions upon parole release. An appeal of a modification of release conditions as part of a revocation decision is governed by § 2.105(g).

* * * * *

■ 4. Revise § 2.204 to read as follows:

§ 2.204 Conditions of supervised release.

(a)(1) *General conditions of release and notice by certificate of release.* All persons on supervision and under our jurisdiction must follow the conditions of release described in paragraphs (a)(3)–(6) of this section. These conditions are necessary to satisfy the purposes of release conditions stated in 18 U.S.C. 3583(d) and 3553(a). Your certificate of release informs you of these conditions and other special conditions that we have imposed for your supervision.

(2) *Refusing to sign the certificate of release does not excuse compliance.* If you refuse to sign the certificate of release, you must still follow the conditions listed in the certificate.

(3) *Report your arrival.* After you are released from custody, you must go directly to the district named in the certificate. You must appear in person at the supervision office and report your home address to the supervision officer. If you cannot appear in person at that office within 72 hours of your release because of an emergency, you must report to the nearest CSOSA or U.S. probation office and obey the instructions given by the duty officer. If you were initially released to the custody of another authority, you must follow the procedures described in this paragraph after you are released from the custody of the other authority.

(4) *Provide information to and cooperate with the supervision officer.* (i) *Written reports.* Between the first and third day of each month, you must make a written report to the supervision officer on a form provided to you. You must also report to the supervision officer as that officer directs. You must answer the supervision officer completely and truthfully when the officer asks you for information.

(ii) *Promptly inform the supervision officer of an arrest or questioning, or a change in your job or address.* Within two days of your arrest or questioning by a law-enforcement officer, you must inform your supervision officer of the contact with the law-enforcement officer. You must also inform your supervision officer of a change in your employment or address within two days of the change.

(iii) *Allow visits of the supervision officer.* You must allow the supervision officer to visit your home and workplace.

(iv) *Allow seizure of prohibited items.* You must allow the supervision officer to seize any item that the officer reasonably believes is an item you are prohibited from possessing (for example, an illegal drug or a weapon), and that is in plain view in your possession, including in your home, workplace or vehicle.

(v) *Take drug or alcohol tests.* You must take a drug or alcohol test whenever your supervision officer orders you to take the test.

(5) *Prohibited conduct.* (i) *Do not violate any law.* You must not violate any law and must not associate with any person who is violating any law.

(ii) *Do not possess a firearm or dangerous weapon.* You must not possess a firearm or other dangerous weapon or ammunition.

(iii) *Do not illegally possess or use a controlled substance or drink alcohol to excess.* You must not illegally possess or use a controlled substance and you must not drink alcoholic beverages to excess. You must stay away from a place where a controlled substance is illegally sold, used or given away.

(iv) *Do not leave the district of supervision without permission.* You must not leave the district of supervision without the written permission of your supervision officer.

(v) *Do not associate with a person with a criminal record.* You must not associate with a person who has a criminal record without the permission of your supervision officer.

(vi) *Do not act as an informant.* You must not agree to act as an informant for any law-enforcement officer without the prior approval of the Commission.

(6) *Additional conditions.* (i) *Work.* You must make a good faith effort to work regularly, unless excused by your supervision officer. You must support your children and any legal dependent. You must participate in an employment-readiness program if your supervision officer directs you to do so.

(ii) *Pay court-ordered obligations.* You must make a good faith effort to pay any fine, restitution order, court costs or assessment or court-ordered child support or alimony payment. You must

provide financial information relevant to the payment of such a financial obligation when your supervision officer asks for such information. You must cooperate with your supervision officer in setting up an installment plan to pay the obligation.

(iii) *Participate in a program for preventing domestic violence.* If the term of supervision results from your conviction for a domestic violence crime, and such conviction is your first conviction for such a crime, you must attend, as directed by your supervision officer, an approved offender-rehabilitation program for the prevention of domestic violence if such a program is readily available within 50 miles of your home.

(iv) *Register if you are covered by a special offender registration law.* You must comply with any applicable special offender registration law, for example, a law that requires you to register as a sex-offender or a gun-offender.

(v) *Provide a DNA sample.* You must provide a DNA sample, as directed by your supervision officer, if collection of such sample is authorized by the DNA Analysis Backlog Elimination Act of 2000.

(vi) *Comply with a graduated sanction.* If you are supervised by CSOSA, you must comply with the sanction(s) imposed by the supervision officer and as established by an approved schedule of graduated sanctions. We may decide to begin revocation proceedings for you even if the supervision officer has earlier imposed a graduated sanction for your alleged violation of a release condition.

(vii) *Inform another person of your criminal record or personal history as directed by the supervision officer.* You must inform a person of your criminal record or personal history if your supervision officer determines that your relationship or contact with this person may pose a risk of harm to this person. The supervision officer may direct you to give this notice and then confirm with the person that you obeyed the officer's direction. The supervision officer may also give the notice directly to the person.

(b)(1) *Special conditions of release.* We may impose a condition of release other than a condition described in paragraphs (a)(3)–(6) of this section if we determine that imposing the condition is reasonably related to: the nature and circumstances of your offense and your history and characteristics; or the need to deter you from criminal conduct; or the need to protect the public from further crimes; or the need to provide you with training or correctional treatment or medical care. In choosing a condition we will also consider whether the condition involves no greater deprivation of liberty than is reasonably necessary for the purposes of deterrence of criminal conduct, protection of the public from crime and offender rehabilitation.

(2) The following are examples of special conditions that we may impose—

(i) That you reside in and/or participate in a program of a community corrections center for all or part of the period of supervision;

(ii) That you participate in a drug- or alcohol-treatment program, and not use alcohol and other intoxicants at any time;

(iii) That you remain at home during hours you are not working or going to school, and have your compliance with this condition checked by telephone or an electronic signaling device; and

(iv) That you permit a supervision officer to conduct a search of your person, or of any building, vehicle or other area under your control, at such time as that supervision officer decides, and to seize any prohibited items the officer, or a person assisting the officer, may find.

(3) If we require your participation in a drug-treatment program, you must submit to a drug test within 15 days of your release and to at least two other drug tests, as determined by your supervision officer. If we decide not to impose the special condition on drug-treatment, because available information indicates you are a low risk for substance abuse, this decision constitutes good cause for suspending the drug testing requirements of 18 U.S.C. 3583(d).

(c)(1) *Changing conditions of release.* We may at any time change or add to the conditions of release if we decide that such action is consistent with the criteria described in paragraph (b)(1) of this section.

(2) *Objecting to the proposed change.* If we impose a special condition for you upon your release, you may appeal the imposition of the special condition as provided in § 2.220 within 30 days of the date on the notice of action. If we propose to change your conditions after your release, we will notify you of the proposed change, the reason for the proposed change and give you 10 days from your receipt of the notice to comment on the proposed change. You can waive the 10-day comment period and agree to the proposed change. You are not entitled to the notice and 10-day comment period if: (i) You ask for the change; (ii) we make the change as part of a revocation hearing or an expedited revocation decision; or (iii) we find that the change must be made immediately to prevent harm to you or another person. We will make a decision on the proposed change within 21 days (excluding holidays) after the 10-day comment period ends, and notify you in writing of the decision.

(3) *Appeal of a change in conditions made after release.* You may appeal the change in your conditons as provided in § 2.220 and under the procedures of § 2.26, unless you asked for the change or we make the change as part of an expedited revocation decision.

(d)(1) *Imposing special conditions for a sex offender.* If your criminal record includes a conviction for a sex offense, we may impose a special condition that you undergo an evaluation for sex offender treatment, and participate in a sex offender treatment program as directed by your supervision officer. We will impose the sex offender evaluation and treatment conditions using the procedures described in paragraph (c) of this section. For purposes of applying the procedures described in this section, we use the definitions of ''sex offense'' and ''convicted'' listed at 42 U.S.C. 16911(5) and (8).

(2) (i) If your criminal record does not include a conviction for a sex offense, we may decide that your current behavior or your personal history shows that you should be evaluated for sex offender treatment. In this case, we may impose a special condition requiring an evaluation for sex offender treatment using the procedures described in paragraph (c) of this section.

(ii) At the conclusion of the evaluation, if sex offender treatment appears warranted and you object to such treatment, we will conduct a hearing to consider whether you should be required to participate in sex offender treatment. You will be given notice of the date and time of the hearing and the subject of the hearing, disclosure of the information supporting the proposed action, the opportunity to testify concerning the proposed action and to present evidence and the testimony of witnesses, the opportunity to be represented by retained or appointed counsel and written findings regarding the decision. You will have the opportunity to confront and cross-examine persons who have given information that is relied on for the proposed action, if you ask that these witnesses appear at the hearing, unless we find good cause for excusing the appearance of the witness.

(iii) A hearing is not required if we impose the sex offender treatment condition at your request, as part of a revocation hearing or an expedited

revocation decision, or if a hearing on the need for sex offender treatment (including a revocation hearing) was conducted within 24 months of the request for the special condition.

(iv) In most cases we expect that a hearing conducted under this paragraph will be held in person with you, especially if you are supervised in the District of Columbia. But we may conduct the hearing by videoconference.

(v) You may appeal the imposition of a special condition requiring sex offender treatment as provided in § 2.220 unless you asked for the change or we make the change as part of an expedited revocation decision.

(3) Whether your criminal record includes a conviction for a sex offense or not, if we propose to impose other restrictions on your activities, we will use either the notice and comment procedures of paragraph (c) or the hearing procedures of this paragraph, depending on a case-by-case evaluation of the releasee's interest and the public interest.

(e) *Application of release conditions to an absconder.* If you abscond from and evade supervision, you will stop the running of your supervised release term as of the date of your absconding and you will prevent the expiration of your supervised release term. But you will still be bound by the conditions of release while you are an absconder, even after the original expiration date of your supervised release term. We may revoke the term of supervised release for a violation of a release condition that you commit before the revised expiration date of the supervised release term (the original expiration date plus the time you were an absconder).

(f) *Revocation for certain violations of release conditions.* If we find after a revocation hearing that you have illegally possessed a controlled substance, refused to comply with drug testing, possessed a firearm or tested positive for illegal controlled substances more than three times during one year, we must revoke the term of supervised release and impose a prison term as provided at § 2.218. When considering mandatory revocation for repeatedly failing a drug test, we must consider appropriate alternatives to incarceration.

(g) *Supervision officer guidance.* We expect you to understand the conditions of release according to the plain meaning of the conditions. You should ask for guidance from your supervision officer if there are conditions you do not understand and before you take actions that may risk violation of your release conditions. The supervision officer may instruct you to refrain from particular conduct, or to take specific actions or to correct an existing violation of a release condition. If the supervision officer directs you to report on your compliance with an officer's instruction and you fail to do so, we may consider that your failure is itself a release violation.

(h) *Definitions.* As used in this section, the term—

(1) *Supervision officer* means a community supervision officer of the District of Columbia Court Services and Offender Supervision Agency or a United States probation officer;

(2) *Domestic violence crime* has the meaning given that term by 18 U.S.C. 3561, except that the term ''court of the United States'' as used in that definition shall be deemed to include the Superior Court of the District of Columbia;

(3) *Approved offender-rehabilitation program* means a program that has been approved by CSOSA (or the United States Probation Office) in consultation with a State Coalition Against Domestic Violence or other appropriate experts;

(4) *Certificate of release* means the certificate of supervised release delivered to the release under § 2.203; and

(5) *Firearm* has the meaning given by 18 U.S.C. 921.

(6) *Sex offense* means any ''registration offense'' as that term is defined at DC Code 22–4001(8) and any ''sex offense'' as that term is defined at 42 U.S.C. 16911(5).

■ 5. Revise the first sentence of § 2.220 to read as follows:

§ 2.220 Appeal.

A supervised releasee may appeal a decision to revoke supervised release, impose a term of imprisonment or a new term of supervised release after revocation, or impose or modify a condition of supervised release. * * *

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2013–03942 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Proposed Priority—National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers [CFDA Number: 84.133B–7]

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for an RRTC on Disability Statistics and Demographics. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend the priority to contribute to improved outcomes in these areas for individuals with disabilities.

DATES: We must receive your comments on or before March 25, 2013.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by email, use the following *address: marlene.spencer@ed.gov.* You must include the phrase ''Proposed Priority for a RRTC on Disability Statistics and Demographics'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of proposed priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

This notice proposes one priority, that NIDRR intends to use for one or more competitions in FY 2013 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award using this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 5133, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350. Proposed Priority:

This notice contains one proposed priority, RRTC on Disability Statistics and Demographics.

Background:

For more than 25 years, NIDRR has supported research about disability statistics and demographics to assist government agencies, service providers, consumers, advocates, and others who need guidance or support in generating, analyzing, interpreting, or disseminating disability data. NIDRR seeks to fund an RRTC that will continue to serve as a national resource center for all stakeholders involved in the collection, analysis, dissemination, and use of national disability data.

Research, training, and technical assistance is needed so that national surveys are designed to help ensure that the experiences and outcomes of people with disabilities are fully and accurately captured in the data collections (Livermore et al, 2011). Improved questionnaire designs and innovative data collection strategies can facilitate the collection of valid and reliable disability data (National Research Council, 2009). Research on the benefits and drawbacks of various methodological approaches to the collection and analysis of disability data can improve the quality and consistency of that data and increase confidence in disability research findings (Burkhauser, Houtenville, and Tennant, 2012).

Over the course of the last five years, new sources of disability data have become available. While inconsistencies in the conceptualization and measurement of disability persist (National Research Council, 2009), Federal agencies are making progress in improving the scope and quality of the disability-related data that they are collecting (Livermore et al., 2011). For example, a standard six-question measure to identify the disability status of survey respondents is being used in a growing number of Federal surveys. The use of this measure in a variety of national data collection efforts has the potential to lead to new detailed data about the lives and experiences of individuals with disabilities—including data about employment status, housing, transportation, education, health status, and health care access. For example, this six-question measure was recently selected by the U.S. Department of Health and Human Services to meet the Affordable Care Act's requirement for collecting standard disability data in all national population health surveys (U.S. Department of Health and Human Services, Office of Minority Health, 2012).

Policymakers continue to cite the need for statistical information about the indirect and direct costs of disability, health disparities, individuals with disabilities living in institutional settings, and unmet needs for services or technologies to facilitate environmental access and to enhance community living (U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, 2012; National Council on Disability, 2008). Through analysis, compilation, and dissemination of disability data from national surveys and administrative sources, the RRTC will continue to inform the development of evidence-based disability policy and programs.

References:

Burkhauser, R., Houtenville, A., and Tennant, J. (2012). Capturing the elusive working-age population with disabilities: Reconciling conflicting social success estimates from the current population survey and the American community survey. Journal of Disability Policy Studies. Available From: *http://dps.sagepub.com/content/early/2012/05/30/1044207312446226*

Livermore, G., Whalen, D. Prenovitz, S., Aggarwal, R., and Bardos, M. Disability data in national surveys. Available from: *http://aspe.hhs.gov/daltcp/reports/2011/DDNatlSur.shtml*

National Council on Disability. (2008). Keeping track: National disability status and program performance indicators. Available from: *www.ncd.gov/publications/2008/April212008*

National Research Council. (2009). Improving the measurement of late-life disability in population surveys: Beyond ADLs and IADLs, summary of a workshop. Gooloo S., Wunderlich, Rapporteur. Committee on National Statistics and Committee on

Population. Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

U.S. Department of Health and Human Services. Office of Minority Health (2012). Final Data Collection Standards for Race, Ethnicity, Primary Language, Sex, and Disability Status Required by Section 4302 of the Affordable Care Act. Available from: *http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlid=208.*

U.S. Department of Health and Human Services. Office of Disease Prevention and Health Promotion. (2012). Healthy people 2020: Disability and health. Washington, DC. Available from: *http://healthypeople.gov/2020/topicsobjectives2020/overview.aspx?topicid=9*

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Disability Statistics and Demographics. This RRTC must conduct research, knowledge translation, training, dissemination, and technical assistance activities to advance the use and usefulness of disability statistics and demographic data to inform disability policy and the provision of services to individuals with disabilities. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) National disability data and statistics that are of high quality and relevant to improving the lives of individuals with disabilities. The RRTC must contribute to this outcome by conducting analyses, providing recommendations, and optimizing methodologies for conducting surveys of individuals with disabilities, including sampling techniques, and methods for appropriately interviewing and collecting data from individuals with a wide range of disabilities.

(b) Timely analyses of high-quality, relevant disability and demographic statistics to inform the development of disability policies and programs. The RRTC must contribute to this outcome by:

(i) Producing secondary analyses of national, State, and administrative data that address critical program and service needs.

(ii) Evaluating progress with regard to national goals for individuals with disabilities and their families.

(iii) Providing statistical consultation, including specialized analyses, to facilitate the appropriate use of survey and administrative data by policymakers, advocates, individuals with disabilities, and other stakeholders.

(c) Improved access to disability statistics and demographic information. The RRTC must contribute to this outcome by:

(i) Serving as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and other interested parties.

(ii) Disseminating research findings in clear and useful formats to Federal and other government agencies, policymakers, consumers, advocates, researchers, and others to enhance planning, policymaking, program administration, and delivery of services to individuals with disabilities.

(iii) Developing and disseminating an annual report on disability in the United States that includes statistics on current status and trends related to the prevalence of disabilities, and employment, health, community living, and other outcomes of importance in monitoring the well-being of individuals with disabilities.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed priorities are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have

determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years. Projects similar to the RRTCs have been completed successfully, and the proposed priorities will generate new knowledge through research. The new RRTCs will generate, disseminate, and promote the use of new information that would improve outcomes for individuals with disabilities in the areas of community living and participation, employment, and health and function.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 15, 2013.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–03995 Filed 2–20–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2012–0546; FRL–9784–4]

RIN 2060–AR43

Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards; Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing and extension of comment period.

SUMMARY: The EPA is announcing a public hearing to be held for the proposed rule ''Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards,'' which was published separately in the **Federal Register** on February 7, 2013. (78 FR 9282.) The hearing will be held in Ann Arbor, Michigan on March 8, 2013. EPA is also extending the comment period on the proposed rule to April 7, 2013. The proposed rule would amend the renewable fuel standard program regulations to establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced in the U.S. or imported in the year 2013. The proposal is based in part on EPA's proposed projection of cellulosic biofuel production in 2013, and its proposed determination that the applicable volumes of advanced biofuel and total renewable fuel specified in the statute should not be modified in 2013.

DATES: The public hearing will be held on March 8, 2013 at the location noted below under **ADDRESSES**. The hearing will begin at 9 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by March 1, 2013. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The hearing will be held at the following location: National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, Michigan 48105. A complete set of documents related to the proposal is available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov.* (Docket ID No. EPA–HQ–OAR–2012–0546.)

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; Fax number: (734) 214–4816; Email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public hearing has been published separately in the **Federal Register** at 78 FR 9282, February 7, 2013.

Public Hearing: The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal (which can be found at *http://www.epa.gov/otaq/fuels/renewablefuels/index.htm*). The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be received by the last day of the comment period.

The public hearing will be held on March 8, 2013 at the location noted under **ADDRESSES**, and will begin at 9 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Those wishing to testify at the public hearing should register in advance by notifying the contact person listed under **FOR FURTHER INFORMATION CONTACT** by March 1, 2013 and copies of written statements will be included in the rulemaking docket.

In the NPRM, we established the deadline for comments as March 25, 2013. Because EPA is required to provide no less than 30 days for comments after the date of the hearing, we are extending the end of the comment period to April 7, 2013.

How can I get copies of this document, the proposed rule, and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2012–0546. The EPA has also developed a Web site for the RFS program, including the notice of proposed rulemaking, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: February 15, 2013.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2013–04003 Filed 2–20–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 13–162]

Wireline Competition Bureau Seeks Comment on Connect America Phase II Support for Price Cap Areas Outside of the Contiguous United States

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission seeks to further develop the record on issues relating to Connect America Phase II support for price cap carriers serving areas outside of the contiguous United States.

DATES: Comments are due on or before March 11, 2013 and reply comments are due on or before March 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dania Ayoubi, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 10–90, and DA 13–162, released February 8, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. These documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

I. Introduction

1. In this Public Notice, the Wireline Competition Bureau (Bureau) seeks to further develop the record on issues relating to Connect America Phase II support for price cap carriers serving areas outside of the contiguous United States. In particular, we seek comment on various options for providing Connect America Phase II support to price cap carriers serving such areas and the associated obligations that come with the receipt of such support.

II. Discussion

2. *Application of Cost Model to Areas Outside the Contiguous United States.* Several parties have argued that the Connect America Cost Model (CACM) would provide insufficient support to areas outside the contiguous United States. We seek comment on what objective criteria or factors the Bureau should consider in determining whether support determined by the cost model is sufficient.

3. The Bureau seeks to further develop the record on two alternative options for areas outside the contiguous United States: (1) Modifying the design of and/or specific inputs used in the CACM, including incorporating aspects of the Alaska-specific and Puerto Rico-specific model submissions; or (2) maintaining existing support levels.

4. What specific changes would need to be made or data would need to be incorporated, if the Bureau were to modify the current version of the CACM? Some providers have expressed concern over particular features of the CACM as related to the areas outside the contiguous United States that they serve. Puerto Rico Telephone Company, Inc. (PRTC) argues, for instance, that its standalone Puerto Rico-specific cost model is more accurate because, among other things, it incorporates actual customer locations and the cost of undersea cable transport to Florida. Likewise, Alaska Communications Systems Group, Inc. (ACS) argues that a model that does not include, among other things, the cost of satellite backhaul where terrestrial options are unavailable, would not accurately predict the costs of serving Alaska. Should the Bureau incorporate those modifications into the CACM to better model the forward-looking cost of serving customers in areas outside of the contiguous United States? How should the Bureau proceed if a party has not submitted any information into the record regarding the circumstances in a particular non-contiguous area at the time the Bureau adopts the cost model?

5. If the Bureau were to incorporate aspects of the models offered by interested parties into CACM, how can it ensure that the inputs utilized reflect the costs of an efficient provider rather than current, embedded costs? The mere fact that current support levels may be higher now than they would be under CACM is not necessarily dispositive in determining whether support in such areas is ''sufficient.'' Existing costs may not reflect the forward-looking costs of an efficient provider. What specific metrics or objective data would the Bureau need to be able to distinguish between legitimate differences in operating costs in non-contiguous areas and those that may not reflect the forward-looking costs of an efficient provider?

6. How should the Bureau take into account the additional time it would take to modify CACM to address the unique circumstances of each area outside of the contiguous United States at this stage in the process, and the extent to which a later adoption of CACM would delay the deployment of broadband in areas within the contiguous United States? In order to move forward more quickly, is there an administratively feasible way to pursue implementation of CACM in those areas where further refinement of the model is not necessary while developing an adequate approach in non-contiguous areas? If so, how would the Bureau ensure that total support levels remain within the overall $1.8 billion budget?

7. The Virgin Islands Telephone Corporation (Vitelco) has argued in the alternative that we should maintain support at existing levels. And if we decline to use its ''Broadband Cost Model: Puerto Rico'' (BCMPR), PRTC recommends that we, ''at a minimum, maintain legacy high cost universal service support.'' In directing the Bureau to consider the circumstances facing carriers providing service in areas outside the contiguous United States, the Commission required that if existing support levels are maintained, total support could not exceed the overall budget of $1.8 billion per year. We note that 2011 disbursements for price cap carriers outside of the contiguous United States totaled approximately $76 million, which would leave $1.724 billion remaining for price cap carriers in the contiguous United States. How

would freezing support for certain carriers impact the Commission's progress in extending broadband-capable infrastructure in the United States?

8. We note that the Commission recently sought comment on several options for utilizing funds remaining from Connect America Phase I, with one possibility being to use some or all of those funds to enlarge the budget for Phase II. Should some of the unused Phase I monies be made available to maintain existing support levels for carriers in non-contiguous areas if the Commission were to adopt such a rule increasing the $1.8 billion budget?

9. *State-Level Commitment Process.* The state-level commitment process set forth in the *USF/ICC Transformation Order and FNPRM,* 76 FR 73830, November 29, 2011 and 76 FR 78384, December 16, 2011, assumes that carriers would make commitments based on the model-determined support amount and the service obligations that would attach to that support. In the event the Bureau determines that support in some or all of the non-contiguous areas should instead be maintained at existing levels, should carriers receiving frozen support to serve those areas make a statewide commitment to accept or reject the frozen support? Should there be any changes in the statewide commitment process for carriers receiving frozen support instead of model-based support?

10. *Service Obligations.* Some have suggested that service obligations should be adjusted if support is frozen in non-contiguous areas. The Bureau seeks to further develop the record on what obligations, if any, should be adjusted if the Bureau maintains support at existing levels for some or all of the price cap carriers operating outside the contiguous United States. How many supported locations should be required to have broadband-capable infrastructure that can provide speeds of at least 4 Mbps/1 Mbps, and how should that figure be determined? Should recipients of frozen support be required to deploy infrastructure that can deliver speeds of at least 6 Mbps/1.5 Mbps to some number of supported locations, and how should that number be set? Recognizing that the Bureau has not yet specified metrics for latency or usage capacity for carriers making a state-level commitment, should those requirements be modified for carriers receiving frozen support? What measures would need to be in place to ensure that we have the ability to monitor compliance with adjusted service obligations? Commenters suggesting modified obligations for these carriers should specifically identify which obligations should be modified and specify objective metrics that would need to be met, so that the Commission has the ability to ensure accountability and oversight.

III. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

B. Need for, and Objectives of, the Proposed Rules

12. The Notice seeks comment on a variety of issues relating to Connect America Phase II support for price cap carriers serving areas outside the contiguous United States. The Commission directed the Bureau to design a model to estimate the forward-looking economic costs of providing broadband to high-cost areas. In adopting the cost model, the Bureau was also to consider the unique circumstances facing areas outside the contiguous United States and determine whether the model adequately accounts for costs carriers face in serving those areas.

C. Legal Basis

13. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 2, 4(i), 214, 254, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 214, 254, 303(r), 403, and 706, and §§ 1.1 and 1.1421 of the Commission's rules, 47 CFR 1.1, 1.421.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

14. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

15. Small Businesses. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

16. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

17. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Public Notice.

18. Incumbent Local Exchange Carriers (incumbent LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have

1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Public Notice.

19. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

20. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Public Notice.

21. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

22. Local Multipoint Distribution Service. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

23. Satellite Telecommunications. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

24. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Public Notice.

25. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

26. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or

providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Public Notice.

27. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Public Notice.

28. Cable System Operators. The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

29. Open Video Services. The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

30. Internet Service Providers. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Public Notice.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

31. In this Notice, the Commission seeks public comment on issues relating to Connect America Phase II support for price cap carriers serving areas outside the contiguous United States. The Notice seeks comment on whether the Connect America Cost Model can be modified to account for the unique circumstances providers serving those areas face, of whether existing support levels should be maintained. The Notice also seeks comment on the associated obligations that come with the receipt of such support.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

33. The Notice seeks comment on CAF Phase II support to price cap carriers serving areas outside the contiguous United States. These CAF Phase II issues are not anticipated to have a significant economic impact on small entities insofar as the results impact high-cost support amounts for price cap carriers. This is primarily because most (and perhaps all) of the affected carriers are not small entities. Moreover, the choice of alternatives discussed is not anticipated to systematically increase or decrease

support for any particular group of entities and therefore any significant economic impact cannot necessarily be minimized through alternatives.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

34. None.

H. Paperwork Reduction Act

35. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

I. Filing Requirements

36. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

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

In addition, we request that one copy of each pleading be sent to each of the following:

(1) Dania Ayoubi, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 6–A322, Washington, DC 20554; email: *Dania.Ayoubi@fcc.gov*;

(2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov*.

38. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Kimberly A. Scardino,

Acting Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–04034 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–23; RM–11690; DA 13–95]

Radio Broadcasting Services; Pearsall, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission requests comment on a petition filed by Wendolyn Tellez (''Petitioner''), licensee of FM Station KSAG, Channel 277A, Pearsall, Texas. Petitioner proposes to amend the FM Table of Allotments by substituting Channel 277A for vacant Channel 227A, at Pearsall. The proposal is part of a contingently filed ''hybrid'' application and rule making petition. Channel 277A can be allotted at Pearsall, Texas, in compliance with the Commission's minimum distance separation requirements 28–56–40 NL and 99–11–44 WL, at a site 11.4 km (7.1 miles) northwest of Pearsall. Concurrence by the Government of Mexico is required because Pearsall, Texas, is located within 320 kilometers (199 miles) of the U.S.-Mexican border. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before March 18, 2013 and reply comments must be filed on or before April 2, 2013.

ADDRESSES: You may submit comments, identified by MB Docket No 13–33, by any of the following methods:

• *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *People with disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information of the rulemaking process, see the **SUPPLEMENTARY INFORMATION** sections of this document. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Dan J. Alpert, Esq., Law Offices of Dan J. Alpert, 2120 21st Road N., Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 13–23, adopted January 24, 2013, and released January 25, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by deleting 227A and adding 277A at Pearsall.

[FR Doc. 2013–03943 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2012–0013; FWS–R9–ES–2011–0101; 4500030115]

RIN 1018–AY38; 1018–AY33

Endangered and Threatened Wildlife and Plants; Listing Three Foreign Macaw Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment periods.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on two proposed rules: one to list the hyacinth macaw (*Anodorhynchus hyacinthinus*), and one to list the military macaw (*Ara militaris*) and great green macaw (*Ara ambiguus*) as endangered under the Endangered Species Act of 1973, as amended (Act). Both rules were published in the **Federal Register** on July 6, 2012. We are reopening the comment periods to allow all interested parties an opportunity to provide additional comments on these proposed rules and to submit information on the status of the species. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will accept comments received on or before April 22, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R9–ES–2012–0013 for the hyacinth macaw, and to Docket No. FWS–R9–ES–2011–0101 for the military macaw and great green macaw.

• U.S. mail or hand-delivery: *For the hyacinth macaw:* Public Comments Processing, Attn: FWS–R9–ES–2012–0013; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203. *For the military macaw and great green macaw:* Public Comments Processing, Attn: FWS–R9–ES–2011–0101; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept comments by email or fax. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2012, we published in the **Federal Register** a combined 12-month finding and proposed rule to list the hyacinth macaw (*Anodorhynchus hyacinthinus*) (77 FR 39965), and a combined 12-month finding and proposed rule to list two macaw species, the military macaw (*Ara militaris*) and great green macaw (*Ara ambiguus*) (77 FR 40172), as endangered under the Act (16 U.S.C. 1531 *et seq.*). These proposals each had a 60-day comment period, ending September 4, 2012. We received no requests for a public hearing on

either of these two proposals; therefore, no public hearings will be held. However, we received several requests from the public to extend the comment period on these proposals. Therefore, we are reopening the comment periods on both of these proposed rules for an additional 60 days (see **DATES**).

Public Comments

We will accept written comments and information concerning these proposed rules during this reopened comment period. We will consider information and recommendations from all interested parties. We intend that any final action resulting from these proposals be as accurate as possible and based on the best available scientific and commercial data. For more information on the specific information we are seeking, please see the July 6, 2012, proposed listing rules (77 FR 39965; 77 FR 40172). If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determinations. Our final determinations concerning these proposed listings will take into consideration all written comments and any additional information we receive. You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section. If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on the Internet at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2012–0013 for the hyacinth macaw, and at Docket No. FWS–R9–ES–2011–0101 for the military macaw and great green macaw, or by appointment, during normal business hours, at the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rules on the Internet at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2012–0013 for the hyacinth macaw, and at Docket No. FWS–R9–ES–2011–0101 for the military macaw and great green macaw, or by mail from the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 11, 2013.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–03880 Filed 2–20–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004516–3064–01]

RIN 0648–BC64

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag Management Measures in the Gulf of Mexico

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement management measures described in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would (1) establish a closure date for the 2013 recreational sector for gag harvest based on the projected annual catch target (ACT), and (2) reduce the geographic extent of the recreational shallow-water grouper (SWG) fixed seasonal closure, which are in place to prevent overfishing of gag, and to reduce fishing pressure on other SWG species. The reduction in the geographic extent of the closure still would provide some spawning season protection for several SWG species, but provides a better opportunity for the recreational sector to achieve optimum yield (OY) from the stocks in the SWG complex in the Gulf of Mexico (Gulf). This proposed rule is intended to help achieve OY for the Gulf gag and other SWG resources and prevent overfishing from the stocks in the SWG complex.

DATES: Written comments must be received on or before March 25, 2013.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2013–0012'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0012,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the regulatory amendment, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Peter.Hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, OY from federally managed fish stocks. The reauthorized Magnuson-Stevens Act, as

amended through January 12, 2007, requires the councils to establish annual catch limits (ACLs) for each stock/stock complex and accountability measures (AMs) to ensure these ACLs are not exceeded. This proposed rule addresses these requirements by (1) establishing a closure date for the recreational sector for gag harvest based on when the ACT is projected to be reached, rather than closing on October 31, 2013, under current regulations; and (2) modifying the geographic extent of the recreational SWG fixed seasonal closure, from February 1 through March 31, each year, to permit recreational SWG fishing within Federal waters shoreward of the 20-fathom boundary during the closure. In the Gulf, SWG means gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper.

Recreational Gag Fishing Season

Gulf gag is overfished and the stock is currently in a rebuilding plan. The 10-year rebuilding plan was implemented through Amendment 32 to the FMP (77 FR 6988, February 20, 2012). Pursuant to the rebuilding plan, in 2013, the recreational ACL is scheduled to increase from 1.232 million lb (0.559 million kg) to 1.495 million lb (0.678 million kg), gutted weight, and the ACT is scheduled to increase from 1.031 million lb (0.468 million kg) in 2012 to 1.287 million lb (0.584 million kg), gutted weight. Preliminary estimates indicate the recreational sector landings did not exceed the 2012 ACL of 1.232 million lb (0.559 million kg), gutted weight, which would allow the ACL and ACT to be increased in 2013, in accordance with the rebuilding plan.

The 2012 recreational gag fishing season was July 1 through October 31. To set a 2013 recreational gag fishing season, the Council evaluated seasons beginning at different times. Fishermen had expressed interest in being able to fish for gag during other times of the year to accommodate regional and seasonal differences in gag fishing. As a result, several alternatives were developed to either move the start of the recreational gag fishing season to a different time, or to split the season into two or three sub-seasons. However, moving the season to times when there is greater demand for gag fishing would reduce the total number of days available to fish. Therefore, to provide additional fishing days, the Council added an option to reduce the bag limit from 2 to 1 fish during the recreational gag fishing season.

After evaluating alternatives, the Council selected a recreational gag fishing season beginning on July 1, 2013, and closing when the ACT is projected to be reached, rather than closing on October 31, 2013, which is the current regulation. The Council also decided to maintain the 2-fish bag limit during the recreational gag fishing season rather than reduce the bag limit to 1 fish because the number of projected additional fishing days to the 2013 season was small (less than 2 weeks). If implemented, each year, NMFS would project when the ACT is expected to be reached, and publish the date for the closure of the recreational sector for gag harvest in the **Federal Register**. Given a 2013 ACT of 1.287 million lb (0.584 million kg), gutted weight, and assuming compatible state regulations, preliminary NMFS projections indicate the recreational gag fishing season would remain open until sometime between November 11 and December 3, 2013. A 2013 closure date for the recreational sector for gag harvest would be set in the final rule. This would allow landings data for the recreational sector, through the end of the 2012 recreational gag fishing season (October 31), to be used for projecting the 2013 season length.

The final closure date for the 2013 season may be earlier or later than closure dates described above because it is contingent on catches reported in 2012 and state consistency with regulations existing in 2013. For example, in 2012, four Gulf coast counties in Florida had recreational gag fishing seasons in state waters that were inconsistent with the 2012 Federal season. All other Gulf coast counties were consistent with the season for Federal waters. If Florida chooses to repeat these seasons in 2013, then the effect of any inconsistent seasons on gag harvest would need to be factored into projections of how long the Federal season can be open based on the ACT. Furthermore, accountability measures, specified at 50 CFR part 622.49(a)(4)(ii), state that if landings reach, or are projected to reach, the ACL for that fishing year, NMFS will close the recreational sector for gag harvest for the remainder of the fishing year. Therefore, NMFS could close the recreational sector for gag harvest prior to reaching the final closure date (including the current closure date of October 31, as provided in 50 CFR 622.34(v)), if landings reach, or are projected to reach the ACL for that fishing year.

Recreational SWG Fixed Seasonal Closure

The current recreational SWG fixed seasonal closure, from February 1 through March 31, each year, was part of a suite of recreational measures implemented through Amendment 30B to the FMP (72 FR 17603, April 16, 2009) designed to achieve target harvest levels for both red grouper and gag, and to end overfishing of gag. Part of the rationale for selecting the recreational SWG fixed seasonal closure, from February 1 through March 31, each year, was to protect spawning of SWG species, and in particular gag, which spawn primarily along the 40-fathom break in the eastern Gulf. Because the current and proposed recreational gag fishing season opens July 1, well after peak gag spawning in February and March, gag spawning is protected by both the closure of the recreational sector for gag harvest and the current recreational SWG fixed seasonal closure. The recreational SWG fixed seasonal closure, from February 1 through March 31, also covers the spawning periods of some of the other SWG species and thus provides a biological benefit to these species. Like gag, spawning for many of these SWG species occurs in offshore rather than near-shore waters; thus the modified geographic extent of the recreational SWG fixed seasonal closure proposed in this rule may continue to provide some protection for these SWG species with spawning periods during the proposed closure. In addition, red, black, and other SWG are managed with ACLs and AMs to prevent overfishing from occurring.

The Council evaluated several alternatives to the recreational SWG fixed seasonal closure, including shortening, shifting, and repealing the closure. To continue protections for gag and other SWG spawning, the Council preferred to modify the geographic extent of the February 1 through March 31 recreational SWG fixed seasonal closure, to only apply to Federal waters seaward of the 20-fathom boundary. If implemented, this modification would continue to provide protection for spawning gag as well as for other SWG species that spawn in waters deeper than 20 fathoms in February and March. The coordinates of the boundary would follow the 20-fathom reef fish bottom longline boundary from the Florida Keys north and west to Cape San Blas, as specified in Table 1 of Appendix B to 50 CFR Part 622. Because the longline boundary moves out to 50 fathoms west of Cape San Blas, new 20-fathom boundary coordinates would be established through this rule for waters off Cape San Blas to the U.S. and Mexico border.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant

Administrator for Fisheries, NOAA (AA), has determined that this proposed rule is consistent with the regulatory amendment, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

If implemented, this proposed rule would: (1) Close the recreational sector for gag harvest based on when the ACT is projected to be reached, rather than closing on October 31, 2013, under current regulations; and (2) modify the geographic extent of the recreational SWG fixed seasonal closure, from February 1 through March 31, each year, to permit recreational SWG fishing within Federal waters shoreward of the 20-fathom boundary during the closure. The purpose of this proposed rule is to prevent overfishing and achieve OY from the stocks in the SWG complex. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This rule, if implemented, is expected to directly affect 1,363 vessels that possess a valid or renewable Gulf reef fish for-hire permit. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after expiration. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Although the Gulf reef fish for-hire permit does not distinguish between charterboats and headboats, an estimated 69 headboats operate in the Gulf. As a result, an estimated 1,294 charterboats and 69 headboats in the Gulf would be expected to be directly affected by this proposed rule. The average charterboat is estimated to earn approximately $77,000 (2010 dollars) in annual revenue, and the average headboat is estimated to earn approximately $234,000 (2010 dollars).

No other small entities that would be expected to be directly affected by this proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

This rule, if implemented, would change the closure date for the recreational sector for gag harvest and the geographic extent of the recreational SWG fixed seasonal closure. The proposed closure date for the recreational sector for gag harvest would be expected to increase the number of charterboat individual angler trips targeting gag Gulf-wide by 770–2,464 trips, where a ''trip'' is based on each individual angler rather than the charterboat as a whole. Angler trips are used as the metric of analysis instead of vessel trips because species target information is collected at the angler level and not at the vessel level. The estimated producer surplus (PS), which is used as a proxy for vessel profit, of a charterboat angler trip is $145.63 (2010 dollars). The increase in the number of charterboat individual angler trips targeting gag expected to occur as a result of the proposed change in the recreational gag fishing season would be expected to increase the PS for all affected charterboats combined by approximately $112,000–$359,000 (770–2,464 trips times $145.63 per trip; 2010 dollars). During the 2007–2011 period, the Gulf charterboat fleet averaged approximately 765,200 angler trips per year, of which an average of approximately 14,600, or less than 2 percent, targeted gag. These trips targeting gag generated approximately $111 million in PS per year for the entire fleet. The estimated increase in PS expected to result from the proposed closure date for the recreational sector for gag harvest would, therefore, be expected to increase the total PS received by charterboats by less than 1 percent (approximately 0.1–0.3 percent). Allocated across all charterboats (1,294 vessels), the estimated change in PS would result in an increase of approximately $77–$277 (2010 dollars) per vessel. Although some charterboats would be expected to be more actively engaged in the harvest of gag than others, these results indicate that the proposed closure date for the recreational sector for gag harvest would be expected to have a minor economic impact on the profit of charterboats.

Comparable information for Gulf headboats is not available because target data for headboat trips are not collected. However, gag accounts for less than 4 percent of the total pounds of all species recreationally harvested by headboats, whereas gag accounts for approximately 13 percent of the total pounds recreationally harvested by charterboat anglers despite the low rate (less than two percent of total trips) of gag target effort by charterboat anglers. The higher proportion of gag harvest relative to total harvest for charterboats compared to headboats, despite the low rate of gag target effort by charterboat anglers, suggests that gag target effort by headboat anglers is similarly low. As a result, the proposed closure date for the recreational sector for gag harvest would be expected to result in a small change in the number of headboat angler trips taken and, as a result, have a minor economic impact on the profit of headboats.

The proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to result in a minor economic impact to for-hire small businesses. A fixed seasonal closure applicable to the recreational sector for gag, black grouper, and red grouper of some duration has been in effect since 2006 and was expanded to include all SWG species in 2010. As a result, examination of data prior to 2006 is required to provide insights into the possible economic effects of the proposed change in the geographic extent of the recreational SWG fixed seasonal closure.

During 2004–2005, approximately 6,300 trips are estimated to have been taken each year during February and March by charterboat anglers targeting SWG species. Among the species in the SWG complex, gag is the most commonly targeted species. Of the approximately 6,300 charterboat angler trips targeting SWG taken each year during these months, approximately 4,700 of these trips, or approximately 74 percent, targeted gag. NMFS notes that these results should not be compared with previous discussion of the low importance of gag target effort to charterboat anglers overall (less than 2 percent of total target trips) because that discussion pertained to annual target effort for all species; the current discussion pertains only to target effort in February-March, and only to SWG species. As a result, of the approximately 6,300 trips targeting SWG that occurred each year during February-March, only approximately 1,600 trips targeted SWG species other than gag. During these two years, 2004–2005, approximately 765,300 charterboat angler trips were taken each

year. Thus, the number of trips that targeted a SWG species other than gag during February-March represented approximately 0.2 percent of all charterboat angler trips taken over the entire year.

The proposed change in the geographic extent of the recreational SWG fixed seasonal closure would eliminate the recreational SWG fixed seasonal closure in Federal waters shoreward of the 20-fathom boundary. Estimates of recreational target effort by water depth are not available and the estimates of angler effort provided above, which encompass effort throughout the Gulf, cannot be disaggregated to match the geographic parameters of the proposed rule. As a result, because some SWG target effort may occur seaward of the 20-fathom boundary, estimates of the expected economic effects of the proposed change in the geographic extent of the recreational SWG fixed seasonal closure based on the angler target information discussed above would be expected to be an upper bound. Based on the information provided above, because the recreational harvest of gag would continue to be prohibited seaward of the 20-fathom boundary, the proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to result in a maximum increase of approximately 1,600 charterboat angler trips, or approximately 0.2 percent of normal charterboat angler trips taken over the year. Based on this number of charterboat angler trips, these trips would be expected to result in an increase in the PS to the Gulf charterboat fleet by approximately $235,000 (1,600 trips times $145.63 per trip; 2010 dollars), or approximately 0.2 percent of total PS received by charterboats. Allocated across all charterboats, the estimated change in PS would result in an increase of approximately $182 (2010 dollars) per vessel. Similar to the discussion on the expected effects of the proposed closure date for the recreational sector for gag harvest, although some charterboats would be expected to be more actively engaged than others in the harvest of SWG species other than gag, these results indicate that the proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to have a minor economic impact on the profit of charterboats.

Similar to the discussion of the expected effects of the proposed closure date for the recreational sector for gag harvest, estimates of the expected effects of the proposed change in the geographic extent of the recreational SWG fixed seasonal closure on headboats cannot be calculated with available data, because target data for headboat trips are not collected. However, because the proposed change would only affect the harvest of SWG species other than gag, which is the most commonly targeted SWG species, and would affect fishing opportunities for only a small portion of the year, the proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to result in only a small increase in the number of headboat angler trips taken. As a result, this proposed change in the geographic extent would be expected to have only a minor economic impact on the profit of headboats.

In summary, the proposed rule, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 15, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraphs (u) and (v) are revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(u) *Seasonal closure of the recreational sector for shallow-water grouper (SWG).* The recreational sector for SWG, in or from the Gulf EEZ, is closed each year from February 1 through March 31, in the portion of the Gulf EEZ seaward of rhumb lines connecting, in order, the points in the following table. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ seaward of the following rhumb lines is zero.

Point	North lat.	West long.
1	24°48.0′	82°48.0′
2	25°07.5′	82°34.0′
3	26°26.0′	82°59.0′
4	27°30.0′	83°21.5′
5	28°10.0′	83°45.0′
6	28°11.0′	84°00.0′
7	28°11.0′	84°07.0′
8	28°26.6′	84°24.8′
9	28°42.5′	84°24.8′
10	29°05.0′	84°47.0′
11	29°02.5′	85°09.0′
12	29°21.0′	85°30.0′
13	29°27.9′	85°51.7′
14	29°45.8′	85°51.0′
15	30°05.6′	86°18.5′
16	30°07.5′	86°56.5′
17	29°43.9′	87°33.8′
18	29°43.0′	88°18.5′
19	At State/EEZ line, follow State/EEZ line to point 20.	88°56.0′
20	At State/EEZ line.	89°28.4′
21	29°02.0′	89°45.5′
22	28°32.7′	90°21.5′
23	28°24.8′	90°52.7′
24	28°42.3′	92°14.4′
25	28°34.2′	92°30.4′
26	28°27.6′	95°00.0′
27	28°20.0′	95°06.9′
28	28°02.2′	96°11.1′
29	27°46.5′	96°38.1′
30	27°15.0′	97°00.0′
31	26°45.5′	97°01.4′
32	At EEZ	96°51.0′

(v) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through June 30 and November 11 through December 31, each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

[FR Doc. 2013–03980 Filed 2–20–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 110819515–3085–01]

RIN 0648–BA98

Western Pacific Fisheries; Fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to establish requirements for fishing in the Marianas Trench, Pacific Remote Islands, and Rose Atoll Marine National Monuments. The proposed rule is intended to implement fishery management measures consistent with Presidential Proclamations 8335, 8336, and 8337 that established the Monuments.

DATES: NMFS must receive comments on the proposed rule by April 8, 2013.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2012–0070, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0070,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

The Western Pacific Fishery Management Council (Council) prepared Amendment 3 to the Fishery Ecosystem Plan for the Mariana Archipelago, Amendment 2 to the Fishery Ecosystem Plan for the Pacific Remote Island Areas, Amendment 3 to the Fishery Ecosystem Plan for American Samoa, and Amendment 6 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific. The amendments are presented as a single document, which includes background information on this proposed rule, an environmental assessment, and a regulatory impact review. You may obtain the draft amendment document from *www.regulations.gov* or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or from *www.wpcouncil.org.*

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Michael D. Tosatto (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, tel 808–944–2108.

SUPPLEMENTARY INFORMATION: The Council and NMFS manage fisheries through fishery ecosystem plans for American Samoa, the Mariana Archipelago (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), the Pacific Remote Islands (PRI), Hawaii, and western Pacific pelagic fisheries. Fishing regulations for the western Pacific are found mostly in Title 50 of the Code of Federal Regulations, Part 665 (50 CFR 665).

In 2009, President Bush issued Presidential Proclamations that established three marine national monuments in the central and western Pacific under the authority of the Antiquities Act, as follows:

- Proclamation 8335 of January 6, 2009, ''Establishment of the Marianas Trench Marine National Monument'' (74 FR 1557, January 12, 2009).
- Proclamation 8336 of January 6, 2009, ''Establishment of the Pacific Remote Islands Marine National Monument'' (74 FR 1565, January 12, 2009).
- Proclamation 8337 of January 6, 2009, ''Establishment of the Rose Atoll Marine National Monument'' (74 FR 1577, January 12, 2009).

The proclamations recognize that it is in the public interest to preserve these submerged lands, waters, and marine resources, which are biologically diverse, contain sites of historical and scientific interest, and are essential to the long-term study of tropical marine ecosystems. For more detailed information regarding the marine resources and background for the management of the Monuments, please refer to the Proclamations, available at *www.regulations.gov.*

Among other things, the Proclamations define the Monuments' boundaries, prohibit commercial fishing, and describe the management of Monument resources. The Proclamations direct the Secretary of Commerce to take action under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to regulate fisheries and ensure proper care and management of the monument, including allowing for traditional indigenous fishing practices. The Council recommended incorporating the Proclamations' fishery management provisions into its fishery ecosystem plans, and recommended that NMFS establish certain provisions relating to traditional indigenous fishing practices. This proposed rule would implement the Council's recommendations.

The Marianas Trench Marine National Monument (Fig. 1) includes the waters and submerged lands of the three northernmost islands of the CNMI (Farallon de Pajaros (Uracas), Maug, and Asuncion, collectively the ''Islands Unit''), the submerged lands of designated volcanic sites (''Volcanic Unit''), and the Marianas Trench (''Trench Unit''). The Pacific Remote Islands Marine National Monument (Figs. 2 through 6) includes the waters and submerged and emergent lands of Wake Island, Baker Island, Howland Island, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll (''Pacific Remote Islands''), seaward to a distance approximately 50 nautical miles (nm). The Rose Atoll Marine National Monument in American Samoa (Fig. 7) includes the emergent and submerged lands and waters of Rose Atoll, seaward to a distance approximately 50 nm.

Consistent with the Proclamations, and based on recommendation from the Council, this proposed rule would create new subparts in 50 CFR Part 665, one for each of the three Monuments. Briefly, the proposed rule would implement new requirements as follows:

- Codify the boundaries of the Monuments and their various management units.
- Prohibit commercial fishing in the Pacific Remote Islands and Rose Atoll Monuments, and in the Islands Unit of the Marianas Trench Monument.
- Establish management measures for non-commercial and recreational fishing in the Monuments, including but not limited to the following:
  - Require Federal permits and reporting for non-commercial and recreational charter fishing to aid in the monitoring of fishing activities.
  - Allow customary exchange in non-commercial fisheries in the

Marianas Trench and Rose Atoll Marine National Monuments to help preserve traditional, indigenous, and cultural fishing practices.

- Define customary exchange as the non-market exchange of marine resources between fishermen and community residents for goods, and/or services for cultural, social, or religious reasons, and which may include cost recovery through monetary reimbursements and other means for actual trip expenses (ice, bait, food, or fuel) that may be necessary to participate in fisheries in the western Pacific.
- Limit permit eligibility for non-commercial fishing to community residents, as identified in the fishery ecosystem plans—specifically, American Samoa, Guam and the CNMI are fishing communities—and limit permit eligibility for recreational charters to businesses of local fishing communities for the Rose Atoll Monument and Marianas Monument Islands Unit.
- Prohibit all fishing within 12 nm of the Pacific Remote Islands, subject to U.S. Fish & Wildlife Service authority to allow non-commercial fishing in consultation with NMFS and the Council.
- Prohibit all fishing within 12 nm around Rose Atoll. The Council and NMFS would review this regulation after three years.

• Prohibit the conduct of commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip.

NMFS would make administrative housekeeping changes to the Federal permit and reporting requirements at 50 CFR 665.13 and 665.14, and the vessel identification requirements at 50 CFR 665.16 to incorporate the new permits that this proposed rule would establish.

NMFS would also make administrative housekeeping changes to the requirements for low-use marine protected areas in the Pacific Remote Islands. NMFS currently allows limited fishing within certain areas of the Pacific Remote Islands (at Johnston Atoll, Palmyra Atoll, and Wake Island). Because this proposed rule would prohibit fishing within 12 nm of the islands, it supersedes the provisions allowing fishing in the low-use marine protected areas. To eliminate the potential conflicting requirements, NMFS would remove the provisions allowing limited take in the monument areas; specifically, the definition of the low-use area at 50 CFR 665.599, applicable permit provisions at 50 CFR 665.624, and the related prohibition at 50 CFR 665.625.

NMFS must receive any public comments on this proposed rule by the close of business on April 8, 2013, and will not consider late comments. In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments through April 2, 2013, on proposed amendments to the Fishery Ecosystem Plans for the Marianas Archipelago, the Pacific Remote Island Areas, American Samoa, and Western Pacific Pelagics Fisheries, as stated in the Notice of Availability published on February 2, 2013 (78 FR 7385). The Secretary of Commerce will consider public comments on this proposed rule in the decision to approve, disapprove, or partially approve the FEP amendments, if NMFS receives such comments by April 2, 2013.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Fishery Ecosystem Plans for the Mariana Archipelago, the Pacific Remote Island Areas, American Samoa, and Western Pacific Pelagics Fisheries, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The analysis follows.

In January 2009, President George W. Bush established, by Presidential Proclamations, three marine national monuments in the western Pacific. Consistent with these proclamations, this proposed rule would prohibit commercial fishing in the Rose Atoll and Pacific Remote Islands (PRI) Monuments, and within the Islands Unit of the Marianas Trench Monuments. The proposed rule would also establish provisions for managing non-commercial fishing activities in the Monuments. These provisions include, among other requirements: managing non-commercial fishing with Federal permit and reporting requirements to aid in the monitoring of fishing activities, limiting non-commercial fishing eligibility to residents and businesses of local fishing communities, allowing customary exchange, and creating certain no-take/no-fishing marine protected areas.

The proposed rule would apply to the following categories (as determined by the SBA) of small entities: commercial fishing vessels and recreational charter fishing vessels. NMFS believes that businesses operating as recreational charter and commercial fishing vessels in the Territories and in Hawaii would be considered small entities, with annual revenues below $7 million and $4 million, respectively. The proposed rule would apply to hundreds of vessels, regardless of gear type and size, many of which are primarily non-commercial fishing vessels that occasionally sell fish or take clients out on charter fishing trips. However, as discussed below, the rule will likely have little effect on overall commercial fishing and charter fishing activities relative to the status quo.

Fishing activity within the areas now contained in the Monuments has historically been low, even prior to the Proclamations. One recent study estimated that historically, about three trips with the primary purpose of fishing (commercial or non-commercial) were made annually to what is now the Islands Unit of the Marianas Trench Monument between 1970 and 2010. As for the PRI, commercial fishing within 50 nm of each island was prohibited by the Proclamation. Fishing activities around the Pacific Remote Island Areas (PRIA) outside the monument is currently low. As of January 2013, the type and number of PRIA fishing permits issued are as follows: PRIA troll handline (3), PRIA bottomfish (0), PRIA crustaceans (0), PRIA precious corals (0) and PRIA coral reef ecosystem (0). Longline and purse seine fishing has also occurred in the EEZ around the PRIA, outside Monument waters, in recent years. Within the PRI Monument, based on anecdotal information, a small amount of recreational fishing may be occurring by charter vessels visiting Palmyra Atoll from Hawaii. Fishing effort, both commercial and non-commercial, around Rose Atoll is unknown, but likely to be low, as most fishing occurs closer to the shoreline of more populated areas of Tutuila and Manua. With limited information on commercial, non-commercial, and recreational fishing in and around the Monuments, NMFS based the analysis provided in the Environmental

Assessment in support of the proposed action assuming that 10 vessels each would make one non-commercial or charter fishing trip annually to the Marianas Trench, 10 vessels each would make one trip annually to Rose Atoll, and 15 vessels each would make one trip annually to PRI.

Commercial fishing within the Rose Atoll and PRI Monuments, and the Islands Unit of the Mariana Trench Monument was banned through the Proclamations in 2009, so this proposed rule only codifies an existing prohibition on commercial fishing. However, a few provisions of this proposed rule could potentially affect businesses operating commercial fishing and charter fishing vessels. The proposed action prohibits fishing vessels from conducting commercial fishing outside the Monument boundaries and non-commercial fishing inside the Monument during the same trip. Any fishermen who wish to sell fish caught during their trip would not be able to go to any of the Monuments to fish recreationally or non-commercially; this applies to all fishing vessels, as well as charter fishing vessels. This is likely to have little to no effect on revenues, as fishermen whose primary trip goal is to earn revenue, however modest, will choose not to fish non-commercially in Monument waters.

Recreational charter vessel owners and operators would generally be allowed to continue to take recreational charter fishing trips to the Monuments; however, they cannot sell, barter, or trade fish caught within the Rose Atoll and PRI Monuments, or fish caught within the Islands Unit of the Marianas Trench Monument, nor can they supplement trip fee revenues by selling fish caught outside of these Monument boundaries during non-commercial or recreational fishing trips into these areas.

In general, the primary revenue sources for charter fishing vessels are boat charter fees paid by customers, and any revenue earned from selling fish would supplement trip fees. Sales of fish caught outside the Rose Atoll and PRI Monuments, and the Islands Unit of the Marianas Trench Monument are still permitted, as long as no fish were caught inside those areas on the same trip. The restriction on supplemental fish sales is not expected to have a significant impact to small entities operating charter fishing trips to Rose Atoll and PRI Monuments or the Islands Unit of the Marianas Trench Monument because the overall number of recreational fishing trips to any of the three Monuments is likely to be less than ten to fifteen each year, and that number is likely very small relative to the total number of charter fishing trips by the affected vessels taken outside the Monuments annually.

Any fishermen wishing to fish non-commercially in Rose Atoll or in the Islands Unit of the Marianas Trench Marine National Monument would be subject to new community residency requirements under the proposed action. Fishermen who are community residents of American Samoa may fish in Rose Atoll, while those who wish to fish in the Islands Unit of the Marianas Trench Monument must be community residents of Guam or CNMI. These restrictions are necessary to ensure that customary exchange does not provide a toehold for commercial fishing, which is prohibited by the Proclamations. Residency requirements do not apply to those who wish to fish in PRI Monument or in the Volcano or Trench Units of the Marianas Trench Monument. A recreational fishing charter business operating in the Rose Atoll Monument must be legally established in American Samoa, and a recreational fishing charter business operating in the Islands Unit of the Marianas Trench Monument must be legally established in Guam or the CNMI. This could adversely affect U.S. charter fishing vessels that do not meet the community residency requirements that would otherwise choose to apply for a permit to fish in Rose Atoll or the Islands Unit. With the limited number of trips to these areas, and most, if not all, made by residents of the local fishing community, NMFS predicts that the new community residency requirements would affect few, if any, small entities.

Both recreational charter fishermen and non-commercial fishermen who wish to fish in the Monuments would be required to obtain Federal permits and complete logbook reports. These would be new requirements, except for non-commercial fishermen in the PRI Monument, who would be subject to existing permit requirements. The purpose of these requirements is to allow NMFS and the Council to track and evaluate non-commercial fishing in the Monuments. The time incurred to meet these requirements is estimated to be 15 minutes for each applicant to complete a permit application for each vessel annually and 20 minutes to complete a daily trip log sheet per trip. NMFS will charge a minor fee to process permit applications, the amount to be determined in accordance with the NOAA Finance Manual. Information provided as part of the permitting requirement includes vessel-specific information while information requested in the daily logbook reports include fish species caught and fishing location. Fulfilling these requirements is not expected to require any professional skills that vessel owner and operators do not already possess. Given the low number of non-commercial fishing trips taken by non-commercial fishermen, including small commercial entities, to the monuments, NMFS conservatively estimates that each permitted charter fishing vessel and non-commercial fishing vessel will take one trip to any of the Monuments per year. The environmental assessment for the proposed action estimates 35 non-commercial fishing permit applications per year. There is insufficient information to develop an estimate as to what proportion of these applications would be from businesses operating charter vessels, rather than non-commercial fishermen fishing for sustenance or to maintain traditional cultural practices.

NMFS also considered, among other alternatives, taking no action to implement the Council recommendation. Because commercial fishing within the Monuments has been banned under the Proclamations since 2009, the analysis of economic impacts to small entities of implementing the proposed action considers codifying the commercial fishing ban as part of the baseline economic environment, and does not consider the ban on commercial fishing within Monument waters as an incremental economic impact of implementing the proposed action. Continuing to take no action would have small positive economic impacts on commercial fishing and recreational charter fishing vessels relative to the preferred action because it would allow non-commercial fishing within the Monuments, would allow fishing vessel to conduct commercial fishing outside the Monument boundaries and non-commercial fishing inside the Monument during the same trip, and would not impose permitting and logbook requirements. However, the No Action Alternative does not meet the objective of establishing requirements for fishing activities in the Monuments, including managing non-commercial fishing as a sustainable activity.

The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule also will not place a substantial number

of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement that has been submitted to and is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS will provide the OMB control number for the information collection when OMB clears the collection-of-information. The public reporting burden is described below, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

For both types of non-commercial fishing (non-commercial and recreational charter) combined, NMFS expects to receive up to 10 permit applications each year for Rose Atoll and the Marianas Islands Unit, each, and up to 15 permit applications a year for the Pacific Remote Islands Monument, for a total of 35 applications in a year. NMFS estimates that an application would take 15 minutes to complete, for a total maximum burden of 8.75 hours. If each fishing trip is three days, there could be 105 logbooks (35 trips × 3 days) in a year. At 20 minutes per log sheet, the maximum reporting burden would be 35 hours per year. Therefore, NMFS expects the total maximum annual burden for permit applications and reporting to be 43.75 hr.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael D. Tosatto (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or by fax to 202–395–7285.

This final rule also contains a collection-of-information requirement subject to the PRA, and which has been approved by the Office of Management and Budget (OMB) under control numbers 0648–0360, –0361, –0584, –0586, and –0589. The one–time public reporting burden for vessel identification requirements is estimated at 45 minutes and $100 in supplies per vessel. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Commercial fishing, Commonwealth of the Northern Mariana Islands, Fisheries, Guam, Marianas Trench, Monuments and memorials, Pacific Remote Islands, Rose Atoll.

Dated: February 13, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR chapter VI as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.12, add the definitions of ''Customary exchange'' and ''Recreational fishing,'' in alphabetical order, and revise the definition of ''Non-commercial fishing'' to read as follows:

§ 665.12 Definitions.

* * * * *

Customary exchange means the non-market exchange of marine resources between fishermen and community residents for goods, and/or services for cultural, social, or religious reasons. Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific.

* * * * *

Non-commercial fishing means fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.

* * * * *

Recreational fishing means fishing conducted for sport or pleasure, including charter fishing.

* * * * *

■ 3. In § 665.13,

■ a. Revise paragraphs (a), (c)(1), and (c)(2);

■ b. Revise paragraph (f)(2) introductory text, and add paragraphs (f)(2)(ix) through (f)(2)(xiii); and

■ c. Revise paragraph (g), to read as follows:

The revisions and additions read as follows:

§ 665.13 Permits and fees.

(a) *Applicability.* The requirements for permits for specific western Pacific fisheries are set forth in subparts B through I of this part.

* * * * *

(c) * * *

(1) An application for a permit to operate in a Federal western Pacific fishery that requires a permit and is regulated under subparts B through I of this part may be obtained from NMFS PIRO. The completed application must be submitted to PIRO for consideration. In no case shall PIRO accept an application that is not on a Federal western Pacific fisheries permit application form.

(2) A minimum of 15 days after the day PIRO receives a complete application should be allowed for processing the application for fisheries under subparts B through I of this part. If an incomplete or improperly completed application is filed, NMFS will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of the letter of notification of deficiency, the application will be administratively closed.

* * * * *

(f) * * *

* * * * *

(2) PIRO will charge a non-refundable processing fee for each application (including transfer and renewal) for each permit listed in paragraphs (f)(2)(i) through (f)(2)(xiii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs

incurred in processing the permit. The fee may not exceed such costs. The appropriate fee is specified with each application form and must accompany each application. Failure to pay the fee will preclude the issuance, transfer, or renewal of any of the following permits:

* * * * *

(ix) Marianas Trench Monument non-commercial permit.

(x) Marianas Trench Monument recreational charter permit.

(xi) Pacific Remote Islands Monument recreational charter permit.

(xii) Rose Atoll Monument non-commercial permit.

(xiii) Rose Atoll Monument recreational charter permit.

* * * * *

(g) *Expiration.* A permit issued under subparts B through I of this part is valid for the period specified on the permit unless revoked, suspended, transferred, or modified under 15 CFR part 904.

* * * * *

■ 4. In § 665.14 revise paragraphs (b)(1)(i) and (b)(2)(iv) to read as follows:

§ 665.14 Reporting and recordkeeping.

* * * * *

(b) * * *

(1) * * *.

(i) The operator of a fishing vessel subject to the requirements of §§ 665.124, 665.142, 665.162, 665.203(a)(2), 665.224, 665.242, 665.262, 665.404, 665.424, 665.442, 665.462, 665.603, 665.624, 665.642, 665.662, 665.801, 665.905, 665.935, or 665.965 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as allowed in paragraph (b)(1)(iii) of this section.

* * * * *

(2) * * *

* * * * *

(iv) If fishing was authorized under a permit pursuant to §§ 665.124, 665.224, 665.424, 665.624, 665.905, 665.935, or 665.965, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

* * * * *

■ 5. In § 665.16 revise paragraph (a)(3) to read as follows:

§ 665.16 Vessel identification.

(a) * * *

(3) A vessel that is registered for use with a valid permit issued under Subparts B through E and Subparts G through I of this part must be marked in accordance with paragraph (b) of this section.

* * * * *

■ 6. Revise § 665.599 to read as follows:

§ 665.599 Area restrictions.

Except as provided in § 665.934, fishing is prohibited in all no-take MPAs. The following U.S. EEZ waters are no-take MPAs: Landward of the 50 fathom curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153.

■ 7. Remove and reserve § 665.624 paragraph (a)(1)(i) to read as follows:

§ 665.624 Permits and fees.

(a) * * *

(1) * * *

(i) [Reserved]

* * * * *

■ 8. Remove and reserve § 665.625 paragraphs (a) and (b)(3) to read as follows:

§ 665.625 Prohibitions.

(a) [Reserved]

(b) * * *

(3) [Reserved]

* * * * *

■ 9. In 50 CFR part 665, add subparts G, H, and I to read as follows:

Subpart G—Marianas Trench Marine National Monument

Sec.
665.900 Scope and purpose.
665.901 Boundaries.
665.902 Definitions.
665.903 Prohibitions.
665.904 Regulated activities.
665.905 Fishing permit procedures and criteria.
665.906 International law.

Subpart H—Pacific Remote Islands Marine National Monument

Sec.
665.930 Scope and purpose.
665.931 Boundaries.
665.932 Definitions.
665.933 Prohibitions.
665.934 Regulated activities.
665.935 Fishing permit procedures and criteria.
665.936 International law.

Subpart I—Rose Atoll Marine National Monument

Sec.
665.960 Scope and purpose.
665.961 Boundaries.
665.962 Definitions.
665.963 Prohibitions.
665.964 Regulated activities.
665.965 Fishing permit procedures and criteria.
665.966 International law.

Subpart G—Marianas Trench Marine National Monument

§ 665.900 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument. Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the Territory of Guam or the Commonwealth of the Northern Mariana Islands.

§ 665.901 Boundaries.

The Marianas Trench Marine National Monument includes the following:

(a) Islands Unit. The Islands Unit includes the waters and submerged lands of the three northernmost Mariana Islands (Farallon de Pajaros (Uracas), Maug, and Asuncion). The shoreward boundary of the Islands Unit is the mean low water line. The seaward boundary of Islands Unit is defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	144°1′22.97″	21°23′42.40″
2	145°33′25.20″	21°23′42.40″
3	145°44′31.14″	21°11′14.60″
4	146°18′36.75″	20°49′17.46″
5	146°18′36.75″	19°22′0.00″
6	145°3′12.22″	19°22′0.00″
7	144°1′22.97″	20°45′44.11″
1	144°1′22.97″	21°23′42.40″

(b) Volcanic Unit. The Volcanic Unit includes the submerged lands of designated volcanic sites. The boundaries of the Volcanic Unit are defined as circles of a one nautical mile radius centered on each of the following points:

ID	E. long.	N. lat.
Fukujin	143°27′30″	21°56′30″
Minami Kasuga #2	143°38′30″	21°36′36″
N.W. Eifuku	144°2′36″	21°29′15″
Minami Kasuga #3	143°38′0″	21°24′0″
Daikoku	144°11′39″	21°19′27″
Ahyi	145°1′45″	20°26′15″

ID	E. long.	N. lat.
Maug	145°13′18″	20°1′15″
Alice Springs	144°30′0″	18°12′0″
Central trough	144°45′0″	18°1′0″
Zealandia	145°51′4″	16°52′57″
E. Diamante	145°40′47″	15°56′31″
Ruby	145°34′24″	15°36′15″
Esmeralda	145°14′45″	14°57′30″
N.W. Rota #1	144°46′30″	14°36′0″
W. Rota	144°50′0″	14°19′30″
Forecast	143°55′12″	13°23′30″
Seamount X	144°1′0″	13°14′48″
South Backarc	143°37′8″	12°57′12″
Archaean site	143°37′55″	12°56′23″
Pika site	143°38′55″	12°55′7″
Toto	143°31′42″	12°42′48″

(c) Trench Unit. The Trench Unit includes the submerged lands of the Marianas Trench. The boundary of the Trench Unit extends from the northern limit of the EEZ around the Commonwealth of the Northern Mariana Islands to the southern limit of the EEZ around Guam as defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	145°5′46″	23°53′35″
2	145°52′27.10″	23°45′50.54″
3	146°36′18.91″	23°29′18.33″
4	147°5′16.84″	23°11′43.92″
5	147°22′31.43″	20°38′41.35″
6	147°40′48.31″	19°59′23.30″
7	147°39′59.51″	19°27′2.96″
8	147°48′51.61″	19°8′18.74″
9	148°21′47.20″	18°56′6.46″
10	148°42′50.50″	17°58′2.20″
11	148°34′47.12″	16°40′53.86″
12	148°5′39.95″	15°25′51.09″
13	146°23′24.38″	12°21′38.38″
14	145°28′33.28″	11°34′7.64″
15	143°3′9″	10°57′30″
16	142°19′54.93″	11°47′24.83″
17	144°42′31.24″	12°21′24.65″
18	145°17′59.93″	12°33′5.35″
19	147°29′32.24″	15°49′25.53″
20	147°27′32.35″	17°57″52.76″
21	147°20′16.96″	19°9′19.41″
22	146°57′55.31″	20°23′58.80″
23	145°44′31.14″	21°11′14.60″
24	144°5′27.55″	23°2′28.67″
1	145°5′46″	23°53′35″

§ 665.902 Definitions.

The following definitions are used in this subpart:

Management unit species or MUS means the Mariana Archipelago management unit species as defined in §§ 665.401, 665.421, 665.441, and 665.461, and the pelagic management unit species as defined in § 665.800.

Monument means the submerged lands and, where applicable, waters of the Marianas Trench Marine National Monument as defined in § 665.901.

Proclamation means Presidential Proclamation 8335 of January 6, 2009, ''Establishment of the Marianas Trench Marine National Monument.''

§ 665.903 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this part, and § 665.15 and subpart D of this chapter, the following activities are prohibited in the Islands Unit and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in violation of § 665.904(a).

(b) Non-commercial fishing, except as authorized under permit and pursuant to the procedures and criteria established in § 665.905.

(c) Transferring a permit in violation of § 665.905(d).

(d) Commercial fishing outside the Islands Unit and non-commercial fishing within the Islands Unit on the same trip in violation of § 665.904(c).

§ 665.904 Regulated activities.

(a) Commercial fishing is prohibited in the Islands Unit.

(b) Non-commercial fishing is prohibited in the Islands Unit, except as authorized under permit and pursuant to the procedures and criteria established in § 665.905.

(c) Commercial fishing outside the Islands Unit and non-commercial fishing within the Islands Unit during the same trip is prohibited.

§ 665.905 Fishing permit procedures and criteria.

(a) *Marianas Trench Monument Islands Unit non-commercial permit.*

(1) Applicability. Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Islands Unit must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) Eligibility criteria. A permit issued under this section may be issued only to a community resident of Guam or the CNMI.

(3) Terms and conditions.

(i) Customary exchange of fish harvested within the Islands Unit under a non-commercial permit is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited. Customary exchange of fish harvested under a non-commercial fishing permit in the Islands Unit may include family and friends of residents of CNMI and Guam fishing communities.

(ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses related to ice, bait, fuel, or food.

(b) *Marianas Trench Monument Islands Unit recreational charter permit.*

(1) Applicability. Both the owner and operator of a vessel chartered to recreationally fish for, take, retain, or possess MUS in the Islands Unit must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) Eligibility criteria. To be eligible for a permit issued under this section, a charter business must be established legally under the laws of Guam or the CNMI.

(3) Terms and conditions.

(i) The sale or exchange through barter or trade of fish caught in the Monument by a charter boat is prohibited.

(ii) No MUS harvested under a recreational charter fishing permit may be used for the purposes of customary exchange.

(c) *Application.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) *Transfer.* A permit issued under this section is not transferrable.

(e) *Reporting and recordkeeping.* The operator of a vessel subject to the

requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.906 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Subpart H—Pacific Remote Islands Marine National Monument

§ 665.930 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument.

§ 665.931 Boundaries.

The Monument, including the waters and submerged and emergent lands of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll, is defined as follows:

(a) Wake Island. The Wake Island unit of the Monument includes the waters and submerged and emergent lands around Wake Island within an area defined by straight lines connecting the following coordinates in the order listed:

ID	E. long.	N. lat.
1	165°42′56″	20°9′27″
2	167°32′23″	20°9′27″
3	167°32′23″	18°25′51″
4	165°42′56″	18°25′51″
1	165°42′56″	20°9′27″

(b) Howland and Baker Islands. The Howland and Baker Islands units of the Monument include the waters and submerged and emergent lands around Howland and Baker Islands within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	Lat.
1	177°27′7″	1°39′15″ N.
2	175°38′32″	1°39′15″ N.
3	175°38′32″	0°38′33″ S.
4	177°27′7″	0°38′33″ S.
1	177°27′7″	1°39′15″ N.

(c) Jarvis Island. The Jarvis Island unit of the Monument includes the waters and submerged and emergent lands around Jarvis Island within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	Lat.
1	160°50′52″	0°28′39″ N.
2	159°8′53″	0°28′39″ N.
3	159°8′53″	1°13′15″ S.
4	160°50′52″	1°13′15″ S.
1	160°50′52″	0°28′39″ N.

(d) Johnston Atoll. The Johnston Atoll unit of the Monument includes the waters and submerged and emergent lands around Johnston Atoll within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	N. lat.
1	170°24′37″	17°35′39″
2	168°37′32″	17°35′39″
3	168°37′32″	15°53′26″
4	170°24′37″	15°53′26″
1	170°24′37″	17°35′39″

(e) Kingman Reef and Palmyra Atoll. The Kingman Reef and Palmyra Atoll units of the Monument include the waters and submerged and emergent lands around Kingman Reef and Palmyra Atoll within an area defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	N. lat.
1	163°11′16″	7°14′38″
2	161°12′3″	7°14′38″
3	161°12′3″	5°20′23″
4	161°25′22″	5°1′34″
5	163°11′16″	5°1′34″
1	163°11′16″	7°14′38″

§ 665.932 Definitions.

The following definitions are used in this subpart:

Management unit species or MUS means the Pacific Remote Island Areas management unit species as defined in §§ 665.601, 665.621, 665.641, and 665.661, and the pelagic management unit species as defined in § 665.800.

Monument means the waters and submerged and emergent lands of the Pacific Remote Islands Marine National Monument, as defined in § 665.931.

Proclamation means Presidential Proclamation 8336 of January 6, 2009, ''Establishment of the Pacific Remote Islands Marine National Monument.''

§ 665.933 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this part, and § 665.15 and subparts E and F of this chapter, the following activities are prohibited in the Monument and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in the Monument.

(b) Non-commercial fishing in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.935.

(c) Transferring a permit in violation of § 665.935(d).

(d) Commercial fishing outside the Monument and non-commercial fishing within the Monument on the same trip in violation of § 665.934(c).

(e) Non-commercial fishing within 12 nm of emergent land within the Monument, unless authorized by the U.S Fish & Wildlife Service, in consultation with NMFS and the Council, in violation of § 665.934(d).

§ 665.934 Regulated activities.

(a) Commercial fishing is prohibited in the Monument.

(b) Non-commercial fishing is prohibited in the Monument, except under permit and pursuant to the procedures and criteria established in § 665.935 or pursuant to 665.934(d).

(c) Commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip is prohibited.

(d) Non-commercial fishing is prohibited within 12 nm of emergent land within the Monument, unless authorized by the U.S. Fish & Wildlife Service, in consultation with NMFS and the Council.

§ 665.935 Fishing permit procedures and criteria.

(a) Non-commercial fishing.

(1) Applicability. Except as provided in section 665.934(d), a vessel that is used to non-commercially fish for, take, retain, or possess MUS in the Monument must be registered for use with a permit issued pursuant to §§ 665.603, 665.624, 665.642, 665.662, 665.801(f), or 665.801(g).

(2) Terms and conditions. Customary exchange of fish harvested in the Monument is prohibited.

(b) *Pacific Remote Islands Monument recreational charter permit.*

(1) Applicability. Except as provided in section 665.934(d), both the owner and operator of a vessel that is chartered to recreationally fish for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) Terms and conditions.

(i) The sale or exchange through barter or trade of fish caught by a charter boat fishing in the Monument is prohibited.

(ii) Customary exchange of fish harvested under a Monument

recreational charter permit is prohibited.

(c) *Application.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) *Transfer.* A permit issued under this section is not transferrable.

(e) *Reporting and recordkeeping.* The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.936 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Subpart I—Rose Atoll Marine National Monument

§ 665.960 Scope and purpose.

The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing within the Monument. Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the Territory of American Samoa.

§ 665.961 Boundaries.

The Monument consists of emergent and submerged lands and waters extending seaward approximately 50 nm from Rose Atoll. The boundary is defined by straight lines connecting the following coordinates in the order listed:

ID	W. long.	S. lat.
1	169°0′42″	13°41′54″
2	167°17′0″	13°41′54″
3	167°17′0″	15°23′10″
4	169°0′42″	15°23′10″
1	169°0′42″	13°41′54″

§ 665.962 Definitions.

The following definitions are used in this subpart:

Management Unit Species or MUS means the American Samoa management unit species as defined in §§ 665.401, 665.421, 665.441, and 665.461, and the pelagic management unit species as defined in § 665.800.

Monument means the waters and emergent and submerged lands of the Rose Atoll Marine National Monument, as defined in § 665.961.

Proclamation means Presidential Proclamation 8337 of January 6, 2009, ''Establishment of the Rose Atoll Marine National Monument.''

§ 665.963 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this part, and § 665.15 and Subpart B of this chapter, the following activities are prohibited in the Monument and, thus, unlawful for a person to conduct or cause to be conducted.

(a) Commercial fishing in the Monument.

(b) Non-commercial fishing in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.965.

(c) Transferring a permit in violation of § 665.965(d).

(d) Commercial fishing outside the Monument and non-commercial fishing within the Monument on the same trip in violation of § 665.964(c).

(e) Fishing within 12 nm of emergent land within the Monument in violation of § 665.964(d).

§ 665.964 Regulated activities.

(a) Commercial fishing is prohibited in the Monument.

(b) Non-commercial fishing is prohibited in the Monument, except as authorized under permit and pursuant to the procedures and criteria established in § 665.965.

(c) Commercial fishing outside the Monument and non-commercial fishing within the Monument during the same trip is prohibited.

(d) All fishing is prohibited within 12 nm of emergent land within the Monument.

§ 665.965 Fishing permit procedures and criteria.

(a) *Rose Atoll Monument non-commercial fishing permit.*

(1) Applicability. Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel.

(2) Eligibility criteria. A permit issued under this section may be issued only to a community resident of American Samoa.

(3) Terms and conditions.

(i) Customary exchange of fish harvested under a non-commercial permit within the Monument is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited. Customary exchange of fish harvested under a non-commercial permit in the Monument may include family and friends of residents of the American Samoa fishing community.

(ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses related to ice, bait, fuel, or food.

(b) *Rose Atoll Monument recreational charter permit.*

(1) Applicability. Both the owner and operator of a vessel that is chartered to fish recreationally for, take, retain, or possess MUS in the Monument must have a permit issued under this section, and the permit must be registered for use with that vessel. Charter boat customers are not required to obtain a permit.

(2) Permit Eligibility criteria. To be eligible for a permit issued under this section, a charter business must be established legally under the laws of American Samoa.

(3) Terms and conditions.

(i) The sale or exchange through barter or trade of fish caught by a charter boat fishing in the Monument is prohibited.

(ii) No MUS harvested under a recreational charter fishing permit may be used for the purposes of customary exchange.

(c) *Application.* An application for a permit required under this section must be submitted to PIRO as described in § 665.13.

(d) *Transfer.* A permit issued under this section is not transferrable.

(e) *Reporting and recordkeeping.* The operator of a vessel subject to the requirements of this section must comply with the terms and conditions described in § 665.14.

§ 665.966 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

BILLING CODE 3510-22-P

Figure 1. Marianas Trench Marine National Monument.

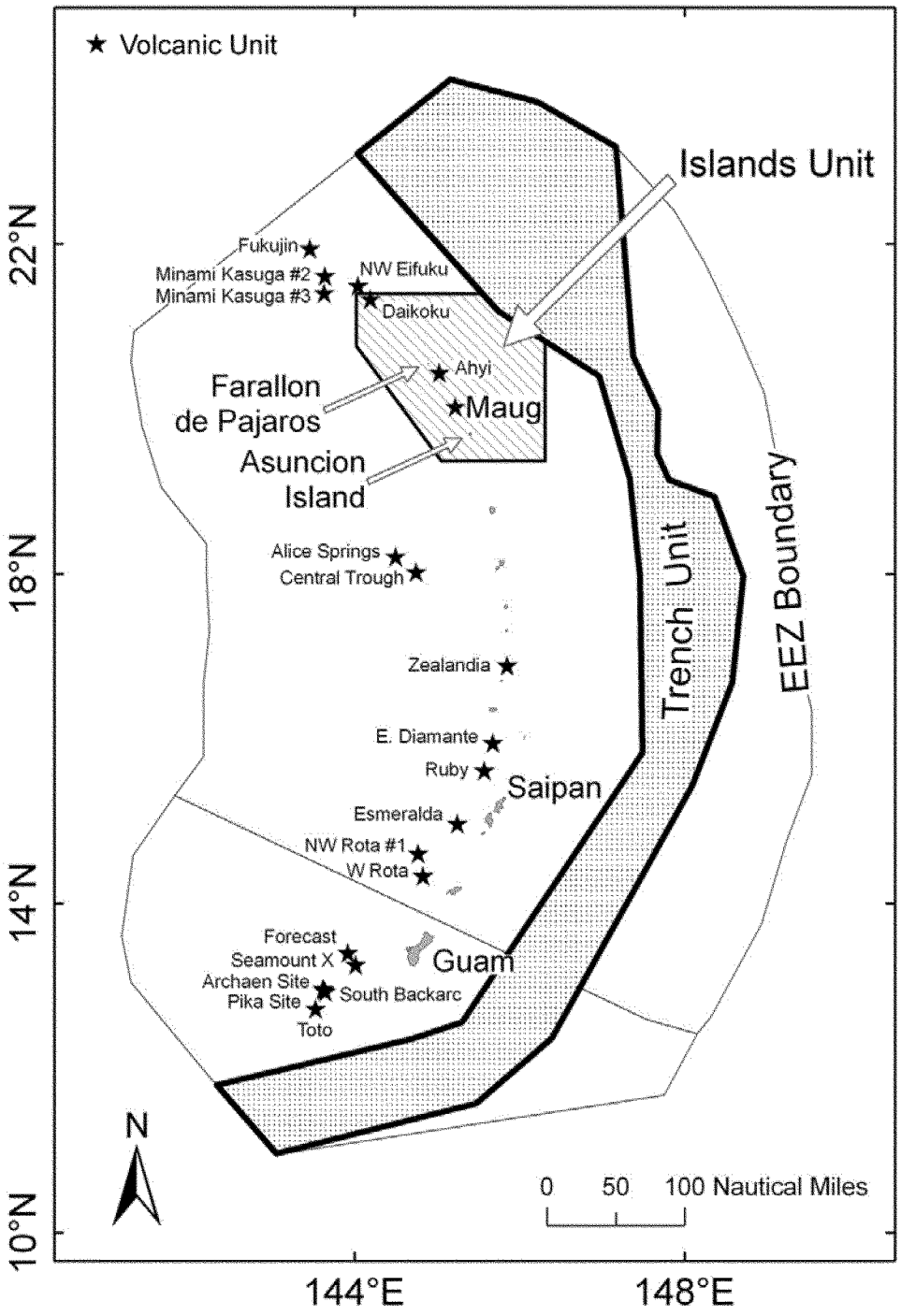


Figure 2. Wake Island, Pacific Remote Islands Marine National Monument.

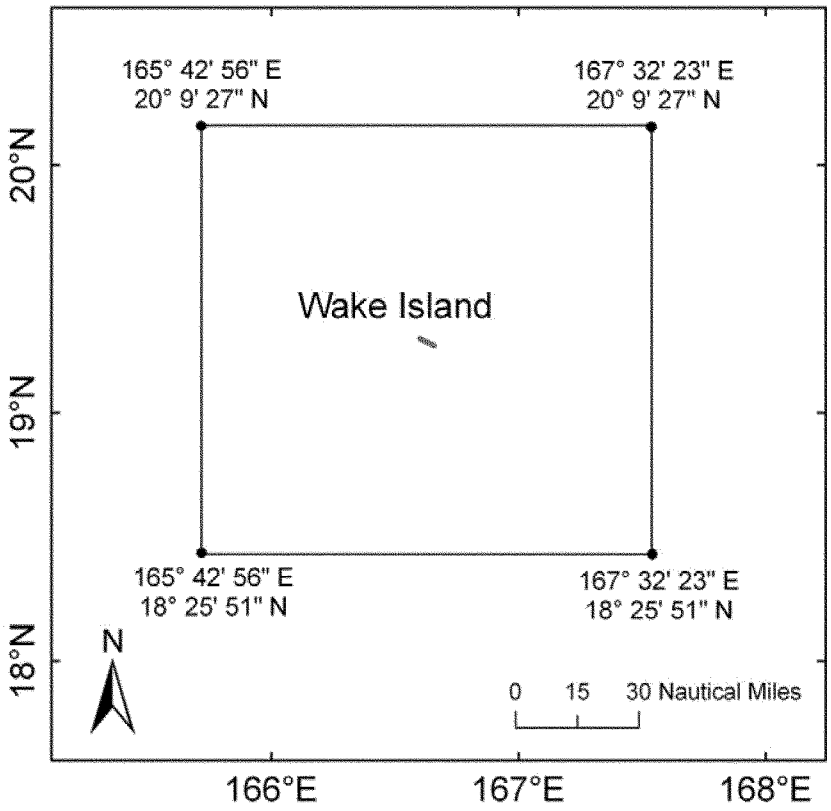


Figure 3. Howland and Baker Islands, Pacific Remote Islands Marine National Monument.

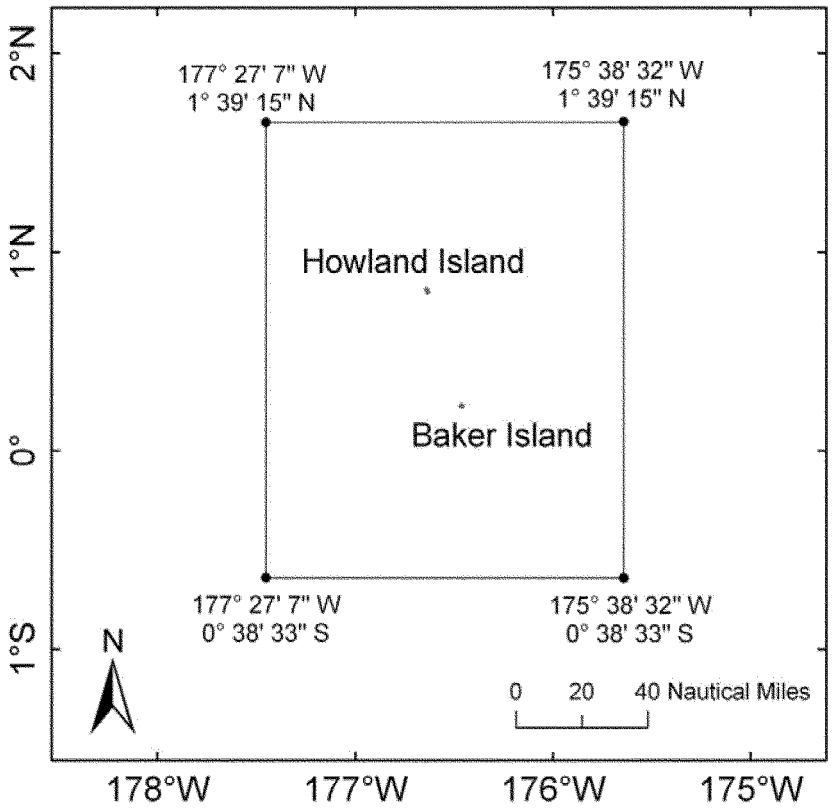


Figure 4. Jarvis Island, Pacific Remote Islands Marine National Monument.

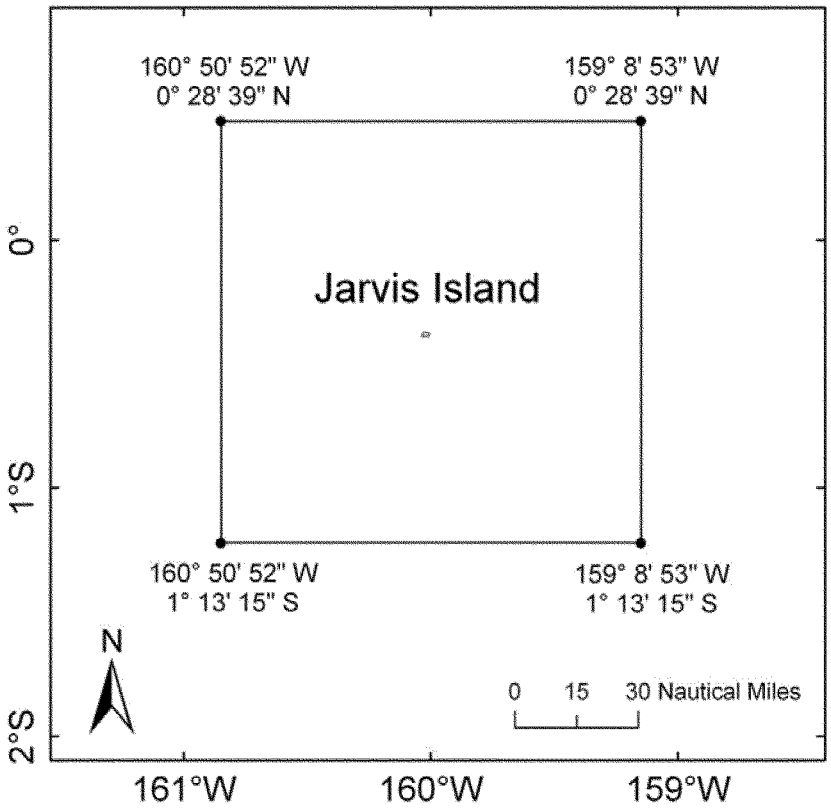


Figure 5. Johnston Atoll, Pacific Remote Islands Marine National Monument.

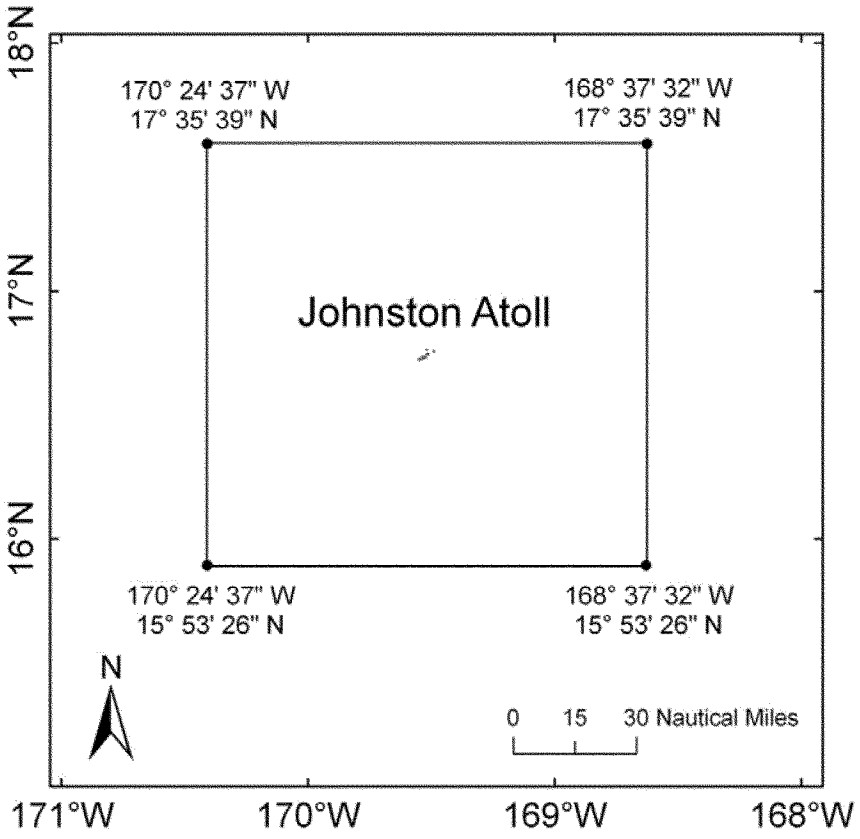


Figure 6. Kingman Reef and Palmyra Atoll, Pacific Remote Islands Marine National Monument.

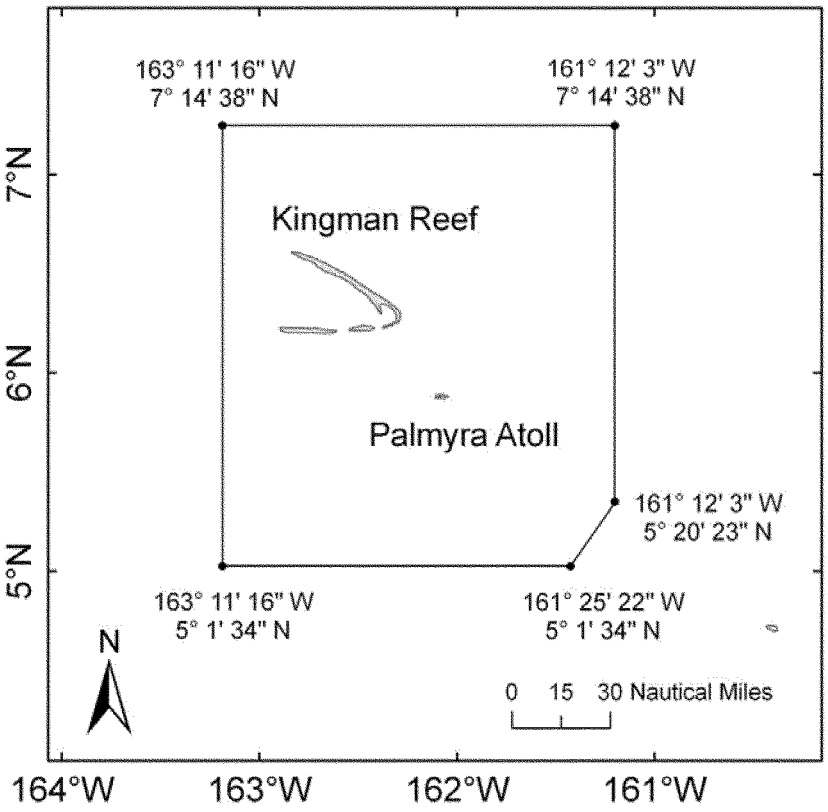
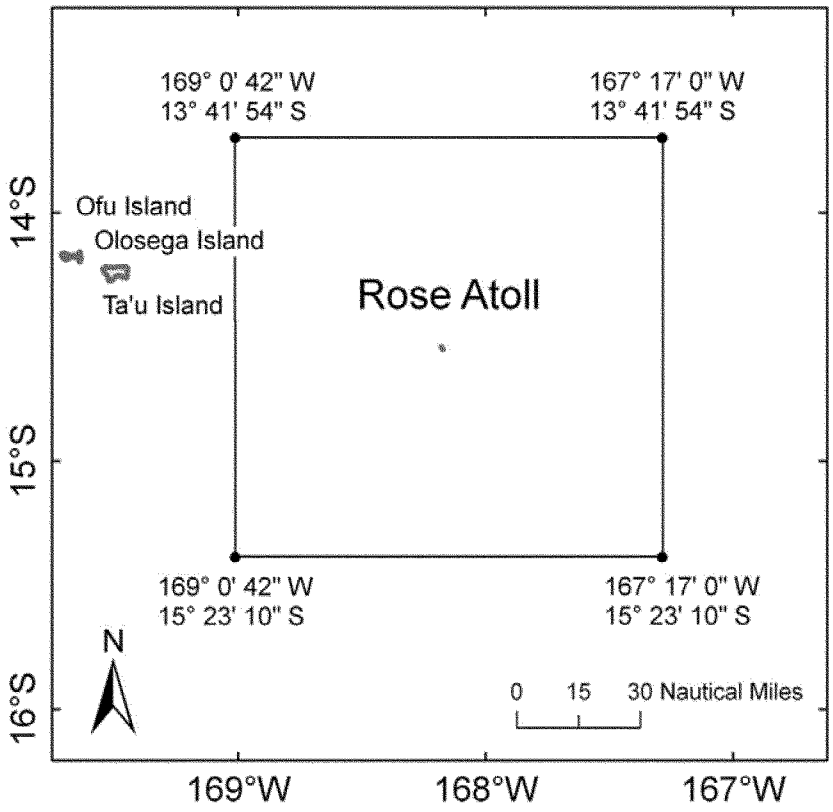


Figure 7. Rose Atoll Marine National Monument.



[FR Doc. 2013–03873 Filed 2–20–13; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 78, No. 35
Thursday, February 21, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 15, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: 7 CFR Part 225, Summer Food Service Program.

OMB Control Number: 0584–0280.

Summary of Collection: Section 13 of the National School Lunch Act, as amended, 42 U.S.C. 1761, authorizes the Summer Food Service Program (SFSP). The SFSP provides assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. Under the program, a sponsor receives reimbursement for serving nutritious, well-balanced meals to eligible children at the food service sites. Information is gathered from State agencies and other organizations wishing to participate in the program to determine eligibility. FNS will use FNS–418 form to collect information.

Need and Use of the Information: FNS uses the information collected to determine an organization's eligibility and to monitor program performance for compliance and reimbursement purposes.

Description of Respondents: Individuals or household; Farms; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 106,187.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 175,391.

Food and Nutrition Service

Title: Federal Collection Methods for Supplemental Nutrition Assistance Program Recipient.

OMB Control Number: 0584–0446.

Summary of Collection: Section 13(b) of the Food and Nutrition Act of 2008 (The Act) and Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.18 require State agencies to refer delinquent debtors for SNAP benefit over-issuance to the U.S. Department of Treasury for collection. The Debt Collection Improvement Act of 1996, 31 U.S.C. 3701, *et seq.,* requires these debts to be referred to Treasury for collection when they are 180 days or more delinquent. Through the Treasury Offset Program (TOP), 31 CFR Part 285, payments such as Federal income tax refunds, Federal salaries and other Federal payments payable to these delinquent debtors will be offset and the amount applied to the delinquent debt.

Need and Use of the Information: The information collected is used by individuals or households to obtain due process before debts are referred to TOP for offset. State agencies will use the collected information to provide due process to individuals/households; to add and maintain debts in TOP; to request addresses; and to certify to Treasury the accuracy and legality of debts that are submitted to TOP. Without the information, compliance with the DCIA would not be possible and departmental participation in TOP would be jeopardized.

Description of Respondents: State, Local, or Tribal Government; Individual or households.

Number of Respondents: 240,954.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 47,601.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–03975 Filed 2–20–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 3575–A.

DATES: Comments on this notice must be received by April 22, 2013 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Susan Woolard, Senior Loan Specialist, Rural Housing Service, STOP 0787, 1400 Independence Avenue SW., Washington, DC 20250–0788 (202) 720–1506, or by email: *susan.woolard@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 3575, subpart A, Community Programs Guaranteed Loans.

OMB Number: 0575–0137.

Expiration Date of Approval: July 13, 2013.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract

Private lenders make the loans to public bodies and nonprofit corporations for the purposes of improving rural living standards and for other purposes that create employment opportunities in rural areas. Eligibility for this program includes community facilities located in cities, towns, or unincorporated areas with a population of up to 20,000 inhabitants.

The information collected is used by the agency to manage, plan, evaluate, an account for government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Nonprofit corporations and public bodies.

Estimated Number of Respondents: 147,760.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 148,976.

Estimated Total Annual Burden on Respondents: 159,873 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 8, 2013.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2013–03946 Filed 2–20–13; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

U.S. Department of Agriculture Multi-Family Housing Program 2013 Industry Forums—Open Teleconference and/or Web Conference Meetings

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces a series of Teleconferences and/or Web Conference Meetings regarding the USDA Multi-Family Housing Program. The Teleconference and/or Web Conference Meetings will be scheduled on a quarterly basis, but may be held more often at the Agency's discretion. This Notice also outlines suggested discussion topics for the meetings and is intended to notify the general public of their opportunity to participate in the Teleconference and/or Web Conference Meetings.

DATES: Teleconference and/or Web Conference Meetings are scheduled to occur during the months of January, April, July, and October of 2013. The dates and times for the Teleconference and/or Web Conference Meetings will be announced via email to parties registered as described below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to register for the meetings and obtain the call-in number, access code, web link and other information for any of the public Teleconference and/or Web Conference Meetings may contact Timothy James, Loan and Finance Analyst, Multi-Family Housing, (202) 720–1094, fax at (202) 720–0302, or email *timothy.james@wdc.usda.gov* and provide their name, title, agency/company name, address, telephone numbers and email address. Persons who are already registered do not need to register again.

Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, complete, sign and mail a program discrimination complaint form, (available at any USDA office location or online at *www.ascr.usda.gov,* or write to: U.S Department of Agriculture, Office of the Assistance Secretary for Civil Rights, 1400 Independence Avenue SW., STOP 9410, Washington, DC 20250–9410.

Or call toll-free (866) 632–9992 (voice) to obtain additional information, the appropriate office or to request documents. Individuals who are deaf, hearing or have speech disability may contact USDA through the Federal Relay service at (800) 877–8339 or (877) 845–6136 (in Spanish). ''USDA is an equal opportunity provider, employer and lender.''

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The objectives of this series of teleconferences are as follows:

- Enhance the effectiveness of the Multi-Family Housing Program
- Establish a forum to update industry participants and Rural Housing Service (RHS) staff
- Enhance RHS' awareness of issues that impact the Multi-Family Housing Program
- Increase transparency and accountability in the Multi-Family Housing Program

Topics to be discussed could include, but will not be limited to, the following:

- Updates on USDA Multi-Family Housing Program activities
- Perspectives on the Multi-Family Housing Notice of Funds Availability processes
- Comments on Section 514/516 and Section 515 transaction processes
- Comments on particular servicing-related activities of interest at that time

Dated: February 11, 2013.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2013–03929 Filed 2–20–13; 8:45 am]

BILLING CODE 3410–XV–P

ARCTIC RESEARCH COMMISSION

Programs and Research Projects Affecting the Arctic

Notice is hereby given that the U.S. Arctic Research Commission will hold its 100th meeting in Anchorage and Bethel, Alaska, on March 21–22, 2013. The business sessions, open to the public, will convene at 8:30 a.m. in Anchorage and reconvene in the afternoon in Bethel on March 21. The commission will meet again at 8:30 a.m. on March 22 in Bethel.

The Agenda items include:

(1) Call to order and approval of the agenda
(2) Approval of the minutes from the 99th meeting
(3) Commissioners and staff reports
(4) Discussion and presentations concerning Arctic research activities

The focus of the meeting will be Arctic research activities in Bethel, as well as reports and updates on other programs and research projects affecting the Arctic.

If you plan to attend this meeting, please notify us via the contact information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. 2013–03849 Filed 2–20–13; 8:45 am]

BILLING CODE 7555–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the National Advisory Committee on Racial, Ethnic and Other Populations (NAC). The Committee will address census policies, research and methodology, tests, operations, communications/messaging and other activities to ascertain needs and best practices to improve censuses, surveys, operations, and programs. The NAC will meet in a plenary session on March 14–15, 2013. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: March 14–15, 2013. On March 14, the meeting will begin at approximately 9:00 a.m. and end at approximately 5:00 p.m. On March 15, the meeting will begin at approximately 9:00 a.m. and end at approximately 1:00 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, *Jeri.Green@census.gov*, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The NAC comprises up to thirty-two members. The Committee provides an organized and continuing channel of communication between race, ethnic, and other populations and the Census Bureau. The committee will advise the Director of the Census Bureau on the full range of economic, housing, demographic, socioeconomic, linguistic, technological, methodological, geographic, behavioral, and operational variables affecting the cost, accuracy, and implementation of Census Bureau programs and surveys, including the decennial census.

The Committee also assists the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committee is established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on March 15. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. If you plan to attend the meeting, please register by Monday, March 11, 2013. You may access the online registration form with the following link: *http://www.regonline.com/nac_mar2013_meeting*. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: February 12, 2013.

Thomas L. Mesenbourg, Jr.,

Acting Director, Bureau of the Census.

[FR Doc. 2013–03877 Filed 2–20–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–14–2013]

Foreign-Trade Zone 37—Orange County, NY, Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Orange, grantee of Foreign-Trade Zone 37, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u) and the regulations of the Board (15 CFR part 400). It was formally docketed on February 11, 2013.

FTZ 37 was approved by the Board on May 4, 1978 (Board Order 130, 43 FR 20526, 05/12/1978) and expanded on July 9, 1999 (Board Order 1044, 64 FR 38887, 07/20/1999). FTZ 37 was reorganized under the ASF on May 13, 2010 (Board Order 1680, 75 FR 29727, 5/27/2010) and its ASF service area was expanded on October 24, 2011 (Board Order 1796, 76 FR 67407, 11/1/2011). The zone project currently has a service area that includes Orange and Duchess Counties, New York.

The applicant is now requesting authority to expand the service area of the zone to include Rockland County, as described in the application. If

approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is adjacent to the Newark/New York Customs and Border Protection Ports of Entry.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 22, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 7, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth Whiteman@trade.gov* or (202) 482–0473.

Dated: February 11, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–04038 Filed 2–20–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 6, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from India. The period of review is February 1, 2011, through January 31, 2012. We invited interested parties to comment on the preliminary results, but we received no comments. We made no changes for the final results of review, and assigned to Agro Dutch Industries Limited an antidumping duty margin based upon the application of adverse facts available.

DATES: *Effective Date:* February 21, 2013.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Terre Keaton Stefanova, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–4929 or (202) 482–1280, respectively.

Background

On November 6, 2012, the Department published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms (mushrooms) from India.[1] We invited interested parties to comment on the *Preliminary Results,* but we received no comments.

The Department has conducted this administrative review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

Period of Review

The period of review is February 1, 2011, through January 31, 2012.

Scope of the Order

The merchandise subject to the order is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Application of Adverse Facts Available

In the *Preliminary Results,* we found that Agro Dutch Industries Limited (Agro Dutch) did not act to the best of its ability in this administrative review because it failed to respond to all of the requisite sections of the Department's questionnaire. Therefore, pursuant to sections 776(a)(2) and (b) of the Tariff Act of 1930, as amended (the Act), we assigned it a rate of 114.76 percent as adverse facts available (AFA). No interested party submitted comments on the *Preliminary Results,* and there is no additional information on the record of this review that would cause us to reconsider our preliminary decision. Thus, for the final results, we continue to find that, by failing to provide information we requested, necessary information is missing from the record and Agro Dutch did not act to the best of its ability. Accordingly, we continue to find that the use of AFA is warranted for this company under sections 776(a)(2) and (b) of the Act.[3]

As we explained in the *Preliminary Results,* the rate of 114.76 percent selected as the AFA rate for Agro Dutch is the highest calculated margin on the record of this proceeding. Further, as discussed in the *Preliminary Results,* we continue to find that the use of the rate of 114.76 percent is sufficiently high to ensure that Agro Dutch does not benefit from failing to cooperate to the best of its ability in our review by refusing to respond to all of the requisite sections of our questionnaire. In addition, we consider the 114.76 percent rate

[1] *See Certain Preserved Mushrooms: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 77 FR 66580 (November 6, 2012) (*Preliminary Results*).

[2] We have revised the HTSUS item numbers for the merchandise subject to this order to reflect the current HTSUS schedule available on the International Trade Commission's Web site at *http://www.usitc.gov/tata/hts/bychapter/index.htm.*

[3] *See Preliminary Results,* and accompanying Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India.

corroborated ''to the extent practicable'' in accordance with section 776(c) of the Act.[4]

Final Results of the Review

We made no changes to our preliminary results. Therefore, we are assigning the following dumping margin to Agro Dutch for the period February 1, 2011, through January 31, 2012.

Manufacturer/Exporter	Percent margin
Agro Dutch Industries Limited	114.76

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review. For Agro Dutch's U.S. sales, we will base the assessment rate assigned to the corresponding entries on AFA, as noted above.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of certain preserved mushrooms from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Agro Dutch will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the all-others rate established in the *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India,* 64 FR 8311 (February 19, 1999). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 13, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–04041 Filed 2–20–13; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Preliminary Results* and accompanying Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India for a full discussion of our corroboration analysis.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is amending the final results of the 2010–2011 antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs'') from the People's Republic of China (''PRC''), to correct certain ministerial errors.

DATES: *Effective Date:* February 21, 2013.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Erin Kearney, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–0167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 2013, the Department disclosed to interested parties its calculations for the final results of the 2010–2011 administrative review of the antidumping duty order on TRBs from the PRC. On January 15, 2013, Changshan Peer Bearing Co., Ltd. (''CPZ/SKF'') timely filed ministerial error allegations and requested that, pursuant to section 751(h) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.224, the Department correct the alleged ministerial errors in the calculations. The Department published the final results of this proceeding on January 16, 2013.[1] On January 22, 2013, the Timken Company (''Timken'') filed rebuttal comments to CPZ/SKF's ministerial error allegations. No other interested party submitted ministerial error allegations or rebuttal comments.

Scope of the Order

For a full description of the products covered by the antidumping duty order on tapered roller bearings from the PRC, *see* Memorandum to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, from Brandon Farlander and Erin Kearney, International Trade Compliance Analysts, AD/CVD Operations, Office 4, concerning, ''Final Results of the 2010–2011 Antidumping Duty Administrative Review of Tapered Roller Bearings from the People's Republic of China: Allegation of Ministerial Errors and Amended Final,'' dated concurrently with this notice (''Ministerial Error Memorandum''), which is incorporated by reference.

Ministerial Errors

A ministerial error is defined in section 751(h) of the Act as including ''errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other

[1] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 3396 (January 16, 2013) (''*Final Results*'').

type of unintentional error which the administering authority considers ministerial.'' [2]

After analyzing CPZ/SKF's comments and Timken's rebuttal comments, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made the following ministerial errors in our calculations for the *Final Results:*

- We unintentionally deducted amounts for domestic brokerage and handling expenses twice for certain sales.
- We unintentionally failed to offset CPZ/SKF's freight expenses with its freight revenue for sales in which it reported both freight expenses from the warehouse to the U.S. customer and corresponding freight revenue.

For a detailed discussion of all alleged ministerial errors, as well as the Department's analysis, *see* Ministerial Error Memorandum.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of TRBs from the PRC. The revised weighted-average dumping margins are detailed below. For CPZ/SKF-specific calculations, *see* Memorandum to the File from Brandon Farlander and Erin Kearney, International Trade Analysts, AD/CVD Operations, Office 4, Import Administration, ''Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Amended Final Results Analysis Memorandum of Changshan Peer Bearing Co., Ltd. and Peer Bearing Company,'' dated concurrently with this notice and incorporated by reference.

In the *Final Results,* we determined that one company, in addition to the mandatory respondent, qualified for a separate rate.[3] Because we have revised the weighted-average dumping margin for CPZ/SKF, we are also revising the weighted-average dumping margin for Xiang Yang Automobile Bearing Co., Ltd., a separate rate respondent, because the rate for Xiang Yang Automobile Bearing Co., Ltd. is based on the weighted-average dumping margin calculated for CPZ/SKF.

The amended, weighted-average dumping margins are as follows:

Exporter	Weighted-average dumping margin (percent)
Changshan Peer Bearing Co., Ltd	14.91
Xiang Yang Automobile Bearing Co., Ltd	14.91
PRC-wide entity *	92.84

* The PRC-wide entity includes Haining Automann Parts Co., Ltd., Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd., and Tianshui Hailin Import and Export Corporation, where the exporter is Tianshui Hailin Import and Export Corporation and the producer is any company other than Hailin Bearing Factory (the successor-in-interest is Gansu Hailin Zhongke Science & Technology Co., Ltd.). The Department has previously found that merchandise produced by Hailin Bearing Factory and exported by Tianshui Hailin Import and Export Corporation is not subject to the order.[4]

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), we calculated importer-specific assessment rates for merchandise subject to this review.[5]

For CPZ/SKF, we calculated an *ad valorem* rate for each importer by dividing the total amount of dumping calculated for the importer's examined sales by the total entered values associated with those sales. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,*[6] or an importer-specific assessment rate is zero or *de minimis,*[7] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

We will instruct CBP to liquidate entries of subject merchandise exported by the PRC-wide entity at the *ad valorem* rate of 92.84 percent of entered value.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made on or after January 16, 2013, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate shown for this company (except if the rate is *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 92.84 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

[2] *See also* 19 CFR 351.224(e).

[3] *See Final Results,* 78 FR at 3397.

[4] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part,* 67 FR 68990, 68991 (November 14, 2002); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2009–2010 Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part,* 77 FR 2271, 2273 (January 17, 2012).

[5] As in the *Final Results,* the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews*'').

[6] *See Final Modification for Reviews.*

[7] *See* 19 CFR 351.106(c)(2).

Dated: February 13, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–04043 Filed 2–20–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of the American Petroleum Institute's Standards Activities

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The American Petroleum Institute (API), with the assistance of other interested parties, continues to develop standards, both national and international, in several areas. This notice lists the standardization efforts currently being conducted by API committees. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of API is being undertaken as a public service. NIST does not necessarily endorse, approve, or recommend the standards referenced.

ADDRESSES: American Petroleum Institute, 1220 L Street NW., Washington, DC 20005; telephone (202) 682–8000, *http://www.api.org.*

FOR FURTHER INFORMATION CONTACT: Individuals listed in the **SUPPLEMENTARY INFORMATION** section of this notice may be reached at the American Petroleum Institute. David F. Alderman, NIST, 100 Bureau Drive, MS 2100, Gaithersburg, MD 20899, email: *david.alderman@nist.gov* or by phone at 301–975–4019.

SUPPLEMENTARY INFORMATION:

Background

The American Petroleum Institute develops and publishes voluntary standards for equipment, materials, operations, and processes for the petroleum and natural gas industry. These standards are used by both private industry and by governmental agencies. All interested persons should contact the appropriate source as listed for further information.

Exploration & Production

Recommended Practice 1FSC, *Facilities Systems Completion, Planning, and Execution,* 1st Edition

Standard 2CCU, *Offshore Cargo Container Design, Manufacturing and Inspection,* 1st Edition

Recommended Practice 2D, *Operation and Maintenance of Offshore Cranes,* 7th Edition

Recommended Practice 2EQ, *Seismic Design Procedures and Criteria for Offshore Structures,* 1st Edition

Recommended Practice 2MET, *Metocean Design and Operating Considerations,* 1st Edition

Recommended Practice 2N, *Planning, Designing, and Constructing Structures and Pipelines for Arctic Conditions,* 3rd Edition

Recommended Practice 2RD, *Dynamic Risers for Floating Installations,* 2nd Edition

Recommended Practice 2SIM, *Structural Integrity Management of Fixed Offshore Structures,* 1st Edition

Recommended Practice 2SM, *Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring,* 2nd Edition

Specification 4F, *Drilling and Well Servicing Structures,* 4th Edition

Specification 6A, *Specification for Wellhead and Christmas Tree Equipment*—Addendum 3, 20th Edition

Specification 6AV1, *Specification for Validation of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service,* 2nd Edition

Recommended Practice 6HT, *Heat Treatment and Testing of Large Cross Section and Critical Section Components,* 2nd Edition

Recommended Practice 7G–1, *Recommended Practice for Drill Stem Design and Operating Limits,* 1st Edition

Specification 7HU2, *Hammer Unions,* 1st Edition

Recommended Practice 10B–2, *Recommended Practice for Testing Well Cements,* 2nd Edition

Recommended Practice 10B–4, *Recommended Practice on Preparation and Testing of Foamed Cement Slurries at Atmospheric Pressure,* 2nd Edition

Specification 11AX, *Specification for Subsurface Sucker Rod Pumps and Fittings,* 13th Edition

Specification 11E, *Specification for Pumping Units,* 19th Edition

Recommended Practice 11BR, *Recommended Practice for the Care and Handling of Sucker Rods,* 10th Edition

Recommended Practice 11G, *Recommended Practice for Installation and Lubrication of Pumping Units,* 5th Edition

Recommended Practice 13B–2, *Recommended Practice for Field Testing Oil-based Drilling Fluids,* 5th Edition

Recommended Practice 13C, *Recommended Practice on Drilling Fluid Processing Systems Evaluation,* 5th Edition

Specification 14A, *Subsurface Safety Valve Equipment,* 12th Edition

Recommended Practice 14C, *Analysis, Design, Installation and Testing of Basic Surface Safety Systems on Offshore Production Platforms,* 8th Edition

Specification 14F, *Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1, and Division 2 Locations,* 5th Edition

Standard 14H, *Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore,* 6th Edition

Specification 16A, *Specification for Drill-through Equipment,* 4th Edition

Standard 16AR, *Repair and Remanufacture of Blowout Prevention Equipment,* 1st Edition

Specification 16C, *Choke and Kill Systems,* 2nd Edition

Specification 16D, *Control Systems for Drilling Well Control Equipment and Control Systems for Diverter Equipment,* 2nd Edition

Specification 16F, *Specification for Marine Drilling Riser Equipment,* 2nd Edition

Specification 16Q, *Design, Selection, Operation and Maintenance of Marine Drilling Riser Systems,* 2nd Edition

Specification 16R, *Marine Drilling Riser Couplings,* 2nd Edition

Specification 17F, *Specification for Subsea Production Control Systems,* 3rd Edition

Recommended Practice 17G, *Recommended Practice for Completion/Workover Riser Systems,* 3rd Edition

Recommended Practice 17H, *Recommended Practice for Remotely Operated Tools (ROT) and Interfaces on Subsea Production Systems,* 2nd Edition

Specification 17L1, *Specification for Flexible Pipe Ancillary Equipment,* 1st Edition

Recommended Practice 17L2, *Recommended Practice for Flexible Pipe Ancillary Equipment,* 1st Edition

Recommended Practice 17O–A1, Addendum 1 to *Recommended Practice for High Integrity Pressure Protection Systems (HIPPS),* 1st Edition

Recommended Practice 17P, *Recommended Practice for Structures and Manifolds of Subsea Production Systems,* 1st Edition

Recommended Practice 17U, *Recommended Practice for Wet and Dry Thermal Insulation of Subsea Flowlines and Equipment,* 1st Edition
Recommended Practice 17W, *Recommended Practice for Subsea Capping Stacks,* 1st Edition
Recommended Practice 19B, *Evaluation of Well Perforators*—Addendum 1, 2nd Edition
Specification 19G2, *Flow-control Devices for Side-pocket Mandrels,* 2nd Edition
Recommended Practice 19G11, *Dynamic Simulation of Gas-Lift Wells and Systems,* 1st Edition
Recommended Practice 19G9, *Design, Operation, and Troubleshooting of Dual Gas-lift Wells,* 2nd Edition
Specification 19S, *Sand Screens,* 1st Edition
Specification 19V, *Subsurface Barrier Valves and Related Equipment,* 1st Edition
Specification 20B, *Open-die-shaped Forgings for use in the Petroleum and Natural Gas Industry,* 1st Edition
Specification 20D, *Nondestructive Examination (NDE) Services for Equipment used in the Petroleum and Natural Gas Industry,* 1st Edition
Recommended Practice/Standard 64, *Diverter Systems Equipment and Operations,* 3rd Edition
Recommended Practice 65–1, *Cementing Shallow Water Flow Zones in Deep Water Wells,* 2nd Edition
Recommended Practice 67, *Oilfield Explosives Safety,* 3rd Edition
Recommended Practice 75, *Development of a Safety and Environmental Management Program for Offshore Operations and Facilities,* 4th Edition
Recommended Practice 90–1, *Annular Casing Pressure Management for Offshore Wells,* 2nd Edition
Recommended Practice 90–2, *Annular Casing Pressure Management for Onshore Wells,* 1st Edition
Recommended Practice 92U, *Underbalanced Drilling Operations,* 2nd Edition
Recommended Practice 96, *Deepwater Well Design and Construction,* 1st Edition
Bulletin 97, *Well Construction Interface Document Guidelines,* 1st Edition
Recommended Practice 98, *Selection of Personal Protective Equipment,* 1st Edition
Recommended Practice 99, *Flash Fire Risk Assessment Standard for the Upstream Oil and Gas Industry,* 1st Edition
Recommended Practice 100–1, *Hydraulic Fracturing Operations—Well Construction and Integrity Guidelines,* 2nd Edition
Recommended Practice 100–2, *Water Management Associated with Hydraulic Fracturing,* 2nd Edition
Document HF4, *Community Engagement Considerations in Hydraulic Fracturing,* 1st Edition
Technical Report PER15K–1, *Protocol for Verification and Validation of HPHT Equipment,* 1st Edition
Specification Q1, *Specification for Quality Programs for the Petroleum and Natural Gas Industry,* 9th Edition
Document XX, *Life Cycle Management for Exploration and Production Oilfield Equipment*

FOR FURTHER INFORMATION CONTACT: Roland Goodman, Standards Department, email: (*goodmanr@api.org*).

Meetings/Conferences: The Exploration & Production Standards Conference will be held in Washington, DC, June 24–28, 2013. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Marketing

Recommended Practice 1640, *Light Product Quality Terminal Operations,* 1st Edition

FOR FURTHER INFORMATION CONTACT: Steve Crimaudo, Standards Department, email: (*crimaudos@api.org*).

Petroleum Measurement

MPMS Chapter 2.2D, *Calibration of Upright Cylindrical Tanks Using the Internal Electro-optical Distance Ranging (EODR) Method* (ANSI/API MPMS 2.2D), 2nd Edition
MPMS Chapter 2.2G, *Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method Using Electro-optical Distance Ranging Equipment,* 1st Edition
MPMS Chapter 3.1A, *Standard Practice for the Manual Gauging of Petroleum and Petroleum Products,* 3rd Edition
MPMS Chapter 3.5.1, *Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Carriers and Floating Storage by Automatic Tank Gauging,* Part 1—*Liquefied Natural Gas,* 1st Edition
MPMS Chapter 3.5.2, *Standard Practice for Level Measurement of Light Hydrocarbon Liquids Onboard Marine Carriers and Floating Storage by Automatic Tank Gauging,* Part 2—*Liquefied Petroleum and Chemical Gases,* 1st Edition
MPMS Chapter 4.2, *Displacement Provers,* 4th Edition
MPMS Chapter 4.8, *Operation of Proving Systems,* 2nd Edition
MPMS Chapter 5.9, *Measurement of Liquid Hydrocarbons by Vortex Meters,* 1st Edition
MPMS Chapter 6.1A, *Liquid Flow Measurement Systems for Single Phase Liquids—General Considerations,* 1st Edition
MPMS Chapter 6.2A, *Truck and Rail Loading/Unloading Measurement Systems,* 1st Edition
MPMS Chapter 6.3A, *Pipeline and Marine Loading and Unloading Measurement Systems,* 1st Edition
MPMS Chapter 6.4A, *Aviation Refueling Measurement Systems,* 1st Edition
MPMS Chapter 7.1, *Temperature Determination,* Part 1—*Liquid in Glass Thermometers,* 2nd Edition
MPMS Chapter 7.2, *Temperature Determination,* Part 2—*Portable Electronic Thermometers,* 3rd Edition
MPMS Chapter 7.4, *Temperature Determination,* Part 4—*Dynamic Temperature Measurement,* 2nd Edition
MPMS Chapter 7.5, *Refrigerated Hydrocarbon and Non-petroleum based Liquefied Gaseous Fuels—General Requirements for Automatic Tank Thermometers Onboard Marine Carriers and Floating Storage,* 1st Edition
MPMS Chapter 8.1/ASTM D 4057, *Manual Sampling of Petroleum and Petroleum Products,* 4th Edition
MPMS Chapter 8.2/ASTM D 4177, *Automatic Sampling of Petroleum and Petroleum Products,* 3rd Edition
MPMS Chapter 8.4, *Standard Practice for Sampling and Handling of Fuels for Volatility Measurement,* 3rd Edition
MPMS Chapter 9.1, *Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method* (ASTM D1298), 3rd Edition
MPMS Chapter 9.2, *Standard Test Method for Density or Relative Density of Light Hydrocarbons by Pressure Hydrometer* (ASTM D1657), 3rd Edition
MPMS Chapter 9.3, *Standard Test Method for Density, Relative Density, and API Gravity of Crude Petroleum and Liquid Petroleum Products by Thermohydrometer Method* (ASTM D6822), 3rd Edition
MPMS Chapter 9.4, *Continuous/On-line Density Measurement and Applications,* 1st Edition
MPMS Chapter 10.4, *Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure),* 4th Edition
MPMS Chapter 10.9, *Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration* (ANSI/ASTM D4928), 3rd Edition
MPMS Chapter 11.1–A2, Addendum 2 to *Volume Correction Factors*

MPMS Chapter 11.3.2.1, *Ethylene Density,* 2nd Edition
MPMS Chapter 11.3.4, *Gasoline/Ethanol Volume Correction Factors,* 1st Edition
MPMS Chapter 12.1.2, *Calculation of Static Petroleum Quantities, Part 2—Calculation Procedures for Tank Cars,* 2nd Edition
MPMS Chapter 12.2, *Calculation of Petroleum Quantities Using Dynamic Measurement Methods,* 2nd Edition
MPMS Chapter 13.3, *Measurement Uncertainty,* 1st Edition
MPMS Chapter 14.1, *Collecting and Handling of Natural Gas Samples for Custody Transfer,* 7th Edition
MPMS Chapter 14.3.2, *Concentric, Square-Edged Orifice Meters,* Part 2—*Specification and Installation Requirements* (ANSI/API MPMS 14.3.2–20XX) (AGA Report No. 3, Part 2), 5th Edition
MPMS Chapter 14.3.3, *Concentric, Square-Edged Orifice Meters,* Part 3—*Natural Gas Applications* (ANSI/API MPMS 14.3.3) (AGA Report No. 3, Part 3), 4th Edition
MPMS Chapter 14.3.4, *Concentric, Square-Edged Orifice Meters,* Part 4—*Background, Development, Implementation Procedures and Subroutine Documentation* (AGA Report No. 3, Part 4), 4th Edition
MPMS Chapter 14.4, *Converting Mass of Natural Gas Liquids and Vapors to Equivalent Liquid Volumes* (GPA 8173–XX), 2nd Edition
MPMS Chapter 14.9, *Measurement of Natural Gas by Coriolis Meter* (AGA Report No. 11), 2nd Edition
MPMS Chapter 14.10, *Measurement of Flow to Flares,* 2nd Edition
MPMS Chapter 14.12, *Vortex Meters For Gas Flow Measurement,* 1st Edition
MPMS Chapter 17.1, *Guidelines for Marine Cargo Inspection,* 6th Edition
MPMS Chapter 17.6, *Guidelines for Determining Fullness of Pipelines Between Vessels and Shore Tanks,* 2nd Edition
MPMS Chapter 17.10.1, *Refrigerated Light Hydrocarbon Fluids—Measurement of Cargoes on Board LNG Carriers,* 1st Edition
MPMS Chapter 17.10.2, *Measurement of Refrigerated and/or Pressurized Cargoes on Board Marine Gas Carriers,* Part 2—*Liquefied Petroleum and Chemical Gases,* 2nd Edition
MPMS Chapter 17.12, *Procedure for Bulk Liquid Chemical Cargo Inspection by Cargo Inspectors,* 2nd Edition
MPMS Chapter 18.1, *Measurement Procedures for Crude Oil Gathered from Small Tanks by Truck,* 3rd Edition
MPMS Chapter 19.3, Part H, *Tank Seals and Fittings Certification—Administration* (also supersedes and incorporates the relevant sections of API MPMS Chapter 19.3 Parts F and G), 2nd Edition
MPMS Chapter 20.1, *Production Allocation Measurement,* 2nd Edition
MPMS Chapter 20.2, *Production Allocation Measurement Using Single Phase Devices,* 1st Edition
MPMS Chapter 20.3, *Multiphase Flow Measurement,* 1st Edition
MPMS Chapter 20.4, *Draft Standard for Phase Behavior Application in Upstream Measurement and Allocation,* 1st Edition
MPMS Chapter 20.5, *Recommended Practice for Well Rate Determination,* 1st Edition
MPMS Chapter 21.1, *Electronic Gas Measurement,* 2nd Edition
MPMS Chapter 22.1, *Testing Protocols—General Guidelines for Developing Testing Protocols for Devices Used in the Measurement of Hydrocarbon Fluids,* 2nd Edition
MPMS Chapter 22.2, *Testing Protocols—Differential Pressure Flow Measurement Devices,* 2nd Edition
MPMS Chapter 22.3, *Testing Protocols—Flare Gas Meters,* 1st Edition
MPMS Chapter 22.4, *Testing Protocols—Pressure, Differential Pressure, and Temperature Measuring Devices,* 1st Edition
MPMS Chapter 22.5, *Testing Protocols—Electronic Flow Computer Calculations,* 1st Edition
MPMS Chapter 22.6, *Testing Protocols—Gas Chromatographs,* 1st Edition
Technical Report 2568, *Evaporative Loss from the Cleaning of Storage Tanks,* 2nd Edition
Technical Report 2572, *Carbon Content, Sampling and Calculation,* 1st Edition
Technical Report 2573, API *MPMS* Chapter 10, *Sediment and Water Methodology Information Guide,* 1st Edition
Technical Report 257X, *Short Term Evaporative Loss Estimation from Atmospheric Storage Tanks,* 1st Edition
Technical Report 25XX, *Thermal Cracked Gas,* 1st Edition

FOR FURTHER INFORMATION CONTACT: Paula Watkins, Standards Department, email: (*watkinsp@api.org*)

Meetings/Conferences: The Spring Committee on Petroleum Measurement Meeting will be held in Dallas, Texas, March 11–15, 2013. The Fall Committee on Petroleum Measurement Meeting will be held in San Francisco, California, October 14–18, 2013. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Pipeline

Standard 1104, *Welding of Pipelines and Related Facilities,* 21st Edition
Recommended Practice 1110, *Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquids or Carbon Dioxide,* 6th Edition
Recommended Practice 1114, *Recommended Practice for the Design of Solution-Mined Underground Storage Facilities,* 2nd Edition
Recommended Practice 1160, *Managing System Integrity for Hazardous Liquid Pipelines,* 2nd Edition
Recommended Practice 1161–A1, Addendum 1 to *Recommended Practice for Pipeline Operator Qualification,* 2nd Edition
Recommended Practice 1161–A2, Addendum 2 to *Recommended Practice for Pipeline Operator Qualification,* 2nd Edition
Standard 1163, *In-line Inspection Systems Qualification,* 2nd Edition
Recommended Practice 1169, *Recommended Practice for Basic Inspection Requirements—New Pipeline Construction,* 1st Edition
Recommended Practice 1170, *Recommended Practice on the Design and Operation of Solution-Mined Salt Caverns Used for Natural Gas Storage,* 1st Edition
Recommended Practice 1171, *Recommended Practice on Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Salt Water Aquifers,* 1st Edition
Recommended Practice 1173, *Recommended Practice for Pipeline Safety Management Systems (SMS),* 1st Edition

FOR FURTHER INFORMATION CONTACT: Ed Baniak, Standards Department, email: (*baniake@api.org*).

Refining

Recommended Practice 505, *Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1 and Zone 2,* 2nd Edition
API 510, *Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration,* 10th Edition
Standard, 520-Part 1, *Sizing, Selection, and Installation of Pressure-Relieving Devices in Refineries*—Part 1, *Sizing and Selection,* 9th Edition
Standard 521, *Guide for Pressure-relieving and Depressuring Systems,* 6th Edition
Standard 527, *Seat Tightness of Pressure Relief Valves,* 4th Edition

Recommended Practice 535, *Burners for Fired Heaters in General Refinery Services,* 3rd Edition
Standard 537, *Flare Details for General Refinery and Petrochemical Service,* 3rd Edition
Recommended Practice 538, *Industrial Fired Boilers,* 1st Edition
Standard 541, *Form-Wound Squirrel-Cage Induction Motors 500 Horsepower and Larger,* 5th Edition
Recommended Practice 551, *Process Measurement Instrumentation,* 2nd Edition
Recommended Practice 552, *Transmission Systems,* 2nd Edition
API 555, *Process Analyzers,* 3rd Edition
Standard 560, *Fired Heaters for General Refinery Services,* 5th Edition
Recommended Practice 573, *Inspection of Fired Boilers and Heaters,* 3rd Edition
Recommended Practice 575, *Inspection of Atmospheric and Low Pressure Storage Tanks,* 3rd Edition
Recommended Practice 577, *Welding Processes, Inspection, and Metallurgy,* 2nd Edition
Recommended Practice 583, *Corrosion Under Insulation and Fireproofing,* 1st Edition
Recommended Practice 584, *Integrity Operating Windows,* 1st Edition
Recommended Practice 585, *Pressure Equipment Integrity Incident Investigation,* 1st Edition
Recommended Practice 591, *Process Valve Qualification Procedure,* 5th Edition
Standard 599, *Metal Plug Valves — Flanged, Threaded and Welding Ends,* 7th Edition
Standard 603, *Corrosion-Resistant, Bolted Bonnet Gate Valves—Flanged and Butt-Welding Ends,* 8th Edition
Standard 612, *Petroleum, Petrochemical and Natural Gas Industries—Steam Turbines—Special-Purpose Applications,* 7th Edition
Standard 617, *Axial and Centrifugal Compressors and Expander-compressors for Petroleum, Chemical and Gas Industry Services,* 8th Edition
Standard 618, *Reciprocating Compressors for Petroleum, Chemical and Gas Industry Services,* 6th Edition
Standard 620, *Design and Construction of Large, Welded, Low-Pressure Storage Tanks,* 12th Edition
Standard 623, *Steel Globe Valves—Flanged and Butt-welding Ends, Bolted Bonnets,* 1st Edition
Standard 624, *Type Testing of Rising Stem Valves Equipped with Flexible Graphite Packing for Fugitive Emissions,* 1st Edition
Standard 625–A1, *Tank Systems for Refrigerated Liquefied Gas Storage*—Addendum 1, 1st Edition
Standard 650, *Welded Tanks for Oil Storage,* 12th Edition
Standard 653–A1, Addendum 1 to *Tank Inspection, Repair, Alteration, and Reconstruction,* 4th Edition
Standard 661, *Air-Cooled Heat Exchangers for General Refinery Service,* 7th Edition
Standard 663, *Multiple Hairpin Heat Exchangers,* 1st Edition
Standard 664, *Spiral Plate Heat Exchangers,* 1st Edition
Standard 670, *Machinery Protection Systems,* 5th Edition
Standard 673, *Centrifugal Fans for Petroleum, Chemical and Gas Industry Services,* 3rd Edition
Standard 682, *Pumps—Shaft Sealing Systems for Centrifugal and Rotary Pumps,* 4th Edition
Recommended Practice 684, *Tutorial on the API Standard Paragraphs Covering Rotor Dynamics and Balance (An Introduction to Lateral Critical and Train Torsional Analysis and Rotor Balancing),* 3rd Edition
Recommended Practice 687, *Rotor Repair,* 2nd Edition
Recommended Practice 691, *Machinery Risk Based Inspection,* 1st Edition
Standard 692, *Compressor Dry Gas Seals,* 1st Edition
Recommended Practice 751, *Safe Operation of Hydrofluoric Acid Alkylation Units,* 4th Edition
Recommended Practice 754, *Process Safety Performance Indicators for the Refining and Petrochemical Industries,* 2nd Edition
Recommended Practice 756, *Management of Hazards Associated with Location of Process Plant Tents,* 1st Edition
Standard 780, *Security Risk Assessment Methodology for the Petroleum and Petrochemical Industries,* 1st Edition
Technical Report, 939–D—A1, Addendum 1 to *Stress Corrosion Cracking of Carbon Steel in Fuel Grade Ethanol—Review, Experience Survey, Field Monitoring, and Laboratory Testing,* 2nd Edition
Standard 2000, *Venting Atmospheric and Low-pressure Storage Tanks,* 7th Edition
Standard 2510, *Design and Construction of LPG Installations,* 9th Edition

FOR FURTHER INFORMATION CONTACT: Stephen Crimaudo, Standards Department, email: (*crimaudos@api.org*).

Meetings/Conferences: The Spring Refining and Equipment Standards Meeting will be held in Las Vegas, Nevada, April 22–26, 2013. The Fall Refining and Equipment Standards Meeting will be held in New Orleans, Louisiana, November 11–15, 2013. Interested parties may visit the API Web site at *http://www.api.org/meetings/* for more information regarding participation in these meetings.

Safety and Fire Protection

Recommended Practice 2030, *Application of Fixed Water Spray Systems for Fire Protection in the Petroleum and Petrochemical Industries,* 4th Edition
Recommended Practice 2218, *Fireproofing Practices in Petroleum and Petrochemical Processing Plants,* 3rd Edition
Recommended Practice 2219, *Safe Operation of Vacuum Trucks in Petroleum Service,* 4th Edition

FOR FURTHER INFORMATION CONTACT: Stephen Crimaudo, Standards Department, email: (*crimaudos@api.org*).

For additional information on the overall API standards program, Contact: David Miller, Standards Department, email: *miller@api.org.*

Dated: February 14, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–03988 Filed 2–20–13; 8:45 am]

BILLING CODE 3510–13–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its Process and Impact Evaluation of the Minnesota Reading Corps. This project will assess the effect of the Minnesota Reading

Corps on the literacy outcomes of students enrolled in their Pre-Kindergarten program and the personal and professional goals of AmeriCorps members serving in the program. Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 22, 2013.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Office of Research and Evaluation; Attention: Scott Richardson, Research Analyst; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3477, Attention Scott Richardson, Research Analyst.

(4) Electronically through *www.regulations.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Scott Richardson, (202) 606–6903, or by email at *srichardson@cns.gov*.

SUPPLEMENTARY INFORMATION:

CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

Emergent literacy achievement data will be collected from preschool students enrolled at select Minnesota preschools at three time points (i.e., fall, winter, and spring) during the 2013–2014 school years. The Individual Growth and Development Indicators (IGDI) assessment will be used to collect achievement data on five critical emergent literacy skills: rhyming, picture naming, alliteration, letter name fluency, and letter sound fluency. The IGDI assessment is a research-validated and reliable tool that measures growth in each of these skills over time. Data from the assessment will be used to measure the impact of preschool instruction on students in the Minnesota Reading Corps program.

Information also will be collected, via survey, from individuals who served as tutors in the Minnesota Reading Corps for the 2012–2013 school years. This survey will be a follow-up data collection effort to a baseline survey conducted September through December of 2012. The survey will assess the effects of service in Minnesota Reading Corps on members' personal and professional goals, as well as program satisfaction, education, employment, and civic engagement.

Current Action

CNCS seeks to renew the current information collection. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on September 30, 2015.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Process Assessment and Impact Evaluation of the Minnesota Reading Corps.

OMB Number: 3045–0144.

Agency Number: None.

Affected Public: Pre-Kindergarten students enrolled in select Minnesota schools and individuals who served as tutors in the Minnesota Reading Corps.

Total Respondents for student assessments: 1,440.

Frequency for students: Three.

Average Time per Response for students: Seven minutes.

Total Respondents for member survey: 1,031.

Frequency for members: Once.

Average Time per Response for members: 20 minutes.

Estimated Total Burden Hours: 848 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 14, 2013.

Christopher Spera,

Director, Office of Research and Evaluation.

[FR Doc. 2013–03997 Filed 2–20–13; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Information on Surplus Land at Former Naval Air Station, Brunswick, ME

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This amended notice provides information regarding additional surplus property at the former Naval Air Station (NAS), Brunswick, ME, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved, and subsequent screening with Federal agencies and Department of Defense components. This Notice amends the Notice published in the **Federal Register** on February 16, 2007 (72 FR 7624, FR Doc. E7–2762)).

DATES: Effective February 7, 2013, by updating the acreage and contact information as indicated below for the following surplus property.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Duchnak, Director, Base Realignment and Closure Program Management Office, 1455 Frazee Road, San Diego, CA 92108–4310, telephone 619–532–0993. For information regarding the specific property below, contact Mr. Gregory Preston, Deputy Director, Base Realignment and Closure Program Management Office, Northeast, 4911 South Broad Street, Philadelphia, PA 19112–1303, telephone 215–897–4910.

SUPPLEMENTARY INFORMATION: Under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, and other public benefit conveyance authorities, this surplus property may be available for conveyance to State and local

governments and other eligible entities for public benefit purposes. Notices of interest from representatives of the homeless, and other interested parties located in the vicinity of any listed surplus property should be submitted to the recognized Local Redevelopment Authority (LRA).

Surplus Property Description. The additional property that is surplus to the needs of the Federal Government consists of approximately 10 acres of land and facilities at the former NAS Brunswick. The land and facilities were formerly requested by the Federal Aviation Administration, and it had subsequently withdrawn its interest in this property. The surplus property is comprised of the following three non-contiguous land parcels and improvements. All aviation-related equipment associated with these parcels has been removed for reuse by the Department of the Navy.

(1) Radar Approach Control Parcel: 5.74 acres. Comments: Air Traffic Control Tower building containing approximately 15,661 square feet, Paved areas (roads and pavements), and Utilities.

(2) Transmitter Parcel: 3.01 acres. Comments: Transmitter building containing approximately 974 square feet, and Generator building containing approximately 160 square feet, Paved areas (roads), and Utilities.

(3) Radar Parcel: 0.92 acres. Comments: Radar ASR–8 building containing approximately 480 square feet, Paved areas (roads), and Utilities.

The Midcoast Regional Redevelopment Authority has been recognized as the LRA. The LRA is located at 2 Pegasus Street, Suite 1, Unit 200, Brunswick, ME 04011. The LRA's point of contact is Mr. Steven Levesque, Executive Director at 207–798–6512.

Dated: February 12, 2013.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2013–03848 Filed 2–20–13; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Public Availability of Defense Nuclear Facilities Safety Board FY 2011 Service Contract Inventory Analysis/FY 2012 Service Contract Inventory

AGENCY: Defense Nuclear Facilities Safety Board (DNFSB).

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventory Analysis and FY 2012 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), DNFSB is publishing this notice to advise the public of the availability of (1) its analysis of the FY 2011 Service Contract inventory and (2) 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 December 19, 2011, 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-inventory-guidance.pdf.* DNFSB has posted its FY 2011 analysis and FY 2012 inventory and a summary of the inventory on the DNFSB homepage at the following link: *http://www.dnfsb.gov/open.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Mark Welch at 202–694–7043 or *Mailbox@dnfsb.gov.*

Dated: February 14, 2013.

Debra H. Richardson,

Deputy General Manager.

[FR Doc. 2013–03896 Filed 2–20–13; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Electric Grid Integration Technical Workshops

AGENCY: Grid Tech Team, U.S. Department of Energy.

ACTION: Notice of availability; request for comments.

SUMMARY: Notice is hereby given that two documents are publicly available and the Department of Energy is requesting public comments. The documents are the *Electricity Distribution System Workshop Discussion Summary* and the *Electricity Transmission System Workshop Discussion Summary.*

DATES: Written comments are to be received at the addresses listed below no later than March 25, 2013.

ADDRESSES: Interested persons are encouraged to submit comments by any of the following methods:

Online comments can be submitted via an online format available through the following Web site (*click the corresponding meeting link under the GTT Workshops header): www.energy.gov/doegridtechteam.*

Email comments may also be sent to: *gridtechteam@hq.doe.gov.*

In the subject line, include [Txm Wkshp] for transmission summary comments, [Dist Wkshp] for distribution summary comments, or [Other] for other general workshop-related comments.

Paper comments can be mailed to:

Attn: Robert S. Anders, Office of Technology Development, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Forrestal Building, Room 6A–067, 1000 Independence Ave. SW., Washington, DC, 20585.

FOR FURTHER INFORMATION CONTACT: Caitlin A. Callaghan, National Electricity Delivery Division, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8E–032, 1000 Independence Ave. SW., Washington, DC 20585; Telephone 202–287–6345.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is in the process of developing a targeted research and development roadmap to address grid challenges that will help guide investments over the next five years. Accordingly, DOE is compiling key reference material and input from a very broad scope of stakeholders from across all sectors of the electricity grid. This process entails convening workshops and leveraging reference material regarding various aspects of the grid—including (but not limited to) smart grid, energy storage, cyber security, advanced computation—and investigating integration issues within the transmission and distribution systems.

Each of the discussion summary documents is the product of separate workshops hosted by the DOE's Grid Tech Team (GTT). Each workshop was posted publicly online and announced through outreach to stakeholders across various sectors of the industry. The intent was to encourage participation by the broadest scope of stakeholders as possible. The Distribution Workshop was held on September 24–26, 2012; the Transmission Workshop took place on November 1–2, 2012. The workshops were held at separate conference facilities in Arlington, Virginia. The discussion summary documents can be found online at: *www.energy.gov/doegridtechteam* (click on the corresponding link under the GTT Workshops header).

The basic structure of the workshops had all the attendees participate in breakout sessions, whereby smaller groups considered particular topics. The underlying purpose of both workshops was not to build consensus among stakeholders, but rather to gather information based on the individual experiences and expertise of the participants relating to the challenges and opportunities facing the electricity distribution and transmission systems. The GTT took all the information from the breakout sessions and synthesized the common themes into the Discussion Summary documents that are hereby available for review and open for comments.

The discussion summary documents will be valuable additions to the growing body of relevant reference material. Thus, the summaries of these workshop discussions, including consideration of public comments, will provide a key resource to help DOE guide its R&D investments in the near term.

DOE intends to finalize and make publically available these documents with consideration of comments received. Comments are invited on all aspects of the workshop topics, although DOE is primarily seeking answers to the following questions:

i. Are there any issues in the discussion summary documents that require particular consideration? Are there any issues in the discussion summary documents that do not warrant further consideration? Please provide any examples or information that further supports your comment.

ii. Are there crucial challenges or opportunities associated with the Electricity Distribution or Transmission System (or both) that are not sufficiently represented in these documents?

The Department of Energy will review all timely written responses to this notice. DOE intends to finalize and make available the Electricity Distribution and Transmission Workshop Discussion Summary reports.

Issued in Washington, DC on February 14, 2013.

Anjan Bose,

Chairman, Grid Tech Team, U.S. Department of Energy.

[FR Doc. 2013–04066 Filed 2–20–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 7, 2013; 1:00 p.m. to 3:00 p.m. (EST).

ADDRESSES: Participants may contact Ms. Joanne Corcoran by March 5, 2013 at email: *joanne.corcoran@science.doe.gov* or by phone at (301) 903–6488, to receive a call-in number. Public participation is welcomed; however, the number of teleconference lines is limited and available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290. Phone (301) 903–9817; fax (301) 903–5051 or email: *david.thomassen@science.doe.gov.* The most current information concerning this meeting can be found on the Web site: *http://science.energy.gov/ber/berac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

• Discussion of the final edits to the BERAC report based on the charge letter dated, December 20, 2012, (*http://science.energy.gov/~/media/bes/besac/pdf/2012–1220-brinkman-to-advisorycommittees.pdf).*

Public Participation: The teleconference meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding the item on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://science.energy.gov/ber/berac/meetings/berac-minutes/.*

Issued in Washington, DC on February 14, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–04065 Filed 2–20–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF High Energy Physics Advisory Panel

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF High Energy Physics Advisory Panel (HEPAP). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, March 11, 2013; 10:00 a.m.–6:00 p.m.

Tuesday, March 12, 2013; 9:00 a.m.–6:00 p.m.

ADDRESSES: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: John Kogut, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–25/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: 301–903–1298.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of high energy physics research.

Tentative Agenda: Agenda will include discussions of the following:

March 11–12, 2013

• Discussion of Department of Energy High Energy Physics Program.

• Discussion of National Science Foundation Elementary Particle Physics Program.

• Reports on and Discussions of Topics of General Interest in High Energy Physics.

• Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John Kogut, 301–903–1298 or *John.Kogut@science.doe.gov.* You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of High Energy Physics Advisory Panel Web site: *http://science.energy.gov/hep/hepap/meetings/.*

Issued in Washington, DC on February 14, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–04064 Filed 2–20–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, March 8, 2013; 9:00 a.m.–5:00 p.m. Saturday, March 9, 2013; 9:00 a.m.–1:00 p.m.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, 301–590–0044.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–26/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Friday, March 8, 2013

• Perspectives from Department of Energy and National Science Foundation.

• Update from the Department of Energy and National Science Foundation's Nuclear Physics Office's.

• Presentation of the NSAC Subcommittee Report on the Committee of Visitors Charge.

• Report on the Facilities Subcommittee.

Saturday, March 9, 2013

• Continued Discussion of Subcommittee Report and Letter Transmittal.

• Public Comment (10-minute rule).

Note: The NSAC Meeting will be broadcast live on the Internet. You may find out how to access this broadcast by going to the following site prior to the start of the meeting. A video record of the meeting, including the presentations that are made, will be archived at this site after the meeting ends: *http://www.tvworldwide.com/events/DOE/130308/.*

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's Office of Nuclear Physics web site: *http://science.energy.gov/np/nsac/meetings/.*

Issued on Washington, DC on February 14, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–04063 Filed 2–20–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–025]

Notice of Petition for Waiver of Samsung Electronics America, Inc. From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Samsung Electronics America, Inc. (Samsung) petition for waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. In its petition, Samsung provides an alternate test procedure that is the same as the test procedure DOE published in an interim final rule. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. Today's notice also grants Samsung an interim waiver from the electric refrigerator and refrigerator-freezer test procedure, subject to use of the alternative test procedure set forth in this notice.

DATES: DOE will accept comments, data, and information with respect to the Samsung Petition until March 25, 2013.

ADDRESSES: You may submit comments, identified by case number ''RF–025,'' by any of the following methods:

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

• *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–025] in the subject line of the message.

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar refrigerator-freezer products. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *AS_Waiver_Requests@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs earlier. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h).

II. Petition for Waiver of Test Procedure and Application for Interim Waiver

On December 11, 2012, Samsung submitted a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that is the same as the test procedure provisions for products with long time or variable defrost DOE published in a final rule (77 FR 3559, 3564–3565, January 25, 2012). These provisions were placed in appendix A, which is not required for use until September 15, 2014, and not in the current appendix A1 test procedure. On January 27, July 19, and December 14, 2011, and Samsung had submitted similar petitions for waiver and requests for interim waiver for other basic models of refrigerator-freezers that incorporate multiple defrost cycles. DOE subsequently granted a waiver for the products specified in these petitions. 77 FR 1474 (Jan. 10, 2012) and 77 FR 75428 (Dec. 20, 2012).

Samsung also requests an interim waiver from the existing DOE test procedure. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE has determined, however that it is likely Samsung's petition will be granted, and that it is desirable for public policy reasons to grant Samsung relief pending a determination on the petition. Previously, DOE granted a waiver to Samsung for other basic models incorporating multiple defrost technology (77 FR 1474, Jan. 10, 2012 and 77 FR 75428, Dec. 20, 2012), and DOE has determined that it is desirable to have similar basic models tested in a consistent manner.

Samsung's petition included an alternate test procedure to account for the energy consumption of its refrigerator-freezer models with multiple defrost cycles. The alternate test procedure specified by Samsung is the same as the test procedure published in the final rule referenced above. The alternate test procedure specified in this interim waiver (as well as the previous waiver granted to Samsung) is identical to the test procedure provisions for products with long time or variable defrost adopted in the final test procedure rule.

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing multiple defrost cycles . Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for the specified Samsung refrigerator-

[1] For editorial reasons, upon codification in the U.S. Code, part B was re-designated part A.

freezer basic models that incorporate multiple defrost cycles, subject to the specifications and conditions below. Samsung shall be required to test or rate the specified refrigerator-freezer products according to the alternate test procedure as set forth in section III, ''Alternate Test Procedure.''

The interim waiver applies to the following basic model groups:

RF31FM*SB**
RF31FM*DB**
RF24FS*DB**

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a subsequent petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures to make representations about the energy consumption and energy consumption costs of products covered by the statute. (42 U.S.C. 6293(c)) Consistent representations are important for manufacturers to use in making representations about the energy efficiency of their products and to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 430.27, DOE will consider setting an alternate test procedure for Samsung in a subsequent Decision and Order.

During the period of the interim waiver granted in this notice, Samsung shall test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, appendix A1, except that, for the Samsung products listed above only, include:

1. In section 1, Definitions, the following definition:

''Defrost cycle type'' means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor ''off'' cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

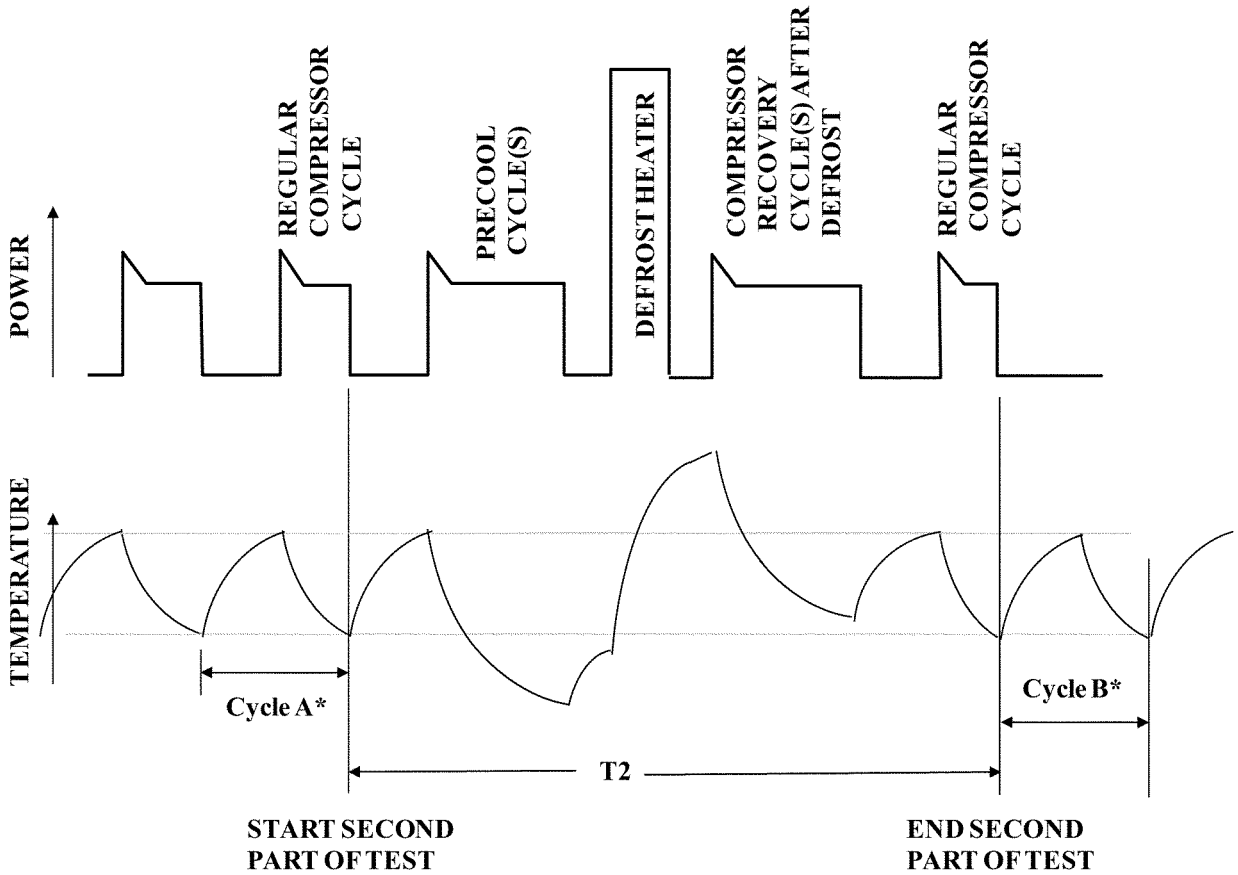
2. In section 4, Test Period, the following:

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperatures of the fresh food and freezer compartments measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in either compartment to deviate from its average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the temperature(s) of one or both compartments prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions. The average temperatures of the compartments measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

Figure 1

Long-time Automatic Defrost Diagram for Cycling Compressors[GPO: START PHOTO]



***Average compartment temperature(s) during cycles A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

3. In section 5, Test Measurements, the following:

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1 / T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \times T2_i / T1)) \times (12 / CT_i)]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to

$$(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} \tilde{} CT_{Li}) + CT_{Li});$$

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth

of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Samsung's petition for waiver from certain parts of the test procedure that apply to refrigerator-freezers and grants an interim waiver to Samsung. DOE is publishing Samsung's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure to measure the energy consumption of refrigerator-freezer basic models that incorporate multiple defrost cycles.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 19 Chapin Road, Building D, Pine Brook, NJ 07058. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Issued in Washington, DC, on February 13, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

December 11, 2012

Dr. David Danielson
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue, SW.
Washington, DC 20585

Dear Assistant Secretary Danielson:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits this Application for Interim Waiver and Petition for Waiver to the Department of Energy (''DOE'' or ''the Department'') regards to Samsung's compressor refrigerator-freezers with multiple defrost cycles.

Reasoning

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of Part 430 (''Appendix A1'') do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers with multiple defrost cycles. DOE concurred with Samsung's understanding in the interim waiver granted to Samsung in 76 FR 16760 [1] and subsequently granted the waiver on January 10, 2012 (77 FR 1474). Additionally, DOE communicated that all manufacturers planning on marketing refrigerator-freezers with multiple defrost cycles must seek a waiver from the Department.[2]

For the reasons that DOE described in its granting of waiver (77 FR 1474) for Samsung refrigerator freezers with multiple defrost cycles, Samsung believes that the granting of Interim Waiver and Waiver for the models listed below are warranted.

Request

Samsung requests that the alternate test procedure for refrigerators with multiple defrost cycles, as prescribed in the waiver (77 FR 1474) and in the interim waiver (77 FR 13109) granted to Samsung, be granted for the following basic Samsung refrigerator-freezers with multiple defrost cycles models:

RF31FM*SB**
RF31FM*DB**
RF24FS*DB**

Please feel free to contact me if you have any questions regarding this Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,
Michael Moss
Director of Corporate Environmental Affairs

[FR Doc. 2013–04062 Filed 2–20–13; 8:45 am]

BILLING CODE 6450–01–P

[1] DOE understands, however, that absent an interim waiver, Samsung's products would not be accurately tested and rated for energy consumption because the current energy test procedure does not include test procedures for products with multiple defrost cycle types.

[2] Until these amendments are required in conjunction with the 2014 standards, manufacturers introducing products equipped with multiple defrost cycle types should, consistent with 10 CFR 430.27, petition for a waiver since the modified version of Appendix A1 set out in today's notice will not include a specified method for capturing this energy usage.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–78–000]

Gulf Shore Energy Partners, LP; Notice of Abbreviated Application for Limited Amendment to Certificate of Public Convenience and Necessity

On February 11, 2013, Gulf Shore Energy Partners, LP (''Gulf Shore''), filed an abbreviated application for limited amendment to certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act (''NGA''), requesting authorization to amend its initial rates.

Any person desiring to intervene or to protest in this proceeding 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) on or before 5:00 p.m. Eastern time on the specified comment date. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Monday, February 25, 2013.

Dated: February 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03956 Filed 2–20–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–77–000]

The East Ohio Gas Company d/b/a Dominion East Ohio; Dominion Transmission, Inc.; Notice of Abbreviated Application for Limited Amendment to Certificate of Public Convenience and Necessity

On February 11, 2013, The East Ohio Gas Company d/b/a Dominion East Ohio (''DEO'') and Dominion Transmission, Inc. (''DTI''), filed an abbreviated application for limited amendment to certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act (''NGA''). Requesting approval of a lease pursuant to which DTI will lease storage capacity from DEO (the ''Phase II Lease''). DEO and DTI received authority in Docket No. CP10–107 for DTI to lease 3 million Dth of storage capacity from DEO.

Any person desiring to intervene or to protest in this proceeding 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) on or before 5:00 p.m. Eastern time on the specified comment date. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Monday, February 25, 2013.

Dated: February 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03955 Filed 2–20–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7887–017]

Marlborough Hydro Associates; Ashuelot River Hydro, Inc.; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On January 9, 2013, Marlborough Hydro Associates (transferor) and Ashuelot River Hydro, Inc. (transferee) filed an application for transfer of license for the Minnewawa Hydroelectric Project, FERC No. 7887, located on Minnewawa Brook in Cheshire County, New Hampshire.

Applicants seek Commission approval to transfer the license for the Minnewawa Hydroelectric Project from the transferor to the transferee.

Applicants' Contact: For transferor: Mr. John Webster, General Partner, Marlborough Hydro Associates, P.O. Box 178, South Berwick, ME 03908 and Ms. Elizabeth W. Whittle, Nixon, Peabody, LLP, 401 Ninth Street NW., Suite 900, Washington, DC 20004, telephone (202) 585–8338. For transferee: Mr. Robert King, President, Ashuelot River Hydro, Inc., 42 Hurricane Road, Keene, NH 03431, telephone (603) 352–3444.

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, by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–7887) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: February 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03957 Filed 2–20–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13563–002]

Juneau Hydropower, Inc.; Notice of Successive Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 3, 2012, Juneau Hydropower, Inc., filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Sweetheart Lake Project located on Lower Sweetheart Lake and Sweetheart Creek in Juneau, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following facilities: (1) A new 275-foot-long, 105-foot-high concrete and rock face dam, including project intake facilities and a 125-foot-wide overflow spillway, constructed at the natural outlet of Lower Sweetheart Lake; (2) the existing Lower Sweetheart Lake, raised to a surface elevation of 628 feet above mean sea level, with a surface area of 1,701.5 acres and an active storage capacity of 94,069 acre-feet at the normal maximum water elevation; (3) a new 500-foot-long, 10-foot-diameter stream diversion tunnel that would be converted to reservoir outlet works after project construction; (4) a new 9,595-foot-long, 12-foot-diameter penstock diverting flow from the project intake to the powerhouse; (5) a new powerhouse containing three new 6.6-megawatt (MW), Francis generating units having a total installed capacity of 19.8 MW; (6) a tailrace consisting of a new 76-foot-wide to 22-foot-wide, 75-foot-long open afterbay; a new 225-foot-long, 12-foot-diameter tunnel extending from the afterbay to an outlet structure on a tributary to Sweetheart Creek; and an existing tributary stream channel, modified to a 100-foot-long, 35-foot-wide channel that will flow into Sweetheart Creek; (7) new marine access facilities, including a dual-height marine ramp, floating docks for seaplane and boat access, and a staging area adjacent to the docks; (8) a new switchyard adjacent to the powerhouse; (9) a new 8.69-mile-long, 138-kilovolt transmission line, consisting of buried, submarine, and overhead segments; (10) a new 4,400-foot-long access road; and (11) appurtenant facilities. The proposed Sweetheart Lake Project would have an average annual generation of 111 gigawatt-hours.

Applicant Contact: Duff Mitchell, Business Manager, Juneau Hydropower, Inc. P.O. Box 22775, Juneau, AK 99802; email: *duff.mitchell@juneauhydro.com;* phone: (907) 789–2775.

FERC Contact: Jennifer Harper; phone: (202) 502–6136.

The original notice, issued on January 9, 2013, was not published in the Juneau newspaper in a timely manner. Therefore, the deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications has been extended to 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13563) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03953 Filed 2–20–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14418–000]

S. Martinez Livestock, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 31, 2012, and revised on July 30, 2012, S. Martinez Livestock, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cold Creek Valley Pumped Storage Project (project) to be located downstream of Priest Rapids dam on the Columbia River, in Yakima County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would include a pumped storage facility and a traditional turbine-generator facility. The pumped storage facility would consist of: (1) A new upper reservoir in Cold Creek Valley; (2) a proposed intake structure including five 1,800-foot-long, 10-foot-diameter penstocks leading to the powerhouse located on the Columbia River downstream of Priest Rapids Dam; (3) a powerhouse with five 400 megawatt (MW) pump/turbine units with an installed capacity of approximately 2,000 MW; and (4) a 30-mile-long transmission line. The estimated annual generation of the pumped storage facility would be 86,430 megawatt hours. The turbine-generator facility would consist of: (1) an intake leading to a 200-foot-long, 5-foot-diamater penstock; and (2) a powerhouse with a 5–MW Francis turbine-generator unit. The estimated annual generation of the turbine generator unit would be 17,286 megawatt hours.

Applicant Contact: Mr. Daniel T. Martinez, S. Martinez Livestock, Inc., 13395 Hwy. 24, Moxee, WA 98936; phone: (541) 298–3300.

FERC Contact: James Hastreiter; phone: (202) 552–2760.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14418) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03952 Filed 2–20–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2013–0065; FRL–9784–1]

Access by EPA Contractors to Information Claimed as Confidential Business Information (CBI) Submitted Under Title II of the Clean Air Act and Related to the Nonroad Diesel Engine Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Transportation and Air Quality (OTAQ) plans to authorize various contractors to access information which was submitted to EPA under Title II of the Clean Air Act that may be claimed as, or may be determined to be, confidential business information (CBI). Access to this information, which is related to the Nonroad Diesel Engine Program will begin on February 22, 2013.

DATES: EPA will accept comments on this Notice through February 26, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kopits, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code: 1809T, Washington, DC 20460; telephone number: 202–566–2299; fax number: 202–566–2338; email address: *Kopits.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this notice apply to me?

This action is directed to the general public. However, this action may be of particular interest to parties who manufacture nonroad diesel engines and equipment and any other parties subject to the regulations found in 40 CFR parts 89 and 1039.

This **Federal Register** notice may be of particular relevance to parties that have submitted data under the above-listed programs or systems. Since other parties may also be interested, the Agency has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

II. How can I get copies of this document and other related information?

A. Electronically

EPA has established a public docket for this **Federal Register** notice under Docket EPA–HQ–OA–2013–0065.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket EPA–HQ–OA–2013–0065 will be available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744.

III. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information (CBI) to Contractors

EPA's Office of Transportation and Air Quality (OTAQ) has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to permit regulated entities flexibility in meeting regulatory requirements (e.g., compliance on average), we collect compliance reports and other information from them. Occasionally, the information submitted is claimed to be confidential business information (CBI). Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B and in accordance with EPA procedures, including comprehensive system security plans (SSPs) that are consistent with those regulations. When EPA has determined that disclosure of information claimed as CBI to contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the contractor and the contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

In accordance with 40 CFR 2.301(h), we have determined that the contractors, subcontractors, and grantees (collectively referred to as ''contractors'') listed below require access to CBI submitted to us under the Clean Air Act and in connection with the nonroad diesel engine program and we are providing notice and an opportunity to comment. OTAQ collects this data in order to monitor compliance with the nonroad diesel engine program and to permit regulated parties flexibility in meeting regulatory requirements through the trading of RINs. We are issuing this **Federal Register** notice to inform all affected submitters of information that we plan to grant access to material that may be claimed as CBI to the contractors identified below on a need-to-know basis.

Under Contract Number EP–W–11–003, Abt Associates, 4550 Montgomery

Avenue, Suite 800 North, Bethesda, MD 20814, and its subcontractor, Engine, Fuel, and Emissions Engineering, Incorporated (EF&EE), 3221 Fitzgerald Road, Rancho Cordova, CA 95670, is providing support to EPA's National Center for Environmental Economics (NCEE) on a retrospective analysis of costs of selected regulatory actions, evaluating the degree to which ex-ante costs and ex-post costs of regulations differ and exploring possible reasons for cost divergence where it exists, that involves access to information claimed as CBI, including the sales projections provided by nonroad diesel engine manufacturers in their certification applications. Access to data, including information claimed as CBI, will commence on February 22, 2013, and will continue until September 10, 2013. If the contract is extended, this access will continue for the remainder of the contract without further notice.

Parties who wish further information about this **Federal Register** notice or about OTAQ's disclosure of information claimed as CBI to contractors may contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection; Confidential business information.

Dated: January 31, 2013.

Al McGartland,

Director, National Center for Environmental Economics, Office of Policy, Office of the Administrator.

[FR Doc. 2013–04033 Filed 2–20–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0757; FRL–9528–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Part B Permit Application, Permit Modifications, and Special Permits (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Part B Permit Application, Permit Modifications, and Special Permits (EPA ICR No. 1573.13, OMB Control No. 2050–0009) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2012. Public comments were previously requested via the **Federal Register** (77 FR 65875) on October 31, 2012 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 25, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2012–0757, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Office of Resource Conservation and Recovery (mail code 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal facilities (TSDFs) to obtain a permit. To obtain the permit, the TSDFs must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under Sections 3004 and 3005.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit; as well as State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA 3005).

Estimated number of respondents: 67.

Frequency of response: On occasion.

Total estimated burden: 23,669 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $3,996,222 (per year), includes $2,791,804 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is decrease of 9,591 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to the smaller number of affected facilities.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–03958 Filed 2–20–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0091, FRL–9784–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR will also incorporate the following ICRs which were approved under separate rulemaking actions:

ICR# 2358 (OMB# 2060–0638) Nitrogen Oxides Ambient Monitoring

ICR# 2370 (OMB# 2060–0642) Sulfur Dioxides Ambient Monitoring

ICR# 0940 (OMB# 2060–0084) $PM_{2.5}$ Ambient Monitoring

This over-arching ICR is scheduled to expire on December 31, 2014. Before submitting the ICR to the OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 22, 2013.

ADDRESSES: Submit your comments, identified by Docket ID number OAR–2002–0091, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0091. 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 whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means 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. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Laurie Trinca, Air Quality Assessment Division, Environmental Protection Agency; telephone number (919) 541–0520; fax number: (919) 541–1903; email address: *trinca.laurie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–OAR–2002–0091, which is available for online viewing at *www.regulations.gov,* or in person at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is the EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for the EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are those state, local air pollution control agencies, and tribal entities which collect and report ambient air quality data for the criteria pollutants to the EPA as well as other supporting measurements.

Title: Ambient Air Quality Surveillance.

ICR numbers: EPA ICR No. 0940–27 OMB Control No. 2060–0084.

ICR status: This ICR is currently scheduled to expire on December 31, 2014. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR includes ambient air monitoring data and other

supporting measurements reporting and recordkeeping activities associated with the 40 CFR 58 Ambient Air Quality Surveillance rule. These data and information are collected by various state and local air quality management agencies and reported to the Office of Air Quality Planning and Standards within the Office of Air and Radiation, U.S. EPA.

This ICR reflects revisions of the previous ICR update of 2011, and it covers the period of 2013–2015. The number of monitoring stations, sampling parameters, and frequency of data collection and submittal is expected to remain relatively stable for 2013–2015, with minor increases and decreases expected for several ambient air monitoring networks as air monitoring agencies review their monitoring networks.

The data collected through this information collection consist of ambient air concentration measurements for the seven air pollutants with national ambient air quality standards (i.e., ozone, sulfur dioxide, nitrogen dioxide, lead, carbon monoxide, $PM_{2.5}$ and PM_{10}), ozone precursors, meteorological variables at a select number of sites, and other supporting measurements. Accompanying the pollutant concentration data are quality assurance/quality control data and air monitoring network design information.

The EPA and others (e.g., state and local air quality management agencies, tribal entities, environmental groups, academic institutions, industrial groups) use the ambient air quality data for many purposes. Some of the more prominent uses include informing the public and other interested parties of an area's air quality, judging an area's (e.g., county, city, neighborhood) air quality in comparison with the established health or welfare standards (including both national and local standards), evaluating an air quality management agency's progress in achieving or maintaining air pollutant levels below the national and local standards, developing and revising State Implementation Plans in accordance with 40 CFR 51, evaluating air pollutant control strategies, developing or revising national control policies, providing data for air quality model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, air quality trends assessment, and air pollution research.

The state and local agencies and tribal entities with responsibility for reporting ambient air quality data and information as requested in this ICR submit these data electronically to the EPA's Air Quality System (AQS) database. Quality assurance/quality control records and monitoring network documentation are also maintained by each state and local agency in AQS electronic format where possible.

Although the state and local air pollution control agencies and tribal entities are responsible for the operation of the air monitoring networks, the EPA funds a portion of the total costs through federal grants. These grants generally require an appropriate level of contribution, or ''match,'' from the state/local agencies or tribal entities. The costs shown in this renewal are the total costs incurred for the monitoring program regardless of the source of the funding. This practice of using the total cost is consistent with prior ICR submittals and renewals.

This Information Collection is estimated to involve 168 respondents for a total cost of approximately $194,490,047 (total capital, and labor and non-labor operation and maintenance) plus a total burden of 1,790,021 hours. The labor costs associated with the hours is $126,733,274. Included in the total are other costs of non-labor operations and maintenance of $13,090,237 and equipment and contract costs of $54,666,536. In addition to the costs at the state and local air pollution control agencies and tribal entities, there is a burden to the EPA of 192,769 hours and $11,014,728.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6,742 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 168

Frequency of response: Data submissions are required quarterly, but may occur more frequently.

Estimated total annual burden hours: 1,790,021 hours.

Estimated total annual costs: $194,490,047. This includes an estimated labor burden cost of $126,733,274 and an estimated cost of $54,666,536 for equipment and contract costs.

Are there changes in the estimates from the last approval?

Yes. There is a decrease of 289,469 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects the EPA's consolidation of monitors into fewer sites, termination of unnecessary monitors, and more efficient procedures for measuring and reporting data.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to the OMB for review and approval pursuant to 5 CFR 1320.12. At that time, the EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to the OMB and the opportunity to submit additional comments to the OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 14, 2013.

Mary E. Henigin,

Acting Director, Air Quality Assessment Division.

[FR Doc. 2013–04008 Filed 2–20–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0500; FRL 9527–5]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's ENERGY STAR Program in the Residential Sector (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''EPA's ENERGY STAR Program in the Residential Sector'' (EPA ICR No. 2193.03, OMB Control No. 2060–0586),

to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through February 28, 2013. Public comments were previously requested via the **Federal Register** (77 FR 50495) on August 21, 2012 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 25, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2004–0500, to (1) EPA online using www.regulations.gov (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Brian Ng, Energy Star Residential Branch, Mailcode 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9162; fax number: (202) 343–2200; email address: *ng.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA first developed energy efficiency guidelines for new homes in 1995. ENERGY STAR's existing homes effort was rolled out in 2000 to promote cost-effective upgrades in the existing homes market. Both of these efforts promote cost effective, whole house energy efficiency improvements that are independently verified by third parties. Through 2011 there have been more than 1.3 million ENERGY STAR certified new homes built in the U.S., and more than 50,000 existing homes have been improved through the whole house retrofit program, Home Performance with ENERGY STAR.

Since participation in the ENERGY STAR program is voluntary, organizations are not required to submit information to EPA. Information received is not of a confidential nature. EPA has developed this ICR to obtain authorization to collect information for the following activities:

Joining the ENERGY STAR Program and Related Activities: An organization interested in joining ENERGY STAR as a partner is asked to submit a partnership agreement establishing its commitment to ENERGY STAR. Partners agree to undertake efforts such as educating their staff and the public about their partnership with ENERGY STAR, developing and implementing a plan to improve energy performance in homes, and highlighting achievements utilizing the ENERGY STAR label.

Verification of ENERGY STAR Guidelines: The purpose of the verification process is to ensure the quality of home construction and improvements with respect to ENERGY STAR guidelines. Under ENERGY STAR's Certified Homes program, verification of a home's energy efficiency occurs when site-built home builders or plants producing manufactured and modular homes want to apply the ENERGY STAR label on homes. The verification process involves the home builder, the verification organization (Home Energy Rating Providers and Home Energy Raters), and the Heating, Ventilation, and Cooling (HVAC) contractor. These organizations complete four checklists as part of the verification process. In addition, plants producing manufactured and modular homes must undergo a certification process to ensure that they consistently produce and install homes that meet ENERGY STAR guidelines. Under ENERGY STAR's Home Performance with ENERGY STAR, program sponsors promote a program of whole house, science-based improvements to existing homes. Sponsors oversee contractors who carry out the improvements, perform tests, and report the results to the sponsors. Under ENERGY STAR's HVAC Quality Installation program, sponsors promote the installation of HVAC systems in new and existing homes to meet ENERGY STAR guidelines. Sponsors oversee contractors who perform the installations, perform tests, and report the results to the sponsors. Sponsors submit quarterly reports to EPA on these activities.

Evaluation: Partners and other program participants are asked to periodically submit information to EPA as needed to assist in evaluating ENERGY STAR's effectiveness in helping organizations promote energy efficiency in homes, to assess partners' level of interest and ability in promoting ENERGY STAR in the residential sector, and to determine the impact that ENERGY STAR has on residential energy use and the supply and demand for energy-efficient homes and home improvement products and services. In addition, EPA offers online tools, such as the Home Energy Yardstick and Home Energy Advisor, for homeowners to learn about and improve their homes' energy efficiency.

Periodic Reporting: Some partners are asked to submit information to EPA periodically to assist EPA in tracking and measuring progress in building and promoting ENERGY STAR certified homes and installing and promoting energy-efficient improvements.

ENERGY STAR Awards: Each year, partners are eligible for an ENERGY STAR award, which recognizes organizations demonstrating outstanding support in promoting ENERGY STAR. An application is submitted to EPA by interested partners.

Outreach Partnership: Partners have the option of participating in an outreach partnership, whereby partners jointly contribute resources to the distribution of a public outreach and education campaign about ENERGY STAR certified homes.

Form Numbers:

- Partnership Letter for Home Builders, Architects & Home Plan Designers, Home Energy Raters & Providers (5900–188)
- Partnership Agreement for EEPS (5900–33)
- Commitment Form for EEPS (5900–272)
- Partnership Agreement for Lenders (5900–08)
- Partnership Agreement for HVAC QI Sponsor (5900–183)
- Partnership Agreement for Home Performance with ENERGY STAR Sponsor (5900–17)
- Implementation Plan for Home Performance with ENERGY STAR Sponsor (5900–186)

- Commitment Form for Outreach Partnership (5900–06)
- Water Management Checklist (5900–178)
- Thermal Enclosure Checklist (5900–176)
- Multifamily High Rise Developer Participation Agreement (5900–267)
- Multifamily High Rise Project Application (5900–266)
- Multifamily High Rise Testing & Verification Worksheet (5900–269)
- Multifamily High Rise Submittal Validation Form (5900–270)
- Multifamily High Rise Performance Path Calculator (5900–268)
- Modular Home Completion Report (5900–189)
- Manufactured Home Completion Report (5900–172)
- Modular Plant Qualification Form (5900–194)
- HVAC QI Rater Checklist (5900–271)
- HVAC Contractor Checklist (5900–175)
- Commissioning Report (5900–180)
- HIP Profile (5900–179)
- Energy Use Authorization Form (5900–184)

Respondents/affected entities: Home builders, modular and manufactured home manufacturing plants, developers, verification organizations, oversight organizations, lenders, energy efficiency program sponsors (e.g., national, regional, state, or local government entities, utilities), architects, home plan designers, retailers, contractors, and homeowners.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 132,000 (total).

Frequency of response: Once, quarterly, annually, and occasionally.

Total estimated burden: 183,967 hours (per year). Burden is defined at 5 CFR 1320.3(b)

Total estimated cost: $13,553,809 (per year). This includes an estimated cost of $13,553,209 for labor and $600 for capital investment, operation and maintenance.

Changes in the Estimates: There is an increase of 3,009 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This includes a 112,566-hour increase due to program changes and a 109,557-hour decrease due to adjustments. The 112,566-hour increase due to program changes resulted primarily from EPA's new, more rigorous guidelines for new homes looking to earn the ENERGY STAR. The 109,557-hour decrease due to adjustments resulted primarily from updated and improved data and analysis.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–03959 Filed 2–20–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9783–1]

National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting(s).

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a series of teleconference meetings of the National Environmental Education Advisory Council (NEEAC). The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency (EPA) on matters related to activities, functions and policies of EPA under the National Environmental Education Act (the Act).

The purpose of these teleconference(s) is to discuss specific topics of relevance for consideration by the council in order to provide advice and insights to the Agency on environmental education.

DATES: The National Environmental Education Advisory Council will hold a public teleconference(s) on Wednesday, February 27, 2013, March 27, 2013, May 22, 2013, June 19, 2013 and July 24, 2013, from 12:00 p.m. until 1:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Javier Araujo, Designated Federal Officer, *araujo.javier@epa.gov,* 202–564–2642, U.S. EPA, Office of Environmental Education, Ariel Rios North Room 1426, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the teleconference, make brief oral comments, or provide a written statement to the NEEAC must contact Javier Araujo, Designated Federal Officer, at *araujo.javier@epa.gov* or 202–564–2642 by 10 business days prior to each regularly scheduled meeting.

Meeting Access: For information on access or services for individuals with disabilities or to request accommodations please contact Javier Araujo at *araujo.javier@epa.gov* or 202–564–2642, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Stephanie Owens,

Deputy Associate Administrator, Office of External Affairs and Environmental Education.

[FR Doc. 2013–04028 Filed 2–20–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9782–9]

National Environmental Justice Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the National Environmental Justice Advisory Council (NEJAC).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its National Environmental Justice Advisory Council (NEJAC). The NEJAC was chartered to provide advice regarding broad, crosscutting issues related to environmental justice. This notice solicits nominations to fill approximately seven (7) new vacancies for terms through June 15, 2016. To maintain the representation outlined by the charter, nominees will be selected to represent: Academia (2 vacancies); grassroots community-based organizations (1 vacancy); non-governmental/environmental organizations (2 vacancies); State government agencies (1 vacancy); and indigenous community-based organizations (1 vacancy). Vacancies are anticipated to be filled by May 2013. Sources in addition to this **Federal Register** Notice also may be utilized in the solicitation of nominees.

DATES: Nominations should be submitted in time to arrive no later than February 22, 2013.

ADDRESSES: Submit nominations electronically with the subject line NEJAC Membership 2013 to *olp.kevin@epa.gov.* You also may submit nominations by mail to: Kevin Olp, NEJAC Membership Outreach Coordinator, Office of Environmental Justice, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (MC 2201A), Washington, DC 20460. Non-electronic submissions must follow the same format and contain the same information. The Office of Environmental Justice will acknowledge receipt of nominations.

FOR FURTHER INFORMATION CONTACT: Kevin Olp, Membership Outreach Coordinator for the NEJAC, U.S. EPA; telephone (202) 564–5423; fax: (202) 564–1624.

SUPPLEMENTARY INFORMATION: The NEJAC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the NEJAC in 1993 to provide independent consensus advice to the EPA Administrator about a broad range of environmental issues related to environmental justice. The NEJAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The Council consists of 26 members (including a Chairperson) appointed by EPA's Administrator. Members serve as non-federal stakeholders representing: four (4) from academia, three (3) from business and industry; six (6) from community based organizations; six (6) from non-governmental/environmental organizations; four (4) from state and local governments; and three (3) from tribal governments and indigenous organizations, of which one member serves as a liaison to the National Tribal Caucus. Members are appointed for three (3)-year terms with the possibility of reappointment to a second term.

The NEJAC usually meets face-to-face twice a year, generally in the Spring and the Fall. Additionally, members may be asked to participate in teleconference meetings or serve on Work Groups to develop recommendations, advice letters, and reports to address specific policy issues. The average workload for members is approximately 5 to 8 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business.

Nominations: Any interested person and/or organization may nominate qualified individuals for membership. The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men of all racial and ethnic groups. All nominations will be fully considered, but applicants need to be aware of the specific representation sought as outlined in the Summary above. In addition, EPA is seeking nominees with knowledge in community sustainability, public health and health disparities, climate change adaptation, land use and equitable development, environmental sociology and social science, and environmental financing.

Other criteria used to evaluate nominees will include

- The background and experience that would help members contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, educational background, professional affiliations, and other considerations
- Demonstrated experience with environmental justice and community sustainability issues at the national, state, or local level;
- Excellent interpersonal and consensus-building skills
- Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters
- Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals are encouraged to self-nominate. Nominations can be submitted in electronic format (preferred) following the template available at *http://epa.gov/environmentaljustice/nejac/index.html#Membership.* To be considered, all nominations should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number.
- Brief Statement describing the nominees interest in serving on the NEJAC
- Résumé and a short biography (no more than 2 paragraphs) describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees
- Letter[s] of recommendation from a third party supporting the nomination. Letter[s] should describe how the nominee's experience and knowledge will bring value to the work of the NEJAC.

Other sources, in addition to this **Federal Register** notice, may also be utilized in the solicitation of nominees. To help the EPA in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Dated: February 13, 2013.

Victoria J. Robinson,

Designated Federal Officer, Office of Environmental Justice, U.S. EPA.

[FR Doc. 2013–03978 Filed 2–20–13; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before March 25, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service; §§ 73.807, 73.809, 73.810, 73.827, 73.850, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form No.: FCC Form 318.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or Tribal governments.

Number of Respondents and Responses: 21,019 respondents with multiple responses; 27,737 responses.

Estimated Time per Response: .0025–12 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; monthly reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 35,471 hours.

Total Annual Cost: $39,750.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: On December 4, 2012, the FCC released a Sixth Report and Order (''Order''), MM Docket No. 99–25, FCC 12–144. In the Order, the FCC revised § 73.853(b) of the Commission's rules (''rules'') to permit federally recognized Native American Tribes and Alaska Native Villages (''Tribal Nations'') and entities owned or controlled by Native Nations (collectively, ''Tribal Nation Applicants'') to hold LPFM licenses. The FCC also revised its definition of local to specify that Tribal Nation Applicants are considered local throughout their Tribal lands. We have revised FCC Form 318 to reflect these changes.

In the Order, the FCC also modified its ownership rules. First, the FCC revised its cross-ownership rule to permit cross-ownership of an LPFM station and up to two FM translator stations. Second, the FCC modified its cross-ownership rule to permit Tribal Nation Applicants to seek up to two LPFM construction permits to ensure adequate coverage of tribal lands. We have revised FCC Form 318 to reflect these changes.

The FCC further modified the point system used to select among mutually exclusive LPFM applicants and set forth in § 73.872 of the rules. First, the FCC revised the ''established community presence'' criterion to extend the ''established community presence'' standard in rural areas. Under the earlier version of the rule, an LPFM applicant was deemed to have an established community presence if it was physically headquartered or had a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members resided within ten miles of the proposed LPFM transmitter site. The FCC changed the standard from ten to twenty miles for all LPFM applicants proposing facilities located outside the top fifty urban markets, for both the distance from transmitter and residence of board member standards. Second, the FCC modified the point system to award a point to Tribal Nation Applicants, when they propose to provide LPFM service to Tribal Nation communities. Third, the FCC established additional points criteria related to maintenance and staffing of a main studio, commitments to locally originate programming and maintain and staff a main studio, and new entry into the broadcasting field. We have revised the Form 318 to reflect these changes to the point system.

The FCC made a number of changes related to time-sharing. It adopted a requirement that parties submit voluntary time-sharing agreements via the Consolidated Database System. It also revised the Commission's involuntary time-sharing policy. As a result of these changes, an LPFM applicant must submit the date on which it qualified as having an ''established community presence.'' The FCC also may require certain LPFM applicants to indicate which 8-hour and 12-hour time slots they prefer. Finally, the FCC adopted a mandatory time-sharing policy similar to that applicable to full-service noncommercial educational FM stations. We have revised the Form 318 to reflect these changes.

Finally, the FCC modified the manner in which it processes requests for waiver of the second-adjacent channel minimum distance separation requirement, amended the rule related to third-adjacent channel interference, and amended the rule that sets forth the obligations of LPFM stations with respect to interference to the input signals of FM translator or FM booster stations. We have revised the Form 318 to reflect these proposed changes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03910 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction

Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 22, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Number: 3060–0180.

Title: Section 73.1610, Equipment Tests.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 500 respondents; 500 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 250 hours.

Total Annual Cost: $0.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1610 requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards. FCC staff use the data to assure compliance with the terms of the construction permit and applicable engineering standards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03908 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 04–286; DA 13–166]

Third Meeting of the Advisory Committee for the 2015 World Radiocommunication Conference

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the third meeting of the WRC–15 Advisory Committee will be held on March 7, 2013, at the Federal Communications Commission. The Advisory Committee will consider recommendations from its Informal Working Groups.

DATES: March 7, 2013; 11:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, Designated Federal Official, WRC–15 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–15 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2015 World Radiocommunication Conference (WRC–15).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the third meeting of the WRC–15 Advisory Committee. Additional information regarding the WRC–15 Advisory Committee is available on the Advisory Committee's Web site, *http://www.fcc.gov/wrc-15.* The meeting is open to the public. The meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at *www.fcc.gov/live.* Comments may be presented at the WRC–15 Advisory Committee meeting or in advance of the meeting by email to: *WRC–15@fcc.gov.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted, but may not be possible to accommodate.

The proposed agenda for the third meeting is as follows:

Agenda

Third Meeting of the WRC–15 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554, March 7, 2013; 11:00 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Second Meeting
4. IWG Reports and Documents Relating to Preliminary Views and Draft Proposals
5. Future Meetings
6. Other Business

Federal Communications Commission.

Mindel De La Torre,

Chief, International Bureau.

[FR Doc. 2013–03941 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Technological Advisory Council will hold a meeting on Monday, March 11, 2013 in the Commission Meeting Room, from 12 p.m. to 3 p.m. at the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

DATES: March 11, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Chief, Electromagnetic Compatibility Division, 202–418–0807; *Walter.Johnston@FCC.gov.*

SUPPLEMENTARY INFORMATION: The FCC Technological Advisory Council will hold its first meeting of the new year on March 11th. This meeting will review work completed in 2012 and discuss possible initiatives for 2013. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. Meetings are also broadcast live with open captioning over the internet from the FCC Live Web page at *http://www.fcc.gov/live/*. The public may submit written comments before the meeting to: Walter Johnston, the FCC's Designated Federal Officer for Technological Advisory Council by email: *Walter.Johnston@fcc.gov* or U.S. Postal Service Mail (Walter Johnston, Federal Communications Commission, Room 7–A224, 445 12th Street SW., Washington, DC 20554). Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Office of Engineering and Technology at 202–418–2470 (voice), (202) 418–1944 (fax). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03875 Filed 2–20–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting Wednesday, February 20, 2013

February 13, 2013.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, February 14, 2013. The meeting is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1	WIRELESS TELCOMMUNICATIONS.	TITLE: Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's rules to Improve Wirelss Coverage Through the Use of signal Boosters. SUMMARY: The Commission will consider a Report and Order to significantly enhance wirelss coverage for consumers, while protecting wireless networks from interference, by adopting new technical and operational requirements for signal boosters.
2	OFFICE OF ENGINEERING & TECHNOLOGY.	TITLE: Revision of Part 15 of the Commission's rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 Ghz Band. SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to substantially increase the amount of unlicensed spectrum available to accelerate the growth and expansion of new Wi-Fi technology offering consumers faster speeds and less network congestion at Wi-Fi hot spots.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Meribeth McCarrick, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–03874 Filed 2–19–13; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, February 26, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–04159 Filed 2–19–13; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A Copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011550–013.

Title: ABC Discussion Agreement.

Parties: Hamburg Sud; King Ocean Services Limited; Seafreight Line, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would add Seaboard Marine Ltd. as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: February 15, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–03986 Filed 2–20–13; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *R Corp Financial,* Round Rock, Texas, to become a bank holding company by acquiring 100 percent of R Bank, Round Rock, Texas.

Board of Governors of the Federal Reserve System, February 15, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–03951 Filed 2–20–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP and the full meeting agenda will be posted on the SACHRP Web site at: *http://www.dhhs.gov/ohrp/sachrp/mtgings/index.html.*

DATES: The meeting will be held on Tuesday, March 12, 2013 from 10:30 a.m. until 5:00 p.m. and Wednesday, March 13, 2013 from 8:30 a.m. until 4:30 p.m. Tuesday morning will begin with a two-hour closed administrative session, with the meeting opening to the public at 10:30 a.m.

ADDRESSES: U.S. Department of Health and Human Services, 200 Independence Avenue SW., Hubert H. Humphrey Building, Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections (OHRP), or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–8141; fax: 240–453–6909; email address: *Julia.Gorey@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On Tuesday, March 12, following opening remarks from Dr. Jerry Menikoff, OHRP Director, and Dr. Jeffrey Botkin, SACHRP Chair, there will be a presentation from HHS staff describing the history of SACHRP and the process for creating regulatory guidance and regulatory change; a discussion of SACHRP members' priorities for future discussion topics will follow. Subpart A Subcommittee will next discuss their recent work, including considerations for revisions to the expedited review list. Subpart A Subcommittee is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment; this Subcommittee was established by SACHRP in October 2006. Following opening remarks on the morning of March 13, a special panel of experts will discuss Improving the Informed Consent Process; this discussion will initiate a new SACHRP spotlight on this topic. The Subcommittee on Harmonization (SOH) will next give a report and discuss their recent work, including an examination of human subject research issues affecting cluster randomized trials, and issues associated with the use of differing agencies' certificates of confidentiality. SOH was established by SACHRP at its July 2009 meeting and is charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or

offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination. SACHRP will conclude Wednesday afternoon with discussion of a revised document on the issue of the use of the internet in human subjects research. Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business March 8, 2013.

Dated: February 15, 2013.

Jerry Menikoff,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2013–03976 Filed 2–20–13; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations to the Advisory Committee on Blood and Tissue Safety and Availability

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Health (OASH) is seeking nominations of qualified individuals to be considered for appointment to the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA). The ACBTSA is a federal advisory committee within the Department of Health and Human Services. Management support for the activities of this Committee is the responsibility of the OASH. The qualified individuals will be nominated to the Secretary of Health and Human Services for consideration of appointment as members of the ACBTSA. Members of the Committee, including the Chair, are appointed by the Secretary. Members are invited to serve on the Committee for up to four-year terms.

DATES: All nominations must be received not later than 4:00 p.m. EDT on March 15, 2013, at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Mr. James Berger, Senior Advisor for Blood Policy; Division of Blood and Tissue Safety and Availability, Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health; Department of Health and Human Services; 1101 Wootton Parkway, Suite 250; Rockville, MD 20852. Telephone: (240) 453–8803.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Senior Advisor for Blood Policy. Contact information for Mr. Berger is provided above.

A copy of the Committee charter and roster of the current membership can be obtained by contacting Mr. Berger or by accessing the ACBTSA Web site at *http://www.hhs.gov/bloodsafety.http://www.hhs.gov/bloodsafety.*

SUPPLEMENTARY INFORMATION: The ACBTSA provides advice to the Secretary, through the Assistant Secretary for Health. The Committee provides advice on a range of policy issues to include: (1) Identification of public health issues through surveillance of blood, and tissue safety issues with national biovigilance data tools; (2) identification of public health issues that effect availability of blood, blood products, and tissues; (3) broad public health, ethical and legal issues related to the safety of blood, blood products, and tissues; (4) the impact of various economic factors (e.g., product cost and supply) on safety and availability of blood, blood products, and tissues; (5) risk communications related to blood transfusion and tissue transplantation; and (6) identification of infectious disease transmission issues for blood, organs, blood stem cells and tissues.

The Committee consists of 23 voting members: there are 14 public members, including the Chair, and nine (9) individuals designated to serve as official representative members of the blood, blood products, tissue and organ professional organizations or business sectors. The public members are selected from state and local organizations, patient advocacy groups, provider organizations, academic researchers, ethicists, physicians, surgeons, scientists, risk communication experts, consumer advocates, legal organizations, and from among communities of persons who are frequent recipients of blood or blood products or who have received tissues or organs.

All ACBTSA members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized also to receive a stipend for attending Committee meetings and to carry out other Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive a stipend for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill two positions in the public member category that will be vacated during the 2013 calendar year.

Nominations

In accordance with the charter, persons nominated for appointment as members of the ACBTSA should be among authorities knowledgeable in blood banking, transfusion medicine, plasma therapies, transfusion and transplantation safety, bioethics, public health economics and/or related disciplines and/or related consumer/patient advocacy. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration of appointment: (a) The name, return address, daytime telephone number, and affiliation(s) of the individual being nominated, the basis for the individual's nomination, the nominated individual's area of expertise, and a statement bearing an original signature of the nominated individual that, if appointed, he or she is willing to serve as a member of the committee; (b) the name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to the contact; and (c) a copy of a current curriculum vitae or resume for the nominated individual.

Individuals can nominate themselves for consideration of appointment to the committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable.

The Department makes every effort to ensure that the membership of HHS federal advisory committees is fairly

balanced in terms of points of view represented and the functions to be performed by the advisory committee. Every effort is made to ensure that the views of women, all ethnic and racial groups, and people with disabilities are represented on HHS federal advisory committees. Therefore, the Department encourages nominations of qualified candidates from these groups. The Department also takes into consideration geographic diversity in the composition of the committee. Appointment to this committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Individuals who are appointed as public members of federal advisory committees are classified as special government employees (SGEs). SGEs who are appointed to serve as members of federal advisory committees are subject to the ethical standards of conduct for federal employees. Upon entering the position and annually throughout the term of appointment, the public members appointed to the ACBTSA will be required to complete and submit a report of their financial holdings, including information about consultancies and research grants or contracts, so that an ethics analysis can be conducted to ensure that members are not involved in activities in the private sector that may pose potential conflicts of interest for performance of their official duties for the Committee.

Dated: February 15, 2013.

James J. Berger,

Senior Advisor for Blood Policy.

[FR Doc. 2013–04036 Filed 2–20–13; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for healthfinder.gov Mobile App Challenge; Correction

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of Disease Prevention and Health Promotion published a document in the **Federal Register** of December 6, 2012, announcing the requirements and criteria for the healthfinder.gov Mobile App Challenge. The document contained inaccurate wording in one subsection of the terms and conditions.

FOR FURTHER INFORMATION CONTACT: Silje Lier, MPH, Communication Advisor, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services. Email *Silje.Lier@hhs.gov*; phone 240–453–6113.

Correction

In the **Federal Register** of December 6, 2012, in FR Doc. 2012–29520, on pages 72864–72865, in the second column, correct section 9 under the ''Eligibility Rules'' caption to read:

(9) Each applicant retains title and full ownership in and to their submission. Applicant expressly reserves all intellectual property rights not expressly granted under this agreement. Applicants must agree to irrevocably grant to federal government a non-exclusive, royalty free, perpetual, irrevocable, worldwide license and right, with the right to sublicense, under entrant's intellectual property rights, in the event that an entrant wins, to use, reproduce, publicly perform, publicly display, and freely distribute the submission provided by such entrant (with or without any modifications or derivative works thereto), or any portion or feature thereof, for a period of one (1) year following the date that the challenge winner is selected.

Dated: February 6, 2013.

Don Wright,

Deputy Assistant Secretary for Disease Prevention and Health Promotion, Office of Disease Prevention and Health Promotion.

[FR Doc. 2013–03882 Filed 2–20–13; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting for Software Developers on the Technical Specifications for Common Formats for Patient Safety Data Collection and Event Reporting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Act (at 42 U.S.C. 299b–23) authorizes the collection of this information in a standardized manner, as explained in the related Patient Safety and Quality Improvement Final Rule, 42 CFR Part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. AHRQ coordinates the development of a set of common definitions and reporting formats (Common Formats) that allow health care providers to voluntarily collect and submit standardized information regarding patient safety events. In order to support the Common Formats, AHRQ has provided technical specifications to promote standardization by ensuring that data collected by PSOs and other entities are clinically and electronically comparable. More information on the Common Formats, including the technical specifications, can be obtained through AHRQ's PSO Web site: *http://www.PSO.AHRQ.GOV/index.html.*

The purpose of this notice is to announce a meeting to discuss the Common Formats technical specifications. This meeting is designed as an interactive forum where PSOs and software developers can provide input on these technical specifications. AHRQ especially requests input from those entities which have used AHRQ's technical specifications and implemented, or plan to implement, the formats electronically.

DATES: The meeting will be held from 8:30 a.m. to 4:00 p.m. on Friday, April 26, 2013.

ADDRESSES: The meeting will be held at the John M. Eisenberg Conference Center, Agency for Healthcare Research and Quality, 540 Gaither Road Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.HHS.GOV.*

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Disability Management at (301) 827–4840, no later than April 10, 2013.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act and Patient Safety Rule establish a framework by which doctors, hospitals, skilled nursing facilities, and other health care

providers may voluntarily report information regarding patient safety events and quality of care. Information that is assembled and developed by providers for reporting to PSOs and the information received and analyzed by PSOs—called ''patient safety work product''—is privileged and confidential. Patient safety work product is used to identify events, patterns of care, and unsafe conditions that increase risks and hazards to patients. Definitions and other details about PSOs and patient safety work product are included in the Patient Safety Rule.

The Patient Safety Act and Patient Safety Rule require PSOs, to the extent practical and appropriate, to collect patient safety work product from providers in a standardized manner in order to permit valid comparisons of similar cases among similar providers. The collection of patient safety work product allows the aggregation of sufficient data to identify and address underlying causal factors of patient safety problems. Both the Patient Safety Act and Patient Safety Rule, including any relevant guidance, can be accessed electronically at: *http://www.PSO.AHRQ.GOV/REGULATIONS/REGULATIONS.htm.*

In collaboration with the interagency Federal Patient Safety Workgroup (PSWG), the National Quality Forum (NQF) and the public, AHRQ has developed Common Formats for two settings of care—acute care hospitals and skilled nursing facilities—in order to facilitate standardized data collection. The term ''Common Formats'' refers to the common definitions and reporting formats that allow health care providers to collect and submit standardized information regarding patient safety events. AHRQ's Common Formats include:

- Event descriptions (descriptions of patient safety events and unsafe conditions to be reported),
- Specifications for patient safety aggregate reports and individual event summaries,
- Delineation of data elements to be collected for different types of events to populate the reports,
- A user's guide and quick guide, and
- Technical specifications for electronic data collection and reporting.

AHRQ convenes the PSWG to assist AHRQ with developing and maintaining the Common Formats. The PSWG includes major health agencies within the Department of Health and Human Services (HHS)—the Centers for Disease Control and Prevention, Centers for Medicare & Medicaid Services, Food and Drug Administration, Health Resources and Services Administration, Indian Health Service, National Institutes of Health, National Library of Medicine, Office of the National Coordinator for Health Information Technology, Office of Public Health and Science, and Substance Abuse and Mental Health Services Administration—as well as the Department of Defense and Department of Veterans Affairs.

When developing Common Formats, AHRQ first reviews existing patient safety event reporting systems from a variety of health care organizations. In collaboration with the PSWG and Federal subject matter experts, AHRQ drafts and releases beta versions of the Common Formats for public review and comment.

Through a contract with AHRQ, NQF solicits feedback on the beta (and subsequent) versions of the Common Formats from private sector organizations and individuals. The NQF, a nonprofit organization that focuses on health care quality, then convenes an expert panel to review the comments received and provide feedback to AHRQ. Based upon the expert panel's feedback, AHRQ, in conjunction with the PSWG, further revises the Common Formats.

The technical specifications promote standardization of collected patient safety event information by specifying rules for data collection and submission, as well as by providing guidance for how and when to create data elements, their valid values, conditional and go-to logic, and reports. These specifications will ensure that data collected by PSOs and other entities have comparable clinical meaning.

The technical specifications also provide direction to software developers, so that the Common Formats can be implemented electronically, and to PS0s, so that the Common Formats can be submitted electronically to the PSO Privacy Protection Center (PSOPPC) for data de-identification and transmission to the Network of Patient Safety Databases (NPSD).

Most recently, AHRQ and the PSWG announced the release of Common Formats—Hospital Version 1.2 in the **Federal Register** on April 13, 2012: 77 FR 22322–22324. The Common Format—Readmissions Version 0.1 Beta for analysis of the circumstances surrounding readmissions into acute care hospitals was announced in the **Federal Register** on July 20, 2012: 77 FR 42736–42737.

The Software Developer's meeting will focus on discussion of the implementation and use of Hospital Common Formats 1.1 and 1.2; the technical specifications, which provide direction to software developers that plan to implement the Common Formats electronically; and future development plans for the Common Formats. The technical specifications are a critical component that allow for the aggregation of patient safety event data.

The technical specifications consist of the following:

- Data dictionary—defines data elements and their attributes (data element name, answer values, field length, guide for use, etc.) included in Common Formats;
- clinical document architecture (CDA) implementation guide — provides instructions for developing a file to transmit the Common Formats Patient Safety data from the PSO to the PSO PPC using the Common Formats;
- validation rules and errors document—specifies and defines the validation rules that will be applied to the Common Formats data elements submitted to the PSO PPC;
- Common Formats flow charts—diagrams the valid paths to complete generic and event specific formats (a complete event report);
- local specifications—provides specifications for processing, linking and reporting on events and details specifications for reports; and
- metadata registry—includes descriptive facts about information contained in the data dictionary to illustrate how such data corresponds with similar data elements used by other Federal agencies and standards development organizations [e.g., HL–7, International Standards Organization (ISO)].

Agenda, Registration and Other Information About the Meeting

On Friday, April 26, 2013, a pre-meeting seminar will convene at 8:30 a.m. with focus on data submission, including discussion of technical specifications and aggregate reports. Then, the general meeting will start at 10:00 a.m. with an overview of Federal efforts related to the Common Formats. The agenda will continue with presentations and discussion of implementations of Hospital Common Formats Version 1.1 and 1.2 and next steps for upcoming Common Formats releases. AHRQ staff and contractors will also review database functionality, which is available through the PSO PPC, for PSOs to generate aggregate reports with technical specifications. Finally, the meeting will review data submission both by PSOs and by vendors on behalf of a PSO. Throughout the meeting there will be interactive discussion to allow

meeting participants not only to provide input, but also to respond to the input provided by others. A more specific agenda will be provided to meeting registrants before the meeting.

AHRQ requests that interested persons register with the PSO PPC to participate in the meeting. The contact at the PSO PPC is Mark Baliff who can be reached by telephone at (866) 571–7712 and by email at *SUPPORT@.PSOPPC.ORG.* Additional logistical information for the meeting is also available from the PSO PPC. The meeting space will accommodate approximately 150 participants. Interested persons are encouraged to register as soon as possible for the meeting. Non-registered individuals will be able to attend the meeting in person if space is available.

Prior to the meeting, AHRQ invites review of the technical specifications for Common Formats. The formats can be accessed through AHRQ's PSO Web site at *http://www.pso.AHRQ.GOV/formats/commonfmt.htm.* AHRQ is committed to continuing refinement of the Common Formats, and welcomes questions from prospective meeting participants and interested individuals on the technical specifications. These questions should be emailed to *SUPPORT@PSOPPC.ORG* no later than April 10th, 2013. AHRQ will use the input received at this meeting to further update and refine the Common Formats.

Dated: February 7, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–03911 Filed 2–20–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Delisting for Cause for Independent Data Safety Monitoring, Inc.

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: AHRQ has delisted Independent Data Safety Monitoring, Inc. due to its failure to correct a deficiency. The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on January 15, 2013.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; *Email: psoAHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, Public Law 109–41,42 U.S.C. 299b–21 b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule, 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

Independent Data Safety Monitoring, Inc. failed to respond to a Notice of Preliminary Finding of Deficiency sent by AHRQ pursuant to 42 CFR 3.108(a)(2) and a Notice of Proposed Revocation and Delisting sent by AHRQ pursuant to 42 CFR 3.108(a)(3)(iii)(C) which found that Independent Data Safety Monitoring, Inc. had not complied with its attestation to notify the Secretary if there has been a change in the accuracy of the information it submitted for initial listing, which includes contact information for the PSO (42 CFR 3.102(a)(1)(vi)). Independent Data Safety Monitoring, Inc. did not exercise its opportunity to be heard in writing to respond to the deficiency specified in the notices, and has not provided any evidence of a good faith effort to correct the deficiency. As such, pursuant to 42 CFR 3.108(a)(4)(iii), the notice of proposed revocation became final as a matter of law and the basis for revocation.

Accordingly, AHRQ has revoked the listing of Independent Data Safety Monitoring, Inc., PSO number P0114, effective at 12:00 Midnight ET (2400) on January 15, 2013.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: February 11, 2013.

Carolyn M. Clancy,

Director.

[FR Doc. 2013–03909 Filed 2–20–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Personal Protective Technology for Pesticide Handlers: Stakeholder Meeting

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Pesticide Handler Personal Protective Technology Stakeholder Meeting''.

Stakeholder Meeting Time and Date:

4 p.m.–6 p.m. EDT, March 25, 2013 [Optional]

8 a.m.–6 p.m. EDT, March 26, 2013.

Place: NIOSH, Patriots Plaza 1, 395 E. Street, SW., Room 9000, Washington, DC 20201. This meeting will also be accessible remotely through Live Meeting with advanced registration.

Purpose of the Meeting: This meeting is being held to motivate and educate pesticide handlers and pesticide workers to use best pesticide personal protective equipment practices. This stakeholder meeting allows NIOSH to facilitate focused communication and exchange ideas and solutions between key stakeholder groups. Stakeholder feedback is sought to provide input to future updates of the NIOSH Personal

Protective Technology program research agenda.

Day 1, March 25th, 2013 (4 a.m.–6 p.m.) is optional. This first day includes informal introductions and discussions of partnering opportunities and on-going collaborations.

Day 2, March 26, 2013 (8 a.m.–6 p.m.) will include formal sessions on potential health effects of pesticide exposure, work safety culture, and the use and limitations of storytelling to motivate safer and healthier work practices. Pesticide handlers and pesticide workers will share their personal stories. The afternoon session will include an update from the U.S. Environmental Protection Agency (EPA).

This meeting will also include interactive sessions involving an expert panel in which stakeholders will brainstorm ways to collaboratively promote wide-spread adoption of best practices.

Status: The meeting is open to the public, limited only by the space available. The meeting room accommodates 33 people. This meeting will also be available to participants at 100 locations via Live Meeting. Live Meeting participants can simultaneously listen, speak, and view presentations via a telephone call and Internet connection.

Registration will be accepted on a first come first served basis. Registration to participate in person is available on the NIOSH NPPTL Web site: *www.cdc.gov/niosh/npptl.*

Registration to participate via Live Meeting is available at: *https://www.livemeeting.com/lrs/1100003614/Registration.aspx?pageName=lx5wbfv03vl92kzj.* Preregistration is required for both remote and in-person attendees.

An email confirming registration will be sent from NIOSH and will include details needed to participate. A government-issued photo ID will be required to obtain entrance to Patriots Plaza for those who will attend in-person. Non-US citizens must be cleared in advance. This clearance takes a minimum of 30 days.

FOR FURTHER INFORMATION CONTACT: Dr. Kimberly Faulkner, Epidemiologist, NIOSH NPPTL at *NPPTLEventsPesticide@cdc.gov,* telephone (412) 386–6111, fax (412) 386–6617.

Dated: February 14, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–03925 Filed 2–20–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tracking of the Early Head Start Research and Evaluation Project (EHSRET) Sample.

OMB No.: 0970–0388.

Description: The EHSREP is a longitudinal study originally designed to meet the 1994 requirement for a national evaluation of the Early Head Start program. Child and family assessments were conducted when children were 14 months old, 24 months old, 36 months old, in the spring prior to kindergarten entry, and again in the spring of the sixth year of formal schooling (5th grade for most children). Today, children of the EHSREP are approximately 14–17 years of age (depending on their age at the time of enrollment in the study).

The Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) is proposing to track the children/families who participated in the Early Head Start Research and Evaluation Project (EHSREP) until the children reach 18 years of age. The purpose of tracking these participants is to maintain up-to-date contact information for the children/families in the event that the ACF determines that a future follow-up to the EHSREP will take place.

Respondents: Participants in the Early Head Start Research and Evaluation Project.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Tracking Survey	2533	3	.25	1,899	633
Administrative Records Consent Form	1700	1	.08	136	45

Estimated Total Annual Burden Hours: 678.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA SUBMISSION@OMB.E0P.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2013–03868 Filed 2–20–13; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0118]

Extreme Weather Effects on Medical Device Safety and Quality

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is studying the potential effects of extreme weather and natural disasters on medical device safety and quality. FDA is announcing at this time its request for comments on the topic of extreme weather effects on medical device safety and quality.

DATES: Submit either electronic or written comments by May 10, 2013.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Kelly, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3429, Silver Spring, MD 20993–0002, *Jennifer.Kelly@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Extreme Weather (EW) events and natural disasters can interfere with the manufacturing, shipping, storage, or use of marketed devices, which may lead to concerns with their safety or effectiveness. Examples of such events include hurricanes, floods, lightning storms, earthquakes, and fires.

FDA is holding a meeting of its Device Good Manufacturing Practice Advisory Committee on April 11, 2013, to discuss how to optimize the use of FDA's current regulatory framework to address risks and vulnerabilities to the manufacturing chain resulting from EW conditions. Future steps may be identified to help industry mitigate or better tolerate challenges to the manufacturing chain as a result of EW conditions. FDA is opening this docket to gather additional information to support FDA's efforts to minimize the impact of EW events on the safety, effectiveness, and availability of medical devices. FDA is requesting comments on three scenarios related to medical devices and EW. FDA will use this information to help industry anticipate and prepare for potential challenges from EW situations in the future.

Scenario A. Marketed Devices Already in Use for Patient Care

Medical devices in use for ongoing patient care may be damaged or prevented from functioning by EW conditions. In particular, those medical devices that are essential to ongoing patient safety, treatment, or comfort need to continue functioning even under less than optimal conditions such as electric power or network outages or lack of clean water. Examples include ventilators in hospitals, infusion pumps providing essential medicines at home, and dialysis machines in outpatient centers. The specific risks to patients and the best options for device optimization will depend on the type of product, the expected uses, and the locations of treatment.

Scenario B. New/Unused Devices, Components, or Accessories

Medical devices, components, or accessories may be damaged by EW conditions before use, while in storage, or during shipping. Examples include surgical gloves being held for shipment in a warehouse when it floods or weather interrupting transportation of temperature-sensitive devices.

Scenario C. Damage to Medical Device Manufacturing Sites

Medical device manufacturing facilities or equipment may be damaged during EW, limiting the number or quality of devices that can be produced until repairs are made. EW may also interrupt access to electric power, filtered water, or other necessary materials and utilities, thereby limiting production. Examples include a manufacturing plant damaged by fire, flooding in a storage warehouse, or power interruptions in clean rooms and other controlled environments during the manufacturing process.

FDA is seeking information particularly on the following questions; however, you may respond to any, all, or none of these questions, or you may submit comments on any topic relating to the purposes of this document, regardless of whether a topic is addressed by these questions:

1. Have you experienced any of the scenarios or any other effects of EW on the safety and effectiveness of medical devices?

2. How did you respond to extended periods of electrical or network outages or other events related to EW?

3. In past EW situations, how was communication handled between the manufacturer facility and patients/users about the safe use of products during EW events? How did you provide/receive information about device failures? Do you have any suggestions for complaint handling during these situations?

4. How should industry optimize the design, production, and use of medical devices during and after EW events?

5. How could products be monitored during transport and storage in light of potential interruptions and environmental extremes from EW events?

6. How can manufacturers best prevent or minimize temporary shortages of medical devices when EW may damage existing inventory or impact just-in-time production of critical components?

7. In what ways have EW events impacted your manufacturing site? What were the lessons learned during the recovery process as you returned to production? What changes were made as a result of the EW event?

8. Are there additional steps FDA can take to help industry anticipate, mitigate, or better tolerate the effects of EW?

9. Are there steps that standards development or other professional organizations can take to support industry to optimally prepare for EW events?

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: February 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03993 Filed 2–20–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Device Good Manufacturing Practice Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (Agency or FDA). The meeting will be open to the public.

Name of Committee: Device Good Manufacturing Practice Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 11, 2013, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900.

Contact Person: Natasha Facey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg 66, rm. 1544, Silver Spring, MD 20993–0002, 301–796–5290, *Natasha.Facey@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On April 11, 2013, the committee will discuss the potential effects of extreme weather and natural disasters on medical device manufacturing chain processes and marketed medical device safety and quality. The committee will further discuss how to optimize the use of FDA's current regulatory framework to address risks and vulnerabilities to the manufacturing chain resulting from extreme weather conditions. Future steps may be identified to help industry mitigate or better tolerate challenges to the manufacturing chain as a result of extreme weather conditions. In a separate **Federal Register** notice, FDA is seeking additional broad public input about the effects of extreme weather on medical device safety and quality.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 4, 2013. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 p.m. Oral presentations from industry, professional organizations, and societies that have an interest in this topic will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 27, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 29, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Committee Management Staff, at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 14, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–03963 Filed 2–20–13; 8:45 am]

BILLING CODE 4160–01–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: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—[Extension].

Abstract: Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which

the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula. Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(5)(C) to develop audit guidelines and because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Office of Pharmacy Affairs (OPA) developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

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:

Reporting/Notification requirement	Number of respondents	Responses per respondent	Total responses	Hours/ response	Total burden hours
AUDITS					
Good Faith Resolution[1]	10	1	10	40	400
Audit Notification of Entity[1]	10	1	10	4	40
Audit Workplan[1]	8	1	8	10	80
Audit Report[1]	6	1	6	10	60
Entity Response	6	1	6	8	48
DISPUTE RESOLUTION					
Mediation Request	10	4	40	10	400
Rebuttal	10	1	10	16	160
TOTAL	50		80		1188

[1] Prepared by the manufacturer.

Recordkeeping Burden:

Recordkeeping requirement	Number of recordkeepers	Hours of recordkeeping	Total burden
Dispute Records	50	0.5	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: February 13, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–03912 Filed 2–20–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Demographic/Behavioral Population Science.

Date: March 12, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue NW., Washington, DC 20006.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03855 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to discuss updates and issues related to ASD research and services activities. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open Meeting.

Date: April 9, 2013.

Time: 9:00 a.m. to 5:30 p.m.* Eastern Time * Approximate end time.

Agenda: To discuss updates and issues related to ASD research and services activities.

Place: The National Institute of Mental Health, The Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20852.

Webcast Live: http://videocast.nih.gov/.

Conference Call Access: Dial: 888–843–7184, Access code: 5279679.

Cost: The meeting is free and open to the public.

Registration: Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. For more on registration please visit the IACC Web site at: *www.iacc.hhs.gov/events.*

Deadlines: Notification of intent to present oral comments: Tuesday, March 26, 2013 by 5:00 p.m. ET. Submission of written/electronic statement for oral comments: Tuesday, April 2, 2013 by 5:00 p.m. ET. Submission of written comments: Tuesday, April 2, 2013 by 5:00 p.m. ET.

Access: White Flint Metro (Red Line)—approximately ½ mile walk. On-site parking with parking validation available.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6182A, Bethesda, MD 20892–9669, Phone: 301–443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Please Note: Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5:00 p.m. ET on Tuesday, March 26, 2013, with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral presentation/statement including a brief description of the organization represented by 5:00 p.m. ET on Tuesday, April 2, 2013. Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5:00 p.m. ET on Tuesday, April 2, 2013. The comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. All written statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast or conference call, please send an email to *iacchelpdesk2012@gmail.com* or by phone at (301) 339–3840.

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: February 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03854 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee (IACC) Subcommittee for Basic and Translational Research.

The IACC Subcommittee for Basic and Translational Research will have a conference call on Wednesday, March 6, 2013. The Subcommittee will discuss future subcommittee activities. The meeting will be accessible by conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC) Subcommittee for Basic and Translational Research.

Type of meeting: Conference Call.

Date: March 6, 2013.

Time: 2:00 p.m.–5:00 p.m. *Eastern Time*—Approximate end time.

Agenda: The subcommittee will discuss future subcommittee activities.

Place: Conference call only; No in-person meeting.

Conference Call: Dial: 888–316–9409; Access code: 4311740.

Cost: The conference call is free.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 6182A, Rockville, MD 20852, Phone: (301) 443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public and accessible via conference call. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call, please-email *iacchelpdesk2012@gmail.com* or call the IACC Technical Support Help Line at 301–339–3840.

Accommodations Statement: Individuals who participate by using the conference call and who need special assistance such as captioning or other reasonable accommodations should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

This meeting notice is being published less than 15 days prior to the meeting due to the urgent need for the subcommittee to discuss subcommittee upcoming activities and emerging issues in the autism community.

Schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: February 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03852 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Overflow: Immunology.
Date: March 13, 2013.
Time: 8:00 a.m. to 10:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stem Cell Therapies.
Date: March 13, 2013.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.
Date: March 14–15, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.
Date: March 14–15, 2013.
Time: 8:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marriott Courtyard Long Beach Downtown, 500 East First Street, Long Beach, CA 90802.
Contact Person: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge, Rm 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Drug Development and Therapeutics.
Date: March 14–15, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Topics in Bacterial Pathogenesis.
Date: March 14–15, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Rolf Menzel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.
Date: March 14, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.
Contact Person: Hilary D Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 357–9236, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neuroscience, Cognition and Perception.
Date: March 14–15, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The St. Regis Washington, DC, 923 16th and K Streets NW., Washington, DC 20006.
Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncology.
Date: March 14–15, 2013.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael L Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.
Date: March 14, 2013.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1044, *campdm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.
Date: March 14, 2013.
Time: 11:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: David R Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Skeletal Muscle.
Date: March 14, 2013.
Time: 1:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational Research in Diabetes and Obesity.

Date: March 14, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Chronic Disease, Aging, and Genetics.

Date: March 14, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: George Vogler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, MSC 7770, Bethesda, MD 20892, 301–435–0694, *voglergp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PA–12–139: Pilot and Feasibility Clinical Research Studies in Digestive Diseases and Nutrition.

Date: March 14, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J Perrin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03861 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA—Member Conflict Applications.

Date: March 26, 2013.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch EPRB, NIAAA, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: February 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03856 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Interagency Autism Coordinating Committee (IACC) Subcommittee for Services Research and Policy Subcommittee.

The IACC Subcommittee for Services Research and Policy will have a conference call on Friday, March 8, 2013. The Subcommittee will discuss future subcommittee activities. The meeting will be accessible by conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC) Subcommittee for Services Research and Policy.

Type of meeting: Conference Call.

Date: March 8, 2013.

Time: 2:00 p.m.–4:30 p.m. *Eastern Time*—Approximate end time.

Agenda: The subcommittee will discuss future subcommittee activities.

Place: Conference call only; No in-person meeting.

Conference Call: Dial: 800–619–7592 Access code: 3128406.

Cost: The conference call is free.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 6182A, Rockville, MD 20852, Phone: (301) 443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The meeting will be open to the public and accessible via conference call. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call, please email *iacchelpdesk2012@gmail.com* or call the IACC Technical Support Help Line at 301–339–3840.

Accommodations Statement: Individuals who participate by using the conference call and who need special assistance such as captioning or other reasonable accommodations should submit a request to the Contact Person listed on this notice at least 5 days prior to the meeting.

Schedule subject to change.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: February 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03853 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.

Date: March 15, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Extracellular RNA Biomarkers.

Date: March 15, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Proteomic and Imaging Biomarkers of Brain Diseases.

Date: March 15, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Biology of Neurodegeneration.

Date: March 15, 2013.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cancer Health Disparities/Diversity in Basic Cancer Research.

Date: March 18–19, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic and Skeletal Biology.

Date: March 18, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03858 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 12–048 Prevention and Treatment of Chronic Diseases in Military Populations.

Date: March 6, 2013.

Time: 10:00 p.m. to 11:30 p.m.

Agenda To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03860 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Clinical Trials SEP Review.

Date: March 8, 2013.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for

Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03857 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

AGENCY: National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Notice of changes to the *NIH Guidelines.*

SUMMARY: Concerns about the emergence of a pandemic influenza virus have spurred research with influenza viruses that have the potential to cause a pandemic, such as highly pathogenic avian influenza (HPAI) H5N1 viruses. In 2012, two published studies funded by the National Institutes of Health (NIH) examined genetic changes that would allow HPAI H5N1 viruses to transmit by respiratory droplets among ferrets, an animal model that is often used to predict transmission and pathogenicity of influenza viruses in humans. This research raised concerns regarding the potential for HPAI H5N1 viruses to evolve and lead to a global pandemic. If transmission of a genetically engineered HPAI H5N1 virus among ferrets by respiratory droplets indicates that HPAI H5N1 viruses could evolve to transmit efficiently among humans by respiratory droplets, the public health risk of such a virus would be greater than that of the HPAI H5N1 virus currently circulating in poultry and wild birds, which does not easily transmit among humans. The NIH Recombinant DNA Advisory Committee (RAC) was asked to review the biosafety requirements for recombinant research with HPAI H5N1 virus contained in the October 2011 *NIH Guidelines* and determine whether these conditions and practices are adequate to address research with HPAI H5N1 viruses that transmit among mammals by respiratory droplets, as demonstrated in an appropriate animal model or clinically in humans (referred throughout this document as mammalian-transmissible HPAI H5N1). On January 24, 2013, the RAC held a public meeting, together with influenza experts, as well as experts from the Centers for Disease Control and Prevention (CDC), the Biomedical Advanced Research and Development Authority (BARDA), HHS, the Food and Drug Administration (FDA), the World Health Organization (WHO), and the U.S. Department of Agriculture (USDA). The RAC recommended additional enhancements for research on mammalian-transmissible HPAI H5N1 virus to supplement the biosafety requirements for HPAI H5N1 that are already delineated in the *NIH Guidelines.* These enhancements include changes to the facility and biosafety equipment and practices, including occupational health practices. Based on the recommendations of the RAC, the NIH Office of Biotechnology Activities (OBA) concluded that more specific guidance regarding recombinant research with mammalian-transmissible HPAI H5N1 virus is warranted.

The resulting amendments to the *NIH Guidelines* are ''Minor Actions'' under Section IV–C–1–(b)–2 of the *NIH Guidelines,* and therefore, will be implemented immediately upon publication in the **Federal Register**. While a Minor Action only requires consultation with the RAC chair and one or more RAC members, as necessary, as noted above, these changes were developed after extensive consultation with the full RAC and other experts and were discussed at a public RAC meeting. Publication in the **Federal Register** will inform the scientific and biosafety communities, as well as solicit continued scientific input should revisions be needed in the future.

DATES: The public is encouraged to submit written comments on this action. Comments may be submitted to the OBA in paper or electronic form at the OBA mailing, fax, and email addresses shown below under the heading **FOR FURTHER INFORMATION.** All comments should be submitted by March 25, 2013. All written comments received in response to this notice will be available for public inspection in the NIH OBA, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, MD 20892–7985, weekdays between the hours of 8:30 a.m. and 5 p.m. and may be posted to the OBA's Web site.

FOR FURTHER INFORMATION CONTACT: If you have questions, or require additional information about these changes, please contact the OBA by email at *oba@od.nih.gov,* or telephone at 301–496–9838. Comments may be submitted to the same email address or by fax at 301–496–9839 or by mail to the Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, MSC 7985, Bethesda, Maryland 20892–7985. Background information may be obtained by contacting NIH OBA by email at *oba@od.nih.gov.*

SUPPLEMENTARY INFORMATION

Background

The NIH is a major funder of research on influenza viruses, much of which involves recombinant DNA technology. One important area of research is focused on currently circulating HPAI H5N1 influenza viruses. These avian influenza viruses primarily infect and kill poultry and other susceptible species. Currently, almost all HPAI H5N1 infections in humans have been linked to a person having close contact with infected poultry; the virus does not seem to transmit readily among humans. In the approximately 600 human cases of infection with HPAI H5N1 virus reported to the WHO to date, apparent human-to-human transmission is limited to small, familial clusters (see e.g., Kandun, I.N. *et al.* Three Indonesian Clusters of H5N1 Virus Infection in 2005, N Engl. J. M. 355: 2186–94 (2006)), without sustained chains of transmission in the community. However, the mortality rate for the human infections reported to WHO is almost 60% [*http://www.who.int/influenza/human_animal_interface/EN_GIP_20130201CumulativeNumberH5N1cases.pdf*]. The high mortality rate for these clinical infections is of great concern, especially if such a virus developed the ability to transmit efficiently among humans.

The public health benefits of research on potentially pandemic influenza viruses include identification of genetic changes that contribute to host adaptation, transmissibility, and virulence. Such information can be used to enhance surveillance as well as contribute to the development of vaccine candidates, and identification of targets for antiviral drugs. While research into influenza viral virulence mechanisms and the development of vaccines and antiviral drugs are public health priorities, it is equally important that the research be performed under appropriate biocontainment to protect the health of laboratory personnel and the public.

In 2009, the *NIH Guidelines* were amended to address research with certain influenza viruses with increased pandemic potential, including the reconstructed 1918 H1N1 virus and

HPAI H5N1 viruses of the Goose/Guangdong/96-like H5 lineage, the lineage responsible for human cases to date. Specifically, HPAI H5N1 viruses were classified as Risk Group 3 agents in Appendix B–III–D, i.e., agents that are able to cause serious or lethal disease, but for which preventative and therapeutic agents may be available (high individual risk, low community risk). In making that decision, the OBA noted that for HPAI H5N1 virus, the individual risk of serious or lethal disease is quite high; however, the community risk is currently considered low, as there is only limited evidence of human-to-human transmission.

Since 2009, the *NIH Guidelines* have set containment for HPAI H5N1 virus research at Biosafety Level (BL) 3 with additional enhancements. These enhancements include additional personal protective equipment (e.g., powered air-purifying respirators, protective suits) and practices and procedures (e.g., clothing changes, showers when appropriate) that are not required at BL3 containment. In addition, the *NIH Guidelines* require implementation of specific practices to avoid inadvertent cross-contamination with other influenza viruses being studied in the same laboratory. The *NIH Guidelines* require periodic training for these enhanced practices. To address the potential public health risks of a laboratory exposure, the *NIH Guidelines* also set forth detailed occupational health requirements for research with each virus, including how to respond to known laboratory exposures or to the development of an influenza-like illness in laboratory workers.

Of note, there are other regulatory requirements governing research with HPAI H5N1 virus. The HPAI H5N1 influenza viruses are USDA Select Agents (9 C.F.R. 121.3(b)). The USDA Animal and Plant Health Inspection Service (APHIS) regulates as a Select Agent avian influenza viruses that demonstrate a high pathogenicity in chickens and contain a specific polybasic amino acid motif at the hemagglutinin (HA) gene cleavage site (or have an amino acid sequence at the cleavage site of the HA gene that is comparable to other highly pathogenic avian influenza viruses) (9 CFR 121.3(c)(3)). Avian influenza viruses that demonstrate evidence of attenuation in poultry can be excluded from the Select Agent list pursuant to 9 C.F.R. 121.3(e). The biosafety containment level recommended for most research with HPAI H5N1 viruses that are Select Agents is a minimum of BL3 enhanced or Animal Biosafety Level 3 (ABSL3) enhanced. Influenza viruses containing genes from an HPAI virus, which are not classified as Select Agents by the USDA, are still regulated by that Agency through ''permitting'' regulations (9 CFR part 122) that govern imports and interstate movements of the viruses. In addition, on October 17, 2012, the CDC issued a request for information and comment regarding whether HPAI H5N1 viruses containing an HA from the Goose/Guangdong/1/96 lineage should become an HHS Select Agent (77 FR 63783). Additional containment practices may apply under the Select Agent regulations and the OBA will defer to the requirements of the regulatory agencies on restricted experiments [9 CFR 121.13, 45 CFR 73.13], for example, the introduction of antiviral resistance into HPAI H5N1 influenza viruses.

In light of recent publications [Imai, M. *et al.,* Nature 486:420–428 (2012), Herfst, S. *et al.,* Science 336:1534–1541 (2012)] reporting genetic changes that may enhance the ability of the HPAI H5N1 virus to transmit by respiratory droplets among mammals, the RAC was asked to revisit the biosafety recommendations in the October 2011 *NIH Guidelines* for research with HPAI H5N1 virus to determine whether these are adequate to address recombinant DNA research with mammalian-transmissible HPAI H5N1 viruses. On January 24, 2013, the RAC met in a public meeting, together with influenza experts, as well as experts from the CDC, BARDA, FDA, WHO, and USDA. The RAC concluded that all HPAI H5N1 viruses, including mammalian-transmissible viruses, are RG3 agents because vaccines and antivirals may be available for the treatment and/or prevention of disease. However, because a mammalian-transmissible virus may present increased risk to the community, additional enhancements to the current biosafety containment and practices were recommended.

The OBA accepts the recommendations of the RAC and the *NIH Guidelines* have been amended to include the following enhancements for research with mammalian-transmissible HPAI H5N1 virus:

- Enhancements of BL3 facilities to include (1) HEPA filtration of exhaust air and air handling systems that are designed to avoid airflow reversal during failure, with periodic verification and at least annual verification of the HEPA filters and (2) backup power for critical controls and instrumentation necessary to maintain containment;
- Specific guidance on liquid and animal waste disposal;
- A requirement that antiviral susceptibility be maintained in laboratory strains of mammalian-transmissible HPAI H5N1 influenza unless specifically authorized by the NIH or another regulatory agency, such as the CDC or USDA in their role administering the Select Agent regulations;
- Additional practices to avoid self-contamination or inadvertent release of the viruses by a laboratory worker, including the requirement for two individuals to be in the lab when certain research is being conducted;
- Enhancements to current occupational health requirements: (1) That HPAI H5N1 licensed vaccines should be taken, if available, (2) mandatory collection and storage of serum samples, (3) isolation of workers out of the community, in a medical or other appropriate facility if they have had a potential ''high-risk'' exposure to the virus, or for those who develop influenza-like illness after being in a laboratory in which research with the virus is being conducted, (4) active surveillance programs for influenza-like illness, (5) a prohibition for home supplies of antiviral agents to avoid self-medication without reporting of illness; and
- A requirement that each laboratory worker sign a document acknowledging that (s)he understands and agrees to adhere to biosafety, biosecurity, and occupational health requirements and also agrees to report any potential exposures or accidents, including those made by other individuals in the laboratory.

In addition to these enhancements, all biosafety containment and practices for research with HPAI H5N1 viruses are applicable to research with mammalian-transmissible strains, and additional containment and practices for mammalian-transmissible HPAI H5N1 are specified in the *NIH Guidelines.* Institutions may, of course, decide to adopt the practices required for research with mammalian-transmissible HPAI H5N1 viruses for all research with HPAI H5N1 viruses.

The RAC made several general recommendations to help guide biosafety assessments for research with HPAI H5N1 influenza viruses, as well as research with emerging influenza viruses that have the potential to lead to a human pandemic because the general population is not expected to have immunity to such viruses (e.g., an H9 avian influenza virus). The OBA concurs with these general risk assessment principles and will incorporate these recommendations into a general guidance document for research with influenza, taking into

account any comments received on this notice:

• While acknowledging the limits of any animal model to predict disease in humans accurately, the ferret remains the best model for assessing the pathogenicity and transmissibility of an influenza virus in mammals. Therefore, containment decisions for influenza viruses should be made based on the assumption that transmissibility and pathogenicity in this model are predictive of the disease in humans.

• It is difficult to predict which experiments may generate a mammalian-transmissible virus; however, given the pathogenicity of HPAI H5N1 viruses, if the experimental procedures are such that it could reasonably be anticipated to generate aerosols and create a mammalian transmissible HPAI H5N1 virus, such as serial passaging of an HPAI H5N1 virus in animals, these studies should be conducted at BL3 with all of the enhancements required for research with HPAI H5N1 mammalian-transmissible virus.

• Likewise, while the risk of generating a mammalian-transmissible, pathogenic influenza virus cannot always be predicted at the beginning of the experiment, enhanced BL3 containment and practices should be considered for research with any influenza virus if: (1) The virus has a high potential to cause disease in humans, as demonstrated in the ferret model, (2) there is little or no community immunity (i.e., a virus with a high pandemic risk), and (3) the research is designed to increase the ability of that influenza virus to be transmissible among mammals. A risk assessment will determine whether the most appropriate BL3 enhanced containment practices are those for RG3 influenza viruses, or include, in addition, the specific enhancements for mammalian-transmissible HPAI H5N1 virus.

• One should also consider BL3 enhanced containment and practices for experiments involving any influenza virus for which there is little or no community immunity (high pandemic risk), if the experiment is designed to increase transmissibility in mammals by respiratory droplets, as the ability to transmit efficiently among humans is a critical attribute of pandemic influenza viruses.

Amendments to the NIH Guidelines

In order to ensure that biosafety for research involving mammalian-transmissible HPAI H5N1 virus is addressed appropriately, the OBA has made changes to the following sections of the *NIH Guidelines:*

In order to make it clear that all facility, procedures and practices for research with HPAI H5N1 viruses also apply to research with mammalian-transmissible HPAI H5N1 viruses, Section III–D–7 is amended to include a specific reference to mammalian-transmissible HPAI H5N1 virus.

The Section III–D–7 previously stated:

Section III–D–7. Experiments Involving Influenza Viruses

Experiments with influenza viruses generated by recombinant methods (e.g., generation by reverse genetics of chimeric viruses with reassorted segments, introduction of specific mutations) shall be conducted at the biosafety level containment corresponding to the risk group of the virus that was the source of the majority of segments in the recombinant virus (e.g., experiments with viruses containing a majority of segments from a RG3 virus shall be conducted at BL3). Experiments with influenza viruses containing genes or segments from 1918–1919 H1N1 (1918 H1N1), human H2N2 (1957–1968) and highly pathogenic avian influenza H5N1 strains within the Goose/Guangdong/96-like H5 lineage (HPAI H5N1) shall be conducted at BL3 enhanced containment (see Appendix G–II–C–5, Biosafety Level 3 Enhanced for Research Involving Risk Group 3 Influenza Viruses) unless indicated below.

Section III–D–7 is amended to state:

Section III–D–7. Experiments Involving Influenza Viruses

Experiments with influenza viruses generated by recombinant methods (e.g., generation by reverse genetics of chimeric viruses with reassorted segments, introduction of specific mutations) shall be conducted at the biosafety level containment corresponding to the risk group of the virus that was the source of the majority of segments in the recombinant virus (e.g., experiments with viruses containing a majority of segments from a RG3 virus shall be conducted at BL3). Experiments with influenza viruses containing genes or segments from 1918–1919 H1N1 virus (1918 H1N1), human H2N2 virus (1957–1968) and highly pathogenic avian influenza H5N1 virus strains within the Goose/Guangdong/96-like H5 lineage (HPAI H5N1), including, but not limited to strains of HPAI H5N1 virus that are transmissible among mammals by respiratory droplets, as demonstrated in an appropriate animal model or clinically in humans, (hereinafter referred to as mammalian-transmissible HPAI H5N1 virus), shall be conducted at BL3 enhanced containment (see Appendix G–II–C–5, Biosafety Level 3 Enhanced for Research Involving Risk Group 3 Influenza Viruses) unless indicated below.

Laboratory Practices and Facilities

Appendix G–II–C outlines the requirements for BL3 facilities and containment practices. All of the requirements in G–II–C apply to research with HPAI H5N1 virus. For research with mammalian-transmissible HPAI H5N1 viruses, the OBA is adding additional facility requirements, specific guidelines for waste disposal, and a requirement that baseline serum samples shall be collected.

Appendix G–II–C–2–n previously stated:

Appendix G–II–C–2–n. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal.

As amended:

Appendix G–II–C–2–n. All wastes from laboratories and animal rooms are appropriately decontaminated before disposal. For research involving mammalian-transmissible HPAI H5N1 virus, liquid effluents should be chemically disinfected or heat-treated, or collected and processed in a central effluent decontamination system. Decontamination of shower and toilet effluents is not required, provided appropriate practices and procedures are in place for primary containment of mammalian-transmissible HPAI H5N1 virus. Animal tissues, carcasses, and bedding originating from the animal room must be decontaminated by an effective and validated method (e.g., use of an autoclave) preferably before leaving the containment barrier. If waste must be transported, special practices should be developed for transport of infectious materials to designated alternate location(s) within the facility.

Appendix G–II–C–2–r states that baseline serum samples should be collected for all laboratory and other at-risk personnel and stored. Collection of baseline serum samples is mandatory for personnel performing research with mammalian-transmissible HPAI H5N1 virus. In addition, the OBA has clarified the time-frame for storage of samples.

Appendix G–II–C–2–r previously stated:

Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored. Additional serum specimens may be collected periodically depending on the agents handled or the function of the laboratory.

The revised section is amended to read as follows:

Appendix G–II–C–2–r. Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored in accordance with institutional policy and at least for the time period in which the personnel continues to work with the agent at biosafety level 3 containment. Such samples must be collected and stored for laboratory and other at-risk personnel who will work with mammalian-transmissible HPAI H5N1 virus. Additional serum specimens may be collected periodically depending on the agents handled or the function of the laboratory.

Facilities

Additional facility enhancements are required for research with mammalian-transmissible HPAI H5N1 virus. These enhancements include HEPA filtration of exhaust air and specific requirements for the air handling systems. In addition, facilities working with mammalian-transmissible HPAI H5N1 virus must have backup power for critical controls. These changes are outlined in a revised Appendix G–II–C–4 Laboratory Facilities (BL3).

Specifically, Appendix G–II–C–4-i previously stated:

Appendix G–II–C–4-i. A ducted exhaust air ventilation system is provided. This system creates directional airflow that draws air into the laboratory through the entry area. The exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from the occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the laboratory) is proper. The exhaust air from the laboratory room may be discharged to the outside without being filtered or otherwise treated.

The amended section clarifies that air flow is from uncontaminated spaces for all labs and adds the following additional requirements for research with mammalian-transmissible HPAI H5N1:

Appendix G–II–C–4-i. A ducted exhaust air ventilation system is provided. This system creates directional airflow that draws air into the laboratory from uncontaminated spaces surrounding the laboratory. The exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the laboratory) is proper. The exhaust air from the laboratory room may be discharged to the outside without being filtered or otherwise treated unless research is being conducted with mammalian-transmissible HPAI H5N1 virus. For research with mammalian-transmissible HPAI H5N1 virus, exhaust air must be HEPA filtered and there must be sealed ductwork from the containment barrier to the filter. In addition, the air handling system shall be designed such that under failure conditions, the airflow will not be reversed and periodic verification, with annual verification of the HEPA filters, shall be performed. Finally, backup power shall be available for critical controls and instrumentation necessary to maintain containment.

Appendix G–II–C–5. Biosafety Level 3 Enhanced for Research Involving Risk Group 3 Influenza Viruses

Appendix G–II–C–5 provides additional specific biosafety guidance for research with 1918 H1N1, human H2N2 (1957–1968), and HPAI H5N1 viruses and is intended to supplement the guidance provided in Appendix G, *Physical Containment,* and Appendix Q, *Physical and Biological Containment for Recombinant DNA Research Involving Animals,* which applies to large research animals. All of the practices and occupational health measures described in Appendix G–II–C–5 apply to research with mammalian-transmissible HPAI H5N1 virus. Additional requirements for research with mammalian-transmissible HPAI H5N1 virus are specified. In addition to updating the following sections to include specific recommendations for research with mammalian-transmissible HPAI H5N1 virus, this section will specifically reference the additional practices and facilities requirements for mammalian-transmissible HPAI H5N1 virus discussed above.

Previously Appendix G–II–C–5 was just a title.

Appendix G–II–C–5. Biosafety Level 3 Enhanced for Research Involving Risk Group 3 Influenza Viruses

It is amended to read as follows:

Appendix G–II–C–5. Biosafety Level 3 Enhanced for Research Involving Risk Group 3 Influenza Viruses

(See Appendices G–II–C–2-n, G–II–C–2-r, and G–II–C–4-i for additional guidance for facilities, waste handling, and serum collection for research involving mammalian-transmissible HPAI H5N1 virus.)

Appendix G–II–C–5-a. Containment, Practices, and Training for Research with Risk Group 3 Influenza Viruses (BL3 Enhanced)

Personal Protective Equipment (PPE) and Practices. Research with HPAI H5N1 virus must be conducted using powered air purifying respirators (PAPRs), double gloves, wrap-around gowns, and shoe coverings. The RAC recommended that laboratory workers doing research with mammalian-transmissible strains of HPAI H5N1 virus also (1) Use protective sleeves over the gown when working in a biosafety cabinet, (2) spray or wipe down their personal protective equipment, in particular their PAPRs, with a disinfectant that has activity against influenza virus prior to leaving containment, and (3) always take a shower before leaving the facility. In addition, at least two individuals should be present in the lab at all times while certain research is conducted and removal of PPE, prior to the shower, should be observed. This system is aimed at promoting adherence to all containment practices, including correct removal of PPE to avoid self-contamination. Finally, as part of proper training, the laboratory workers shall sign a document acknowledging their understanding of, and intent to adhere to biosafety, biosecurity, and occupational health requirements and that they agree to report any exposures or accidents, including those that do not involve the worker. The OBA agrees with these recommendations, and they are implemented through amendments to the following sections.

Appendix G–II–C–5-a-(1) previously stated:

Appendix G–II–C–5-a-(1). In addition to standard BL3 practices, the following additional personal protective equipment and practices shall be used:

(1) Powered Air-purifying Respirators (PAPR) are worn.

(2) Street clothes are changed to protective suit (e.g., wrap-back disposable gown, olefin protective suit).

(3) Double gloves are worn.

(4) Appropriate shoe coverings are worn (e.g., double disposable shoe coverings, single disposable shoe coverings if worn with footwear dedicated to BL3 enhanced laboratory use, or impervious boots or shoes of rubber or other suitable material that can be decontaminated).

(5) Showers prior to exiting the laboratory should be considered depending on risk assessment of research activities.

The revised Appendix G–II–C–5-a-(1) now states:

Appendix G–II–C–5-a-(1). In addition to standard BL3 practices, the following additional personal protective equipment and practices shall be used:

(1) Powered Air-purifying Respirators (PAPR) are worn.

(2) Street clothes are changed to protective suit (e.g., wrap-back disposable gown, olefin protective suit).

(3) Double gloves (disposable) are worn. For research with mammalian-transmissible HPAI H5N1 virus, protective sleeves shall be worn over the gown while working in a biosafety cabinet.

(4) Appropriate shoe coverings are worn (e.g., double disposable shoe coverings, single disposable shoe coverings if worn with footwear dedicated to BL3 enhanced laboratory use, or impervious boots or shoes of rubber or other suitable material that can be decontaminated).

(5) Showers prior to exiting the laboratory should be considered depending on risk assessment of research activities, with the exception that showers prior to exiting the laboratory are required for all research with mammalian-transmissible HPAI H5N1 virus, including care of animals infected with mammalian-transmissible HPAI H5N1 virus.

(6) For research with mammalian-transmissible HPAI H5N1 virus, prior to leaving containment, personal protective equipment shall be sprayed or wiped down with a disinfectant that has activity against influenza viruses.

(7) In order to promote adherence to proper practices, including proper removal of personal protective equipment, and reporting of any loss of containment or exposures, at least two individuals should be in the laboratory at all times when research with mammalian-transmissible HPAI H5N1 virus involves experimental procedures with animals or sharps, or when procedures are being conducted whereby the generation of aerosols is reasonably anticipated. Removal of personal protective equipment should be observed.

Appendix G–II–C–5–a–(2) previously stated:

Appendix G–II–C–5–a –(2). As proper training of laboratory workers is an essential component of biosafety, retraining and periodic reassessments (at least annually) in BL3 enhanced practices, especially the proper use of respiratory equipment, such as PAPRs, and clothing changes, is required.

The revised Appendix G–II–C–5–a–(2) now states:

Appendix G–II–C–5–a–(2). As proper training of laboratory workers is an essential component of biosafety, retraining and periodic reassessments (at least annually) in BL3 enhanced practices, especially the proper use of respiratory equipment, such as PAPRs, and clothing changes, are required. For research with mammalian-transmissible HPAI H5N1 virus, laboratory workers shall be required to sign a document acknowledging their understanding of and intent to adhere to biosafety, biosecurity, and occupational health requirements. This document shall include a statement that the laboratory worker agrees to report any exposures or accidents, including those by other individuals in the lab.

Anti-viral susceptibility. Currently, there is one FDA-licensed vaccine against a single clade of HPAI H5N1 virus, although others with adjuvants to induce broader and more prolonged immune responses are in clinical trials. As vaccines are not 100 percent effective and the mortality rate for HPAI H5N1 virus infections in humans is currently close to 60 percent, the RAC concluded that the availability of effective antiviral agents is a critical pre-requisite for conducting this research at BL3 enhanced containment. Therefore, as stated in Section III–D–7–d, any experiment that attempts to create a mammalian-transmissible virus that is also resistant to neuraminidase inhibitors, including oseltamivir, or other effective antivirals agents (including investigational antiviral agents), would need to be reviewed by the appropriate federal authorities, i.e., the NIH Director or Select Agent Program officials. It is also important to maintain antiviral sensitivity throughout experiments with mammalian-transmissible HPAI H5N1 virus. Therefore, the Appendix G–II–C–5–a–(5) has been amended to address this issue.

Appendix G–II–C–5–a–(5) previously stated:

Appendix G–II–C–5–a–(5). Continued susceptibility of the reassortant influenza viruses containing genes and/or segments from 1918 H1N1, HPAI H5N1, and human H2N2 (1957–1968) to antiviral agents shall be established by sequence analysis or suitable biological assays. After manipulation of genes that influence sensitivity to antiviral agents, susceptibility to these agents shall be reconfirmed.

The revised Appendix G–II–C–5–a–(5) now states:

Appendix G–II–C–5–a–(5). Continued susceptibility of the reassortant influenza viruses containing genes and/or segments from 1918 H1N1, HPAI H5N1, and human H2N2 (1957–1968) to antiviral agents shall be established by sequence analysis or suitable biological assays. After manipulation of genes that influence sensitivity to antiviral agents, susceptibility to these agents shall be reconfirmed. If susceptibility to neuraminidase inhibitors or other effective antiviral agents is lost as a result of genetic modification or serial passage of a mammalian-transmissible HPAI H5N1 virus, then any research with this antiviral agent-resistant virus shall be stopped and research shall only proceed after review by the NIH (as outlined in Section III–A–1–a) or the appropriate federal regulatory agency.

Occupational Health Measures. The *NIH Guidelines* contain detailed occupational health requirements for research with HPAI H5N1 virus. Each institution is required to develop an occupational health plan that includes a requirement for seasonal flu vaccine, a plan to report all incidents (i.e., spills, accidents and potential exposures), and procedures to isolate and treat those who develop influenza-like illness (e.g., fever or respiratory illness) or those who have an accident in the laboratory that places them at high risk of exposure to the virus. The RAC made additional recommendations for research with mammalian-transmissible HPAI H5N1 virus to minimize the potential public health risks that could result from a laboratory worker becoming infected with one of these viruses and entering the community. If a laboratory worker has a respiratory or mucous membrane exposure to a mammalian-transmissible HPAI H5N1 virus, that worker shall be isolated in a hospital room or other designated facility away from the public until infection can be ruled out, as is required in the *NIH Guidelines* for research with the 1918 H1N1 influenza virus. The RAC also recommended that if a licensed vaccine against HPAI H5N1 virus is available, and there are no medical contraindications, it should be taken by all laboratory workers performing research with mammalian-transmissible HPAI H5N1, and a post-vaccination serum sample shall be collected for evaluation of immune responses and stored. Antiviral agents for treating potential exposures shall only be provided after medical evaluation; home supplies shall not be provided to avoid self-treatment of influenza-like illness without seeking medical care. Finally, an active surveillance program to identify laboratory workers with influenza-like illness shall be undertaken. To implement these changes, the following sections are amended.

Appendix G–II–C–5–c outlines the requirement for an influenza-specific occupational health plan that needs to be developed prior to work with any

RG3 influenza virus, including HPAI H5N1 virus. In reviewing Appendix G–II–C–5–c, the RAC noted that clarification of the wording of Appendix G–II–C–5–c was needed to define what an incident includes and the time frames for reporting. This change will apply to all research with RG3 influenza viruses, which includes HPAI H5N1 virus, as well as research with 1918 H1N1 and influenza viruses containing the HA from the H2N2 virus that circulated from 1957–1968.

Appendix G–II–C–5–c previously stated:

Appendix G–II–C–5–c: A detailed occupational health plan shall be developed in advance of working with these agents in consultation, as needed, with individuals with the appropriate clinical expertise. In addition, the appropriate public health authority shall be consulted (e.g., local public health officials) on the plan and a mock drill of this plan shall be undertaken periodically. The plan should include an incident reporting system and laboratory workers shall report all incidents.

The revised Appendix G–II–C–5–c states:

Appendix G–II–C–5–c. Occupational Health

A detailed occupational health plan shall be developed in advance of working with these agents in consultation, as needed, with individuals with the appropriate clinical expertise. In addition, the appropriate public health authority shall be consulted (e.g., local public health officials) on the plan and a mock drill of this plan shall be undertaken periodically. The plan shall include a description of the incident reporting system in place for incidents, which includes any loss of containment, spills, accidents, or potential exposures. The plan must specify that all incidents must be reported immediately to the appropriate institutional authorities, and no later than 24 hours to the appropriate public health authorities (e.g., the U.S. Department of Agriculture, the Centers for Disease Control and Prevention, NIH, local and state health authorities).

Appendix G–II–C–5–c–(2) previously stated:

Appendix G–II–C–5–c–(2). A detailed occupational health plan shall include:

(1) Unless there is a medical contraindication to vaccination (e.g., severe egg allergy) annual seasonal influenza vaccination as prerequisite for research to reduce risk of influenza like illness requiring isolation and tests to rule out infection with experimental virus and possible co-infection with circulating influenza strains.

(2) Virus specific vaccination, if available, should be offered.

(3) Reporting of all respiratory symptoms and/or fever (i.e., influenza like illnesses);

(4) 24-hour access to a medical facility that is prepared to implement appropriate respiratory isolation to prevent transmission and is able to provide appropriate antiviral agents. Real-time reverse transcription-polymerase chain reaction (RT–PCR) procedures should be used to discriminate these viruses from currently circulating human influenza viruses. For exposures to viruses containing genes from 1918 H1N1 or the HA gene from human H2N2 (1957–1968), specimens shall be sent to the CDC for testing (RT–PCR and confirmatory sequencing).

The revised Appendix G–II–C–5–(2) now states:

Appendix G–II–C–5–c–(2). A detailed occupational health plan shall include:

(1) Unless there is a medical contraindication to vaccination (e.g., a severe egg allergy), annual seasonal influenza vaccination as a prerequisite for research to reduce the risk of influenza-like illness that would require isolation and testing to rule out infection with experimental viruses and raise the risk for possible co-infection with circulating influenza strains.

(2) Virus-specific vaccination, if available, should be offered and if a licensed HPAI H5N1 vaccine is available, and there are no medical contraindications, laboratory workers performing research with mammalian-transmissible HPAI H5N1 viruses should be vaccinated. A post-vaccination serum sample shall be collected, assessed for immune response, and stored in accordance with institutional policy, at least for the time in which the laboratory worker continues to conduct HPAI H5N1 virus research.

(3) Reporting of all respiratory symptoms and/or fever (i.e., influenza like illnesses). For research involving mammalian-transmissible HPAI H5N1 virus, laboratory workers shall be actively monitored for influenza-like illness (i.e., fever and respiratory symptoms).

(4) 24-hour access to a medical facility that is prepared to implement appropriate respiratory isolation to prevent transmission and is able to provide appropriate antiviral agents. Real-time reverse transcription polymerase chain reaction (RT–PCR) assays should be used for virus detection and to discriminate these viruses from currently circulating human influenza viruses. For exposures to viruses containing genes from 1918 H1N1 or the HA gene from human H2N2 (1957–1968), specimens shall be sent to the CDC for testing (RT–PCR and confirmatory sequencing).

When the *NIH Guidelines* were revised in 2009, Appendix G–II–C–5–c–(2) was added to specify the development of a detailed occupational health plan for research with each RG3 influenza virus. The community risk from an inadvertent laboratory release of an influenza virus containing the HA gene from human H2N2 (1957–1968) or gene from 1918 H1N1, both of which have previously caused pandemics, was expected to be higher than for wild-type HPAI H5N1 virus, which does not efficiently transmit human-to-human. Consequently, the previous occupational health recommendations in the *NIH Guidelines* differed between HPAI H5N1 virus, and H2N2 (1957–1968) or 1918 H1N1 viruses. For 1918 H1N1 and H2N2 (1957–1968) viruses, which were demonstrated to efficiently transmit from person-to-person, isolation outside of the community of a laboratory worker who was potentially infected with one of these viruses was determined to be an important public health measure to prevent a new pandemic with a laboratory-created virus. Home isolation was not considered a reliable public health measure as the laboratory worker could more easily leave their house or other people could enter the house. However, at the time the 2009 revisions were developed, HPAI H5N1 virus could not easily transmit among humans, and therefore, home isolation was permitted after exposure. Because the transmission of an influenza virus by respiratory droplets among ferrets indicates that this virus may also transmit among humans, the RAC recommended that isolation policies for exposures to HPAI H5N1 viruses that are transmissible by respiratory droplets among ferrets be the same as for other RG3 influenza viruses that have the ability to transmit among humans. For the same reasons, home supplies of antivirals shall not be given to laboratory workers engaged in research with mammalian-transmissible HPAI H5N1 virus to prevent self-treatment of influenza-like illness or underreporting of potential exposures. In addition, since the phrase ''antiviral agents for post-exposure prophylaxis'' can be interpreted as recommending a specific approved dose, the term prophylaxis is removed because the appropriate dose is determined by the medical evaluation. The following

changes were made to Appendices G–II–C–5–c–(3), G–II–C–5–c–(4), and G–II–C–5–c–(6).

Appendix G–II–C–5–c–(3) stated:

Appendix G–II–C–5–c–(3). In preparing to perform research with 1918 H1N1, human H2N2 (1957–1968), or HPAI H5N1, principal investigators should develop a clear plan specifying who will be contacted in the event of a potential exposure (during and after work hours) to conduct a risk assessment and make decisions as to the required response, including the need for and extent of isolation of the exposed worker. After any kind of potential exposure, a rapid risk assessment shall be performed by the principal investigator, health and biosafety officials, and subsequent actions should depend on the appraised level of risk of respiratory infection for the individual and potential for transmission to others. A laboratory worker performing research with either an influenza virus containing the HA gene from human H2N2 or an influenza virus containing genes and/or segments from 1918 H1N1, shall be informed in advance that, in the case of a known laboratory exposure with a high risk for infection, e.g., involving the upper or lower respiratory tract or mucous membranes, the laboratory worker will need to be isolated in a predetermined facility, rather than home isolation, until infection can be ruled out by testing (e.g., negative RT–PCR for 1918 H1N1 or human H2N2 (1957–1968)) of appropriately timed specimens. Laboratory workers shall be informed in advance that in the case of a known laboratory exposure to highly pathogenic avian influenza H5N1 strains within the Goose/Guangdong/96-like H5 lineage with high risk for infection, they should be prepared to self isolate (for example at home) until infection can be ruled out by testing (e.g., negative RT–PCR for HPAI H5N1) of appropriately timed specimens. The action taken for other types of exposures should be based on the risk assessment. In addition, based on the risk assessment: (1) Treatment with appropriate antiviral agents shall be initiated, and (2) the appropriate public health authorities shall be notified.

The revised Appendix G–II–C–5–c–(3) now states:

Appendix G–II–C–5–c–(3). In preparing to perform research with 1918 H1N1, human H2N2 (1957–1968), or HPAI H5N1, principal investigators should develop a clear plan specifying who will be contacted in the event of a potential exposure (during and after work hours) to conduct a risk assessment and make decisions as to the required response, including the need for and extent of isolation of the exposed worker. After any kind of potential exposure, a rapid risk assessment shall be performed by the principal investigator, health and biosafety officials, and subsequent actions should depend on the appraised level of risk of respiratory infection for the individual and potential for transmission to others. A laboratory worker performing research with either an influenza virus containing the HA gene from human H2N2 or an influenza virus containing genes and/or segments from 1918 H1N1 or mammalian-transmissible HPAI H5N1 viruses, shall be informed in advance that, in the case of a known laboratory exposure with a high risk for infection, e.g., involving the upper or lower respiratory tract or mucous membranes, the laboratory worker will need to be isolated in a predetermined facility, rather than home isolation, until infection can be ruled out by testing (e.g., negative RT–PCR for 1918 H1N1, human H2N2 (1957–1968), or HPAI H5N1) of appropriately timed specimens. Laboratory workers with a known laboratory exposure with high risk for infection during research with HPAI H5N1 virus strains that are not transmissible among mammals should be prepared to self-isolate (for example at home) until infection can be ruled out by testing (e.g., RT PCR for HPAI H5N1) of appropriately timed specimens. The action taken for other types of exposures should be based on the risk assessment. In addition, based on the risk assessment: (1) Treatment with appropriate antiviral agents shall be initiated, and (2) the appropriate public health authorities shall be notified.

Appendix G–II–C–5–c–(4) is amended to clarify that this section applies to all individuals who enter a laboratory where research with RG3 influenza viruses is being conducted, including trainees and other employees, and not limited to those who have had a specific exposure due to loss of containment. Recognizing this clarification will likely lead to an increase in reporting of minor viral symptoms, we have also clarified that transportation to receive medical treatment and any decision on isolation is to be based on the risk assessment by the individuals identified in the occupational health plan.

Appendix G–II–C–5–c–(4) previously stated:

Appendix G–II–C–5–c–(4). Influenza-like illness. If a laboratory worker, who had recent exposure (within ten days) to influenza viruses containing the human H2N2 HA gene or any gene from the 1918 H1N1 or HPAI H5N1 viruses, or to animals exposed to such viruses, demonstrates symptoms and/or signs of influenza infection (e.g., fever/chills, cough, myalgias, headache), then the lab worker shall report by phone to the supervisor/principal investigator and other individuals identified in the occupational health plan. The laboratory worker shall be transported to a healthcare facility that can provide adequate respiratory isolation, appropriate medical therapy, and testing to determine whether the infection is due to a recombinant influenza virus. The appropriate public health authorities shall be informed whenever a suspected case is isolated.

Appendix G–II–C–5–c–(4) is amended to state:

Appendix G–II–C–5–c–(4). Influenza-like illness. If an individual has entered (within ten days) a laboratory conducting research with influenza viruses containing the human H2N2 HA gene or any gene from the 1918 H1N1 or HPAI H5N1 viruses, or housing animals exposed to such viruses, and the individual demonstrates symptoms and/or signs of influenza infection (e.g., fever/chills, cough, myalgia, headache), then he/she shall report by phone to the supervisor/principal investigator and other individuals identified in the occupational health plan. If needed, the person with influenza-like illness shall be transported to a healthcare facility, under the appropriate isolation conditions, that can provide adequate respiratory isolation, appropriate medical therapy, and testing to determine whether the infection is due to a recombinant influenza virus. The appropriate public health authorities shall be informed whenever a suspected case is isolated.

Appendix G–II–C–5–c–(6) previously stated:

Appendix G–II–C–5–c–(6). Antiviral agents for post-exposure prophylaxis shall be provided only after medical evaluation. Home supplies shall not be provided in advance for research with 1918 H1N1 or influenza viruses containing the HA gene from human H2N2.

The revised G–II–C–5–c–(6) now states:

Appendix G–II–C–5–c–(6). Antiviral agents for an exposure shall be provided only after medical evaluation. Home supplies shall not be provided in advance for research with 1918 H1N1, mammalian-transmissible HPAI H5N1 or influenza viruses containing the HA gene from human H2N2.

Summary of Changes

The following provides the revised language for amended sections discussed above:

Section III–D–7

Experiments with influenza viruses generated by recombinant methods (e.g., generation by reverse genetics of chimeric viruses with reassorted segments, introduction of specific mutations) shall be conducted at the biosafety level containment corresponding to the risk group of the virus that was the source of the majority of segments in the recombinant virus (e.g., experiments with viruses containing a majority of segments from a RG3 virus shall be conducted at BL3). Experiments with influenza viruses containing genes or segments from 1918–1919 H1N1 virus (1918 H1N1), human H2N2 virus (1957–1968) and highly pathogenic avian influenza H5N1 virus strains within the Goose/Guangdong/96-like H5 lineage (HPAI H5N1), including, but not limited to, strains of HPAI H5N1 virus that are transmissible among mammals by respiratory droplets, as demonstrated in an appropriate animal model or clinically in humans (hereinafter referred to as mammalian-transmissible HPAI H5N1 virus), shall be conducted at BL3 enhanced containment (see Appendix G–II–C–5, Biosafety Level 3 Enhanced for Research Involving Risk Group 3 Influenza Viruses) unless indicated below.

Appendix G–II–C–2–n

All wastes from laboratories and animal rooms are appropriately decontaminated before disposal. For research involving mammalian-transmissible HPAI H5N1 virus, liquid effluents should be chemically disinfected or heat-treated, or collected and processed in a central effluent decontamination system. Decontamination of shower and toilet effluents is not required, provided appropriate practices and procedures are in place for primary containment of mammalian-transmissible HPAI H5N1 virus. Animal tissues, carcasses, and bedding originating from the animal room must be decontaminated by an effective and validated method (e.g., use of an autoclave) preferably before leaving the containment barrier. If waste must be transported, special practices should be developed for transport of infectious materials to designated alternate location(s) within the facility.

Appendix G–II–C–2–r

Baseline serum samples for all laboratory and other at-risk personnel should be collected and stored in accordance with institutional policy and at least for the time period in which the personnel continues to work with the agent at biosafety level 3 containment. Such samples must be collected and stored for laboratory and other at risk personnel who will work with mammalian-transmissible HPAI H5N1 virus. Additional serum specimens may be collected periodically depending on the agents handled or the function of the laboratory.

Appendix G–II–C–4–i

A ducted exhaust air ventilation system is provided. This system creates directional airflow that draws air into the laboratory from uncontaminated spaces surrounding the laboratory. The exhaust air is not recirculated to any other area of the building, is discharged to the outside, and is dispersed away from occupied areas and air intakes. Personnel shall verify that the direction of the airflow (into the laboratory) is proper. The exhaust air from the laboratory room may be discharged to the outside without being filtered or otherwise treated unless research is being conducted with mammalian-transmissible HPAI H5N1 virus. For research with mammalian-transmissible HPAI H5N1 virus, exhaust air must be HEPA filtered and there must be sealed ductwork from the containment barrier to the filter. In addition, the air handling system shall be designed such that under failure conditions, the airflow will not be reversed and periodic verification, with annual verification of the HEPA filters, shall be performed. Finally, backup power shall be available for critical controls and instrumentation necessary to maintain containment.

Appendix G–II–C–5. Biosafety Level 3 Enhanced for Research Involving Risk Group 3 Influenza Viruses

(See Appendices G–II–C–2–n, G–II–C–2–r, and G–II–C–4–i for additional guidance for facilities, waste handling, and serum collection for research involving mammalian-transmissible HPAI H5N1 virus.)

Appendix G–II–C–5–a. Containment, Practices, and Training for Research with Risk Group 3 Influenza Viruses (BL3 Enhanced)

Appendix G–II–C–5–a–(1)

In addition to standard BL3 practices, the following additional personal protective equipment and practices shall be used:

(1) Powered Air-purifying Respirators (PAPR) are worn.

(2) Street clothes are changed to protective suit (e.g., wrap-back disposable gown, olefin protective suit).

(3) Double gloves (disposable) are worn. For research with mammalian-transmissible HPAI H5N1 viruses, protective sleeves shall be worn over the gown while working in a biosafety cabinet.

(4) Appropriate shoe coverings are worn (e.g., double disposable shoe coverings, single disposable shoe coverings if worn with footwear dedicated to BL3 enhanced laboratory use, or impervious boots or shoes of rubber or other suitable material that can be decontaminated).

(5) Showers prior to exiting the laboratory should be considered depending on risk assessment of research activities, with the exception that showers prior to exiting the laboratory are required for all research with mammalian-transmissible HPAI H5N1 virus, including care of animals infected with mammalian-transmissible HPAI H5N1 virus.

(6) For research with mammalian-transmissible HPAI H5N1 virus, prior to leaving containment, personal protective equipment shall be sprayed or wiped down with a disinfectant that has activity against influenza viruses.

(7) In order to promote adherence to proper practices, including proper removal of personal protective equipment, and reporting of any loss of containment or exposures, at least two individuals should be in the laboratory at all times when research with mammalian-transmissible HPAI H5N1 virus involves experimental procedures with animals or sharps, or when procedures are being conducted whereby the generation of aerosols is reasonably anticipated. Removal of personal protective equipment should be observed.

Appendix G–II–C–5–a–(2)

As proper training of laboratory workers is an essential component of biosafety, retraining and periodic reassessments (at least annually) in BL3 enhanced practices, especially the proper use of respiratory equipment, such as PAPRs, and clothing changes, are required. For research with mammalian-transmissible HPAI H5N1 virus, laboratory workers shall be required to sign a document acknowledging their understanding of and intent to adhere to biosafety, biosecurity, and occupational health requirements. This document shall include a statement that the laboratory worker agrees to report any exposures or accidents, including those by other individuals in the lab.

Appendix G–II–C–5–a–(5)

Continued susceptibility of the reassortant influenza viruses containing genes and/or segments from 1918 H1N1, HPAI H5N1, and human H2N2 (1957–1968) to antiviral agents shall be established by sequence analysis or suitable biological assays. After manipulation of genes that influence sensitivity to antiviral agents, susceptibility to these agents shall be reconfirmed. If susceptibility to neuraminidase inhibitors or other effective antiviral agents is lost as a result of genetic modification or serial passage of a mammalian-transmissible HPAI H5N1 virus, then any research with this antiviral agent-resistant virus shall be stopped and research shall only proceed after review by the NIH (as outlined in Section III–A–1-a) or the appropriate federal regulatory agency.

Appendix G–II–C–5–c. Occupational Health

A detailed occupational health plan shall be developed in advance of working with these agents in consultation, as needed, with individuals with the appropriate clinical expertise. In addition, the appropriate public health authority shall be consulted (e.g., local public health officials) on the plan and a mock drill of this plan shall be undertaken periodically. The plan shall include a description of the incident reporting system in place for incidents, which includes any loss of containment, spills, accidents, or potential exposures. The plan must specify that all incidents must be reported immediately to the appropriate institutional authorities, and no later than 24 hours to the appropriate public health authorities (e.g., the U.S. Department of Agriculture, the Centers for Disease Control and Prevention, NIH, local and state health authorities).

Appendix G–II–C–5–c–(2)

A detailed occupational health plan shall include:

(1) Unless there is a medical contraindication to vaccination (e.g., a severe egg allergy), annual seasonal influenza vaccination as a prerequisite for research to reduce the risk of influenza-like illness that would require isolation and testing to rule out infection with experimental viruses and raise the risk for possible co-infection with circulating influenza strains.

(2) Virus-specific vaccination, if available, should be offered and if a licensed HPAI H5N1 vaccine is available, and there are no medical contraindications, laboratory workers performing research with mammalian-transmissible HPAI H5N1 virus should be vaccinated. A post-vaccination serum sample shall be collected, assessed for immune response, and stored in accordance with institutional policy, at least for the time in which the laboratory worker continues to conduct HPAI H5N1 virus research.

(3) Reporting of all respiratory symptoms and/or fever (i.e., influenza-like illnesses). For research involving mammalian-transmissible HPAI H5N1 virus, laboratory workers shall be actively monitored for influenza-like illness (i.e., fever and respiratory symptoms).

(4) 24-hour access to a medical facility that is prepared to implement appropriate respiratory isolation to prevent transmission and is able to provide appropriate antiviral agents. Real-time reverse transcription polymerase chain reaction (RT–PCR) assays should be used for virus detection and to discriminate these viruses from currently circulating human influenza viruses. For exposures to viruses containing genes from 1918 H1N1 or the HA gene from human H2N2 (1957–1968), specimens shall be sent to the CDC for testing (RT–PCR and confirmatory sequencing).

Appendix G–II–C–5–c–(3)

In preparing to perform research with 1918 H1N1, human H2N2 (1957–1968), or HPAI H5N1, principal investigators should develop a clear plan specifying who will be contacted in the event of a potential exposure (during and after work hours) to conduct a risk assessment and make decisions as to the required response, including the need for and extent of isolation of the exposed worker. After any kind of potential exposure, a rapid risk assessment shall be performed by the principal investigator, health and biosafety officials, and subsequent actions should depend on the appraised level of risk of respiratory infection for the individual and potential for transmission to others. A laboratory worker performing research with either an influenza virus containing the HA gene from human H2N2 or an influenza virus containing genes and/or segments from 1918 H1N1 or mammalian-transmissible HPAI H5N1 viruses, shall be informed in advance that, in the case of a known laboratory exposure with a high risk for infection, e.g., involving the upper or lower respiratory tract or mucous membranes, the laboratory worker will need to be isolated in a predetermined facility, rather than home isolation, until infection can be ruled out by testing (e.g., negative RT–PCR for 1918 H1N1, human H2N2 (1957–1968), or HPAI H5N1) of appropriately timed specimens. Laboratory workers with a known laboratory exposure with high risk for infection during research with HPAI H5N1 virus strains that are not transmissible among mammals should be prepared to self-isolate (for example at home) until infection can be ruled out by testing (e.g., RT PCR for HPAI H5N1) of appropriately timed specimens. The action taken for other types of exposures should be based on the risk assessment. In addition, based on the risk assessment: (1) Treatment with appropriate antiviral agents shall be initiated, and (2) the appropriate public health authorities shall be notified.

Appendix G–II–C–5–c–(4). Influenza-Like Illness

If an individual has entered (within ten days) a laboratory conducting research with influenza viruses containing the human H2N2 HA gene or any gene from the 1918 H1N1 or HPAI H5N1 viruses, or housing animals exposed to such viruses, and the individual demonstrates symptoms and/or signs of influenza infection (e.g., fever/chills, cough, myalgia, headache), then he/she shall report by phone to the supervisor/principal investigator and other individuals identified in the occupational health plan. If needed, the person with influenza-like illness shall be transported, under the appropriate isolation conditions, to a healthcare facility that can provide adequate respiratory isolation, appropriate medical therapy, and testing to determine whether the infection is due to a recombinant influenza virus. The appropriate public health authorities shall be informed whenever a suspected case is isolated.

Appendix G–II–C–5–c–(6)

Antiviral agents for an exposure shall be provided only after medical evaluation. Home supplies shall not be provided in advance for research with 1918 H1N1, mammalian-transmissible HPAI H5N1 or influenza viruses containing the HA gene from human H2N2.

Dated: February 14, 2013.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2013–03974 Filed 2–20–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0037]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an approval of revisions to the following collection of information: 1625–0086, Great Lakes Pilotage. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before April 22, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–0037] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

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

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek approval of revisions of the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2013–0037], and must be received by April 22, 2013. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2013–0037], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2013–0037'' in the ''Keyword'' box. If you submit your comments by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2013–0037'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual

submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Great Lakes Pilotage.

OMB Control Number: 1625–0086.

Summary: The Office of Great Lakes Pilotage is seeking a revision of OMB's current approval for Great Lakes Pilotage data collection requirements for the three U.S. pilot associations it regulates. This revision would require continued submission of data to an electronic collection system. This system is identified as the Great Lakes Electronic Pilot Management System which will eventually replace the manual paper submissions currently used to collect data on bridge hours, vessel delay, vessel detention, vessel cancellation, vessel movage, pilot travel, revenues, pilot availability, and related data. This revision ensures the required data is available in a timely manner and allows immediate accessibility to data crucial from both an operational and rate-making standpoint. Additionally, this collection adds inclusion of a registration form (CG–4509) required to be completed by all registered and applicant pilots.

Need: To comply with the statutory and regulatory requirements respecting the rate-making and oversight functions imposed upon the agency.

Forms: CG–4509.

Respondents: The three U.S. pilot associations regulated by the Office of Great Lakes Pilotage and members of the public applying to become Great Lakes Registered Pilots.

Frequency: Daily, Weekly, Monthly, Quarterly, Semi-annually, Annually, On Occasion; frequency dictated by marine traffic levels and association staffing.

Burden Estimate: The estimated burden increases to 19 hours a year with the addition of CG–4509 to this collection.

Dated: February 13, 2013.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–03918 Filed 2–20–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK963000–L14300000–ET0000; AA–12484]

Public Land Order No. 7808; Extension of Public Land Order No. 6965; AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the withdrawal created by Public Land Order (PLO) No. 6965 for an additional 20-year period. This extension is necessary to allow the continued protection of the U.S. Forest Service research natural area within the Tongass National Forest, which would otherwise expire on April 14, 2013. The land has been and will remain open to mineral leasing.

DATES: *Effective Date:* April 15, 2013.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7504. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which this withdrawal was first made requires this extension to continue the protection of the Dog Island Research Natural Area within the Tongass National Forest, to maintain a natural ecological complex containing Pacific yew, and to preserve the land for research, science, and educational purposes. The withdrawal extended by this order will expire on April 14, 2033, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6965 (58 FR 19612 (1993)) which withdrew approximately 685 acres of public land from settlement, sale, location, or entry under the public land laws, including the United States mining laws but not from leasing under the mineral leasing laws, to protect the Dog Island Research Natural Area, is hereby extended for an additional 20-year period until April 14, 2033.

Dated: February 13, 2013.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2013–03989 Filed 2–20–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[IDI 35965]

Public Land Order No. 7809; Withdrawal of National Forest System Land for the Settler's Grove of Ancient Cedars Botanical and Recreation Area; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 183.46 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years to protect one of the few remaining stands of old-growth western red cedar trees in the Settler's Grove of Ancient Cedars Botanical and Recreation Area within the Idaho Panhandle National Forest.

DATES: *Effective Date:* February 13, 2013.

FOR FURTHER INFORMATION CONTACT: Scott Bixler, U.S. Forest Service, Region 1, P.O. Box 7669, Missoula, Montana 59807 406–329–3655 or Laura Underhill, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3866. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7-days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This order replaces Public Land Order 6658 (52 FR 36577 (1987)) which expired on September 9, 2007 and withdrew the same land to the United States Forest Service for protection of the Settler's Grove of Ancient Cedars Botanical and Recreation Area.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, for the protection of the Settler's Grove of Ancient Cedars Botanical and Recreation Area:

Idaho Panhandle National Forest

Boise Meridian

T. 50 N., R. 5 E.,
Sec. 4, NW¼NE¼ of lot 1, NW¼ of lot 1, SW¼SW¼ of lot 1, N½SW¼ of lot 1, SE¼NE¼ of lot 2, SE¼ of lot 2, NE¼SW¼NE¼, NW¼SE¼SW¼NE¼, E½NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, SW¼SW¼NE¼, E½SE¼SE¼NW¼, SW¼SE¼SE¼NW¼, SE¼SW¼SE¼NW¼, NW¼NE¼SW¼, NE¼NE¼SW¼, S½NE¼NW¼SW¼, SE¼NW¼NW¼SW¼, NE¼SW¼NW¼SW¼, N½SE¼NW¼SW¼, and W½NW¼NW¼SE¼.
T. 51 N., R. 5 E.,
Sec. 33, S½SE¼NE¼SE¼, SE¼SW¼NE¼SE¼, NE¼SE¼SE¼, E½NW¼SE¼SE¼, W½SE¼SE¼SE¼, SW¼SE¼SE¼, and NE¼SE¼SE¼SE¼;
Sec. 34, SW¼NW¼SW¼, NW¼SW¼SW¼, S½NW¼NW¼SW¼.

The area described contains 183.46 acres in Shoshone County.

2. The withdrawal made by this order does not alter the applicability of the general land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) the Secretary determines that the withdrawal shall be extended.

Dated: February 13, 2013.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2013–03987 Filed 2–20–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Environmental Documents Prepared for Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals by the Gulf of Mexico OCS Region.

SUMMARY: BOEM, in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEAs) and Findings of No Significant Impact (FONSIs). These documents were prepared during the period October 1, 2012, through December 31, 2012, for oil, gas, and mineral-related activities that were proposed in the Gulf of Mexico, and are more specifically described in the Supplementary Information Section of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Attention: Public Information Office (GM 250E), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEM prepares SEAs and FONSIs for certain proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of proposed activities and present BOEM conclusions regarding the significance of those effects. The SEAs are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEM finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/operator	Location	Date
Stone Energy Corporation, Structure Removal, SEA ES/SR 93–043.	East Cameron, Block 64, Lease OCS–00089, located 21 miles from the nearest Louisiana shoreline.	10/2/2012
Apache Corporation, Structure Removal, SEA ES/SR 11–161	South Marsh, Block 58, Lease OCS–G 01194, located 57 miles from the nearest Louisiana shoreline.	10/2/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–273.	Vermilion, Block 131, Lease OCS–G 00775, located 32 miles from the nearest Louisiana shoreline.	10/2/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–255	South Timbalier, Block 205, Lease OCS–G–05612, located 41 miles from the nearest Louisiana shoreline.	10/3/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–265 & 12–266.	Viosca Knoll, Block 204, Lease OCS–G 04921, located 29 miles from the nearest Mississippi shoreline.	10/3/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA R–5670.	Walker Ridge, Block 51, Lease OCS–G 31938, located 153 miles to the nearest Louisiana shoreline.	10/3/2012
Fugro Multi-Client Services, Inc., Geological & Geophysical Survey, SEA L11–017.	Located in the Central Planning Area of the Gulf of Mexico	10/4/2012
TGS–NOPEC Geophysical Co., Geological & Geophysical Survey, SEA L12–027.	Located in the Central Planning Area of the Gulf of Mexico	10/4/2012
Eni US Operating Co. Inc., Exploration Plan, SEA S–7565	Mississippi Canyon, Block 460, Lease OCS–G18245, located 33 miles from the nearest Louisiana shoreline.	10/4/2012
Dynamic Data Services, Inc., Geological & Geophysical Survey, SEA L12–004.	Located in the Western, Central, & Eastern Planning Areas of the Gulf of Mexico.	10/5/2012
Murphy Exploration and Production Company—USA, Exploration Plan, SEA R–5682.	De Soto Canyon, Block 134, Lease OCS–G 23488, located 73 miles from the nearest Louisiana shoreline.	10/9/2012

Activity/operator	Location	Date
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7570.	Keathley Canyon, Block 875, Lease OCS–G 21444, located southeast of Houma, Louisiana, 213 miles from the nearest shoreline in Terrebonne Parish, Louisiana.	10/10/2012
BP Exploration & Production Inc., Development Operations Coordination Document, SEA S–7557.	Mississippi Canyon, Block 383, Lease OCS–G 07937, located 49.5 miles from the nearest Louisiana shoreline.	10/10/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–232,12–233, 12–234, 12–235, & 12–236.	South Pelto, Block 12, Lease OCS–00072, located 7 to 9 miles from the nearest Louisiana shoreline.	10/10/2012
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 12–237, 12–239, & 12–240.	South Pelto, Block 19, Lease OCS–00073, located 7 miles from the nearest Louisiana shoreline.	10/10/2012
Chevron U.S.A. Inc., Geological & Geophysical Survey, SEA L12–015.	Located in the Central Planning Area of the Gulf of Mexico	10/11/2012
PetroQuest Energy, L.L.C., Structure Removal, SEA ES/SR 12–224.	Ship Shoal, Block 72, Lease OCS–00060, located 4 miles from the nearest Louisiana shoreline.	10/11/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–254	South Pelto, Block 2, Lease OCS–G 14532, located 3 miles from the nearest Louisiana shoreline.	10/11/2012
Maritech Resources, Inc., Structure Removal, SEA ES/SR 11–292.	West Cameron, Block 586, Lease OCS–G 02436, located 121 miles from the nearest Louisiana shoreline.	10/11/2012
Exxon Mobil Corporation, Development Operations Coordination Document, SEA N–9639.	Keathley Canyon, Block 964, Lease OCS–G 21451, located 215 miles from the nearest Louisiana shoreline.	10/15/2012
BHP Billiton Petroleum (GOM) Inc., Exploration Plan, SEA R–5669.	DeSoto Canyon, Block 726, Lease OCS–G 32014, located 133 miles from the nearest Louisiana shoreline.	10/16/2012
Chevron U.S.A. Inc., Geological & Geophysical Survey, SEA L12–016.	Located in the Central Planning Area of the Gulf of Mexico	10/16/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–269 & 12–270.	East Cameron, Block 64, Lease OCS–00089, located 20 miles from the nearest Louisiana shoreline.	10/17/2012
Helis Oil & Gas Company, L.L.C., Structure Removal, SEA ES/SR 12–278.	High Island, Block 129, Lease OCS–G 01848, located 28 miles from the nearest Louisiana shoreline.	10/17/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–279.	Vermillion, Block 131, Lease OCS–G 00775, located 33 miles from the nearest Louisiana shoreline.	10/17/2012
Virgin Offshore U.S.A., Inc., Structure Removal, SEA ES/SR 05–114.	East Cameron, Block 2, Lease OCS–G 10605, located 4 miles from the nearest Texas shoreline.	10/18/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–281.	Eugene Island, Block 57, Lease OCS–G 02601, located 6 miles from the nearest Louisiana shoreline.	10/18/2012
Fugro Multi Client Services, Inc., Geological & Geophysical Survey, SEA M12–003.	Located in the Central & Eastern Planning Areas of the Gulf of Mexico.	10/19/2012
Westerngeco LLC, Geological & Geophysical Survey, SEA L12–017.	Located in the Western & Central Planning Area of the Gulf of Mexico, greater than 94 miles from the nearest shoreline.	10/19/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 12–274, 12–275, & 12–276.	Galveston, Block 303, Lease OCS–G 04565, located 12 miles from the nearest Texas shoreline.	10/22/2012
Apache Deepwater LLC, Exploration Plan, SEA N–9649	Green Canyon, Blocks 230 & 274, Lease OCS–G 33233 & OCS–G 33241, located south of Houma, Louisiana, 97 miles from the nearest Louisiana shoreline.	10/22/2012
EP Energy E&P Company, L.P., Structure Removal, SEA ES/SR 06–091A.	South Marsh Island, Block 210, Lease OCS–00310, located 7 miles from the nearest Louisiana shoreline.	10/22/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–282.	Vermilion, Block 131, Lease OCS–G 00775, located 32 miles from the nearest Louisiana shoreline.	10/22/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–277.	Vermillion, Block 122, Lease OCS–G 22620, located 34 miles from the nearest Louisiana shoreline.	10/22/2012
Energy XXI GOM, LLC, Structure Removal, SEA ES/SR 12–280.	West Cameron, Block 132, Lease OCS–G 24712, located 19 miles from the nearest Louisiana shoreline.	10/22/2012
Statoil USA E&P Inc., Exploration Plan, SEA R–5667	Green Canyon, Block 36 & 79, Lease OCS–G 26287 & OCS–G 33816, located south of Louisiana in the Central Planning Area of the Gulf of Mexico.	10/24/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–257.	Vermillion, Block 267, Lease OCS–G 03135, located 71 miles from the nearest Louisiana shoreline.	10/24/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–256.	West Cameron, Block 172, Lease OCS–G 01998, located 25 miles from the nearest Louisiana shoreline.	10/24/2012
Linder Oil Company, A Partnership, Structure Removal, SEA ES/SR 12–268.	West Cameron, Block 168, Lease OCS–G 05283, located 24 miles from the nearest Louisiana shoreline.	10/29/2012
Shell Offshore Inc., Development Operations Coordination Document, SEA R–5434.	Viosca Knoll, Block 956, Lease OCS–G 06896, located south of Mobile, Alabama, 55.5 miles from the nearest Louisiana shoreline.	10/31/2012
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA N–9665.	Mississippi Canyon, Block 258, Lease OCS–G 24066, located south of Plaquemines Parish, Louisiana, 61.8 miles from the nearest Louisiana shoreline.	11/2/2012
Shell Offshore Inc., Geological & Geophysical Survey, SEA L12–029.	Main Pass, Viosca Knoll, Mississippi Canyon & DeSoto Canyon Protractions Areas, located 20 miles from the nearest shoreline in the Central Planning Area of the Gulf of Mexico.	11/5/2012
Noble Energy, Inc., Exploration Plan, SEA R–5704	Mississippi Canyon, Block 698, Lease OCS–G 28022, located 79 miles from the nearest Louisiana shoreline.	11/5/2012
BP Exploration & Production Inc., Exploration Plan, SEA N–9660.	Keathley Canyon, Block 57, Lease OCS–G 25777, located south of Brazoria County, Texas, 184.5 miles from the nearest Texas shoreline.	11/6/2012

Activity/operator	Location	Date
Woodside Energy (USA) Inc., Exploration Plan, SEA S–7534 ..	Walker Ridge, Block 325, Lease OCS–G 32673, located 167 miles from the nearest Louisiana shoreline.	11/7/2012
Shell Offshore Inc., Right-of-Use & Easement, SEA R–5711	Walker Ridge, Block 536, un-leased block in the Central Planning Area.	11/9/2012
GX Technology, Geological & Geophysical Survey, SEA L12–030.	Western & Central Planning Area of the Gulf of Mexico, located 108 miles from the nearest Texas shoreline.	11/14/2012
Statoil Gulf of Mexico LLC, Exploration Plan, SEA N–9666	Alaminos Canyon, Block 380, Lease OCS–G 32954, located east of Port Mansfield, Willacy County, Texas, 162 miles from the nearest Texas shoreline.	11/15/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–267 & 12–272.	Vermillion, Block 46, Lease OCS–00079, located 8 miles from the nearest Louisiana shoreline.	11/15/2012
BP Exploration & Production Inc., Exploration Plan, SEA S–7582.	Green Canyon, Blocks 825, 826, & 829, Leases OCS–G 09981, 09982, & 28100, located south of Terrebonne Parish, Louisiana, 130.7 miles from the nearest Louisiana shoreline.	11/20/2012
Shell Offshore Inc., Development Operations Coordination Document, SEA N–9627.	Mississippi Canyon Blocks 762, 806, & 807, located 53 miles from the nearest Louisiana shoreline.	11/20/2012
ConocoPhillips Company, Exploration Plan, SEA N–9662	Walker Ridge, Blocks 460 & 416, located south of Houma, Louisiana, 171 miles from the nearest shoreline in Terrebonne Parish, Louisiana.	11/20/2012
EMGS Americas, Geological & Geophysical Survey, SEA T12–003.	Alaminos Canyon, Western Planning Area, greater than 10 miles from the nearest shoreline.	11/21/2012
Global Geophysical Services Inc., Geological & Geophysical Survey, SEA L12–028.	Eugene Island, Eugene Island South, & Ship Shoal Areas in the Central Planning Area of the Gulf of Mexico.	11/21/2012
Energy Resource Technology GOM, Inc., Development Operations Coordination Document, SEA S–7556.	Green Canyon, Block 237, Lease OCS–G 15563, located south of Terrebonne Parish, 105 miles from the nearest Louisiana shoreline.	11/26/2012
Chevron U.S.A. Inc., Exploration Plan, SEA N–9667	Keathley Canyon, Block 736, Lease OCS–G 22367, located south of Cameron Parish, Louisiana, 209 miles from the nearest shoreline in Terrebonne Parish.	11/26/2012
Stone Energy Corporation, Structure Removal, SEA ES/SR 12–271.	East Cameron, Block 64, Lease OCS–00089, located 20 miles from the nearest Louisiana shoreline.	11/27/2012
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–185	Eugene Island, Block 371, Lease OCS–G 05525, located 93 miles from the nearest Louisiana shoreline.	11/27/2012
TGS, Geological & Geophysical Survey, SEA L12–034	Central & Eastern Planning Area of the Gulf of Mexico	11/28/2012
Tesla Offshore, LLC, Geological & Geophysical Survey, SEA L12–031.	Eugene Island South Addition & South Marsh Island Addition, Central Planning Area of the Gulf of Mexico, located 50 miles from the nearest shoreline.	12/5/2012
Shell Offshore Inc., Geological & Geophysical Survey, SEA L12–033.	Garden Banks & South Marsh Island in the Central Planning Area of the Gulf of Mexico, located 110 miles from the nearest shoreline.	12/6/2012
Apache Deepwater LLC, Exploration Plan, SEA R–5642	Garden Banks, Block 288, Lease OCS–G 34520, located 128 miles from the nearest shoreline in Vermillion Parish, Louisiana.	12/6/2012
Shell Offshore Inc., Geological & Geophysical Survey, SEA L12–014.	Green Canyon, Block 200, located 80 miles from the nearest Louisiana shoreline.	12/7/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7575.	East Breaks, Blocks 645, 689, & 690, Lease OCS–G 32822, 22295, & 22296, respectively, located south of Brazoria County, Texas, 120 miles from the nearest Texas shoreline.	12/10/2012
Apache Corporation, Development Operations Coordination Document, SEA S–7467.	High Island, Block A–376, Lease OCS–G 02754, located 124 miles from the nearest Louisiana shoreline.	12/10/2012
BP Exploration & Production Inc., Development Operations Coordination Document, SEA R–5519.	Green Canyon, Block 782, Lease OCS–G 15610, located south of Terrebonne Parish, Louisiana, 128.5 miles from the nearest Louisiana shoreline.	12/11/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7585.	Green Canyon, Block 683, Lease OCS–G 18421, located south of Houma, Louisiana, 120 miles from the nearest shoreline in Terrebonne Parish, Louisiana.	12/12/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–285, 12–286, 12–287, 12–288, & 12–289.	Ship Shoal, Block 26, Lease OCS–G 01441, located 6 miles from the nearest Louisiana shoreline.	12/12/2012
Mariner Energy Resources, Inc., Structure Removal, SEA ES/SR 12–291, 12–292, 12–293, 12–294, 12–295, 12–296, & 12–297.	Ship Shoal, Block 26, Lease OCS–G 01441, located 4–5 miles from the nearest Louisiana shoreline.	12/17/2012
Tesla Offshore, LLC, Geological & Geophysical Survey, SEA L12–031MOD.	Eugene Island South Addition & South Marsh Island, located 50 miles from the nearest shoreline.	12/18/2012
Apache Corporation, Structure Removal, SEA ES/SR 12–290	Eugene Island, Block 88, Lease OCS–G 10721, located 25 miles from the nearest Louisiana shoreline.	12/18/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 12–298 & 12–299.	High Island, Block A523, Lease OCS–G 11390 located 92 & 94 miles respectively from the nearest Louisiana shoreline.	12/18/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 11–015A	High Island, Block A523, Lease OCS–G 11390, located 94 miles from the nearest Louisiana shoreline.	12/18/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7587.	Walker Ridge, Block 51, Lease OCS–G 31938, located southwest of Houma, Louisiana, 153 miles from the nearest shoreline in Terrebonne Parish, Louisiana.	12/18/2012

Activity/operator	Location	Date
Anadarko Petroleum Corporation, Development Operations Coordination Document, SEA N–9664.	Lease OCS–G 21444, 21447, & 26771, located south of Terrebonne Parish, Louisiana, 211.9 miles from the nearest Louisiana shoreline.	12/19/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 12–300 & –301.	Mustang Island, Block 739, Lease OCS–G 04064, located 24 miles from the nearest Louisiana shoreline.	12/19/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7589.	Green Canyon, Block 562, Lease OCS–G 11075, located south of Terrebonne Parish, Louisiana, 113 miles from the nearest Louisiana shoreline.	12/20/2012
Shell Offshore Inc., Exploration Plan, SEA N–9670	Mississippi Canyon, Block 721, Lease OCS–G 33171, Block 720, Lease OCS–G 33170, & Block 722, OCS–G 33172, located south of Venice, Louisiana, 49 miles from, the nearest shoreline in Plaquemines Parish, Louisiana.	12/20/2012
Pisces Energy LLC, Structure Removal, SEA ES/SR 12–318 ..	North Padre Island, Block A59, Lease OCS–G 07155, located 34 miles from the nearest Louisiana shoreline.	12/20/2012
Mariner Energy, Inc., Structure Removal, SEA ES/SR 12–284	Ship Shoal, Block 26, Lease OCS–G 01441, located 5 miles from the nearest Louisiana shoreline.	12/20/2012
PetroQuest Energy, L.L.C., Structure Removal, SEA ES/SR 12–261.	Vermilion, Block 287, Lease OCS–G 03137, located 75 miles from the nearest Louisiana shoreline.	12/20/2012
WesternGeco, LLC, Geological & Geophysical Survey, SEA L12–035.	Viosca Knoll, DeSoto Canyon, Lloyd Ridge, & Destin Dome in the Central and Eastern Planning Areas of the Gulf of Mexico.	12/20/2012
Anadarko Petroleum Corporation, Exploration Plan, SEA R–5726.	Walker Ridge, Block 51, Lease OCS–G 31983, located 153 miles from the nearest Louisiana shoreline.	12/20/2012
LLOG Exploration Offshore, L.L.C., Development Operations Coordination Document, SEA S–7563.	Mississippi Canyon, Block 503, Lease OCS–G 27277, located 36 miles from the nearest Louisiana shoreline.	12/21/2012
Taylor Engineering, Inc., Geological & Geophysical Survey, SEA E12–001 & E12–002.	Nearshore sand shoals off Jupiter, Florida, located three miles from the nearest Florida shoreline.	12/21/2012
Exxon Mobil Corporation, Exploration Plan, SEA R–5731	Walker Ridge, Block 674, Lease OCS–G 32699, located 190 miles from the nearest Louisiana shoreline.	12/21/2012

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about the SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEM at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: January 11, 2013.

John L. Rodi,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2013–03994 Filed 2–20–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for our Permanent Regulatory Program Requirements—Standards for Certification of Blasters, has been forwarded to the Office of Management and Budget (OMB) for review and approval. This information collection activity was previously approved by OMB and assigned control number 1029–0080. This information collection request describes the nature of the information collection and its expected burden.

DATES: OMB has up to 60 days to approve or disapprove the information collection requests but may respond after 30 days. Therefore, public comments should be submitted to OMB by March 25, 2013, to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_submission@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0080 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted the request to OMB to renew its approval for the collection of information found at 30 CFR part 850. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0080, and may be found in OSM's regulations at 30 CFR 850.10. Individuals are required to respond to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection was published on November 15, 2012 (77 FR 68148). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 850—Permanent Regulatory Program Requirements—Standards for Certification of Blasters.

OMB Control Number: 1029–0080.

Summary: The information is used to identify and evaluate new blaster certification programs. Part 850 implements Section 719 of the Surface Mining Control and Reclamation Act (SMCRA). Section 719 requires the Secretary of the Interior to issue regulations which provide for each State regulatory authority to train, examine and certify persons for engaging in blasting or use of explosives in surface coal mining operations. Each State that wishes to certify blasters must submit a blasters certification program to OSM for approval.

Bureau Form Numbers: None.

Frequency of Collection: Once.

Description of Respondents: State regulatory authorities and Indian tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 267 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed in **ADDRESSES**. Please refer to control number 1029–0080 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 15, 2013.

Dennis G. Rice,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2013–03960 Filed 2–20–13; 8:45 am]

BILLING CODE 4310–05–P

JUDICIAL CONFERENCE

Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code

AGENCY: Judicial Conference of the United States.

ACTION: Notice.

SUMMARY: Certain dollar amounts in title 11 and title 28, United States Code, are increased.

FOR FURTHER INFORMATION CONTACT: Amanda L. Anderson, Chief, Bankruptcy Judges Division, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1900, or by email at *Bankruptcy_Judges_Division@ao.uscourts.gov.*

SUPPLEMENTARY INFORMATION: Section 104(a) of title 11, United States Code, provides the mechanism for an automatic 3-year adjustment of dollar amounts in certain sections of titles 11 and 28. Public Law 95–598 (1978); Public Law 103–394 (1994); Public Law 109–8 (2005); and Public Law 110–406 (2008). The provision states:

(a) On April 1, 1998, and at each 3-year interval ending April 1 thereafter, each dollar amount in effect under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28 immediately before such April 1 shall be adjusted

(1) To reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(2) To round to the nearest $25 the dollar amount that represents such change.

(b) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the **Federal Register** the dollar amounts that will become effective on such April 1 under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28.

(c) Adjustments made in accordance with subsection (a) shall not apply with respect to cases commenced before the date of such adjustments.

Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11 and title 28, United States Code, as set out in the following chart. These increases do not apply to cases commenced before the effective date of the adjustments, April 1, 2013. Seven Official Bankruptcy Forms (1, 6C, 6E, 7, 10, 22A and 22C) and two Director's Forms (200 and 283) also will be amended to reflect these adjusted dollar amounts.

Dated: February 12, 2013.

Amanda L. Anderson,

Chief, Bankruptcy Judges Division.

28 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
1409(b)—a trustee may commence a proceeding arising in or related to a case to recover:		
(1)—money judgment of or property worth less than	$1,175	$1,250.
(2)—a consumer debt less than	$17,575	$18,675.
(3)—a non consumer debt against a non insider less than.	$11,725	$12,475.
11 U.S.C.		
Section 101(3)—definition of assisted person	$175,750	$186,825.
Section 101(18)—definition of family farmer	$3,792,650 (each time it appears)	$4,031,575 (each time it appears).
101(19A)—definition of family fisherman	$1,757,475 (each time it appears)	$1,868,200 (each time it appears).
101(51D)—definition of small business debtor	$2,343,300 (each time it appears)	$2,490,925 (each time it appears).
Section 109(e)—allowable debt limits for individual filing bankruptcy under chapter 13.	$360,475 (each time it appears) $1,081,400 (each time it appears)	$383,175 (each time it appears) $1,149,525 (each time it appears).
Section 303(b)—minimum aggregate claims needed for the commencement of involuntary chapter 7 or chapter 11 bankruptcy:		
(1)—in paragraph (1)	$14,425	$15,325.
(2)—in paragraph (2)	$14,425	$15,325.
Section 507(a)—priority expenses and claims:		
(1)—in paragraph (4)	$11,725	$12,475.
(2)—in paragraph (5)	$11,725	$12,475.
(3)—in paragraph (6)	$5,775	$6,150.
(4)—in paragraph (7)	$2,600	$2,775.
Section 522(d)—value of property exemptions allowed to the debtor:		
(1)—in paragraph (1)	$21,625	$22,975.
(2)—in paragraph (2)	$3,450	$3,675.
(3)—in paragraph (3)	$550	$575.
	$11,525	$12,250.
(4)—in paragraph (4)	$1,450	$1,550.
(5)—in paragraph (5)	$1,150	$1,225.
	$10,825	$11,500.
(6)—in paragraph (6)	$2,175	$2,300.
(7)—in paragraph (8)	$11,525	$12,250.
(8)—in paragraph (11)(D)	$21,625	$22,975.
522(f)(3)—exception to lien avoidance under certain state laws.	$5,850	$6,225.
522(f)(4)—items excluded from definition of household goods for lien avoidance purposes.	$600 (each time it appears)	$650 (each time it appears).
522(n)—maximum aggregate value of assets in individual retirement accounts exempted.	$1,171,650	$1,245,475.
522(p)—qualified homestead exemption	$146,450	$155,675.
522(q)—state homestead exemption	$146,450	$155,675.
523(a)(2)(C)—exceptions to discharge:		
in subclause (i)(I)—consumer debts, incurred ≤90 days before filing owed to a single creditor in the aggregate.	$600	$650.
in subclause (i)(II)—cash advances incurred ≤70 days before filing in the aggregate.	$875	$925.
541(b)—property of the estate exclusions:		
(1)—in paragraph (5)(C)—education IRA funds in the aggregate.	$5,850	$6,225.
(2)—in paragraph (6)(C)—pre-purchased tuition credits in the aggregate.	$5,850	$6,225.
547(c)(9)—preferences, trustee may not avoid a transfer if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of property is less than.	$5,850	$6,225.
707(b)—dismissal of a case or conversion to a case under chapter 11 or 13 (means test):		
(1)—in paragraph (2)(A)(i)(I)	$7,025	$7,475.
(2)—in paragraph (2)(A)(i)(II)	$11,725	$12,475.
(3)—in paragraph (2)(A)(ii)(IV)	$1,775	$1,875.
(4)—in paragraph (2)(B)(iv)(I)	$7,025	$7,475.
(5)—in paragraph (2)(B)(iv)(II)	$11,725	$12,475.

28 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
11 U.S.C.		
(6)—in paragraph (5)(B)	$1,175	$1,250.
(7)—in paragraph 6(C)	$625	$675.
(8)—in paragraph 7(A)(iii)	$625	$675.
1322(d)—contents of chapter 13 plan, monthly income	$625 (each time it appears)	$675 (each time it appears).
1325(b)—chapter 13 confirmation of plan, disposable income.	$625 (each time it appears)	$675 (each time it appears).
1326(b)(3)—payments to former chapter 7 trustee	$25	$25.

[FR Doc. 2013–03998 Filed 2–20–13; 8:45 am]
BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 13–4]

Brian Earl Cressman, M.D.; Decision and Order

On December 5, 2012, Chief Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached Amended Order Granting the Government's Motion for Summary Disposition and Recommended Decision (hereinafter, Recommended Decision). Therein, the ALJ found that Respondent is no longer authorized under Alabama law to dispense controlled substances and therefore recommended that his DEA Certificate of Registration, BC4785614, be revoked. *See* Recommended Decision at 3–5. Neither party filed exceptions to the Recommended Decision. Having reviewed the entire record, I have decided to adopt the ALJ's Recommended Decision in its entirety including his recommended order. *See Hooper* v. *Holder,* 2012 WL 2020079,*2 (4th Cir. 2012).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BC4785614, issued to Brian Earl Cressman, M.D., be, and it hereby is, revoked. I further order that any pending application of Brian Earl Cressman, M.D., to renew or modify this registration, be, and it hereby is, denied. This Order is effective March 25, 2013.

Dated: February 12, 2013.

Michele M. Leonhart,

Administrator.

Theresa Krause, Esq., for the Government.

Brian Earl Cressman, M.D., pro se, for the Respondent.

Amended Order Granting the Government's Motion for Summary Disposition and Recommended Decision

Chief Administrative Law Judge John J. Mulrooney, II. On October 25, 2012, the Administrator of the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) immediately suspending, and proposing to revoke the DEA Certificate of Registration (COR), Number BC4785614, of Brian Earl Cressman, M.D. (Respondent), pursuant to 21 U.S.C. 824(a)(3) and (4) (2006), because the Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) (2006 & Supp. III 2010). In the OSC/ISO, the Government alleges as grounds for revocation, *inter alia,* that the Respondent is ''without authority to handle controlled substances in the [s]tate of Alabama.'' OSC/ISO at 1.

On November 14, 2012, the DEA Office of Administrative Law Judges (OALJ) received from the Respondent, representing himself, *pro se,* a timely filed request for hearing (Hearing Request). Therein, the Respondent conceded that his Alabama Controlled Substance Certificate (ACSC) was revoked in February of 2012. Resp't Hrng. Req., at 1. The same day, this tribunal issued an order (Briefing Schedule): (1) Directing the Government to ''provide evidence to support the allegation that the Respondent lacks state authority to handle controlled substances'' on or before Wednesday, November 21, 2012; (2) setting a deadline of November 21, 2012 for the Government to file a motion for summary disposition; and (3) setting a deadline of November 30, 2012 for the Respondent to respond to any motion for summary disposition. Briefing Schedule, at 1–2.

On November 20, 2012, the Government filed a Motion for Summary Disposition (''MSD''), seeking: (1) Summary disposition; and (2) a recommendation that ''the Respondent's DEA COR as a practitioner be revoked based on the Respondent's lack of a state license.'' MSD, at 5. A copy of a June 21, 2010 Order issued by the Alabama Board of Medical Examiners revoking the Respondent's ACSC was attached to the MSD. MSD App. A. Additionally, the Government included a printout from the Alabama State Board of Medical Examiners Web site dated November 15, 2012, which lists the status of the Respondent's ACSC as revoked, and also a verification of controlled substances registration, dated November 15, 2012, from the Alabama State Board of Medical Examiners, confirming the revocation. MSD Apps. B, C. The Respondent did not file a response to the Government's motion within the time allowed.

On December 3, 2012, this tribunal issued an ''Order Granting the Government's Unopposed Motion for Summary Disposition and Recommended Decision,'' (Summary Disposition Order/Recommended Decision). On the same day the Summary Disposition Order/Recommended Decision was issued, the Respondent filed with the tribunal an untitled letter (Post Order Letter). This amended order has been issued to incorporate the consideration of the matters set for in the Respondent's Post Order Letter, and supersedes the previously-issued Summary Disposition Order/Recommended Decision in all respects.

In his Post Order Letter, the Respondent represents ''that the Alabama revocation decision, was dismissed in a Montgomery circuit court by the Honorable Judge Hardwick.'' Post Order Letter, at 1. In support of this assertion, the Respondent provided a copy of an August 25, 2010 Order from the Circuit Court of Montgomery County (Hardwick, J.). *Id.* at 2–3. Contrary to the Respondent's assertion, this Order did not dismiss the Alabama Board Order revoking the Respondent's state controlled substance privileges, but stayed the Order ''pending judicial review by the Court of Civil Appeals.'' *Id.* at 3. In a subsequent, published decision, the Alabama Court of Civil

Appeals dismissed the Respondent's appeal of the Alabama Board Order on procedural grounds. *Cressman* v. *Ala. Bd. of Med. Exam'rs,* 72 So. 3d 679 (Ala. Civ. App. 2011). Moreover, as discussed, *supra,* in his Request for Hearing, the Respondent has already conceded that his Alabama controlled substance privileges were ''revoked in Feb[ruary] 2012.'' Resp't Req. for Hrng at 1. Therefore, the Respondent's letter notwithstanding, it is beyond argument that the Respondent does not currently possess authority to handle controlled substances in the State of Alabama, the state of his DEA COR.

In order to revoke a registrant's DEA registration, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e). Once DEA has made its *prima facie* case for revocation of the registrant's DEA COR, the burden of production then shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would not be appropriate. *Morall* v. *DEA,* 412 F.3d 165, 174 (D.C. Cir. 2005); *Humphreys* v. *DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz* v. *U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 FR 72311 (1980).

The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in ''the jurisdiction in which he practices.'' *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''); *see also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). DEA has long held that possession of authority under state law to dispense controlled substances is an essential condition for obtaining and maintaining a DEA registration. *Serenity Café,* 77 FR 35027, 35028 (2012); *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988). Because ''possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration,'' this Agency has consistently held that ''the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority].'' *Roy Chi Lung,* 74 FR 20346, 20347 (2009); *see also Scott Sandarg, D.M.D.,* 74 FR 17528, 174529 (2009); *John B. Freitas, D.O.,* 74 ed. Reg. 17524, 17525 (2009); *Roger A. Rodriguez, M.D.,* 70 FR 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 FR 11661 (2004); *Abraham A. Chaplan, M.D.,* 57 FR 55280 (1992); *see also Harrell E. Robinson,* 74 FR 61370, 61375 (2009).[1] ''[R]evocation is warranted even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail.'' *Kamal Tiwari, M.D.,* 76 FR 71604, 71606, (2011); *see also Bourne Pharmacy, Inc.,* 72 Fed Reg. 18273, 18274 (2007); *Anne Lazar Thorn,* 62 FR 12847 (1997).

Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.,* 48 FR 32887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB* v. *Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971). Thus, it is well-settled that, where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required. *See Jesus R. Juarez, M.D.,* 62 FR 14945 (1997); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993). Here, both parties agree, and the supplied Alabama Board Order and other documentation establish, that the Respondent is without authorization to handle controlled substances in Alabama,[2] the jurisdiction where the Respondent holds the DEA COR that is the subject of this litigation.

Summary disposition of an administrative case is warranted where, as here, ''there is no factual dispute of substance.'' *See Veg-Mix, Inc.,* 832 F.2d 601, 607 (D.C. Cir. 1987) (''an agency may ordinarily dispense with a hearing when no genuine dispute exists'').[3] At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to handle controlled substances in the State of Alabama. Because the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that would provide DEA with the authority to allow the Respondent to continue to hold his COR. In view of this determination, it is unnecessary to address the remaining allegations contained in the OSC/ISO.

Accordingly, I hereby

Grant the Government's Motion for Summary Disposition; and *recommend* that the Respondent's DEA registration be *revoked* forthwith and any pending applications for renewal be *denied.*

Dated: December 5, 2012.

John J. Mulrooney, II,

Chief Administrative Law Judge.

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BILLING CODE 4410–09–P

[1] *But see* 21 U.S.C. 824(a)(3) (''A registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance *may* be suspended or revoked by the Attorney General upon a finding that the registrant * * * has had his State license or registration suspended, revoked, or denied by competent State authority. * * *'') (emphasis added).

[2] The Respondent's representation that he has secured employment in Texas is of no moment here. *See Shahid Musud Siddiqui,* M.D., 61 FR 14818 (1996) (a registrant's controlled substance privileges in a state outside the state of his DEA registration is irrelevant).

[3] Even assuming *arguendo* the possibility that the Respondent's state controlled substances privileges could be reinstated, summary disposition would still be warranted because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,'' *Rodriguez,* 70 FR at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. *Michael G. Dolin, M.D.,* 65 FR 5661, 5662 (2000).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–10]

John V. Scalera; Decision and Order

On November 17, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to John V. Scalera, M.D. (hereinafter, Respondent), of Northfield, New Jersey. The Show Cause Order proposed the denial of Respondent's application for a DEA Certificate of Registration as a practitioner, on the ground that his ''registration would be inconsistent with the public interest.'' ALJ Ex. 1, at 1.

The Show Cause Order specifically alleged that Respondent had previously held a DEA registration, which, on February 23, 2009, he voluntarily surrendered for cause. *Id.* The Order alleged that Respondent had written

prescriptions in the name of his deceased mother-in-law for oxycodone and Percocet, both of which are schedule II controlled substances, which he personally filled ''at numerous pharmacies.'' *Id.* The Order further alleged that this conduct had occurred since March 4, 2003, and was in violation of 21 U.S.C. 841(a) and state law. *Id.*

Next, the Show Cause Order alleged that ''[f]rom June 3 * * * through July 11, 2009,'' Respondent had written ''at least nine prescriptions for [t]ramadol, or its trade name Ultram, in the name of [his] daughter,'' and that he ''did not conduct an examination which was properly documented in her patient record in violation of'' the New Jersey Administrative Code. *Id.* at 2. The Order further alleged that he had ''personally filled these prescriptions at * * * five different pharmacies'' and had written ''most, if not all, of [them] to support [his] drug habit.'' *Id.* The Order then alleged that this conduct violated various provisions of New Jersey law. *Id.*

Finally, the Show Cause Order alleged that ''[o]n June 16, 2009, an employee of [Respondent's] office called in a prescription for [t]emazepam, a [s]chedule IV controlled substance, in the name of [his] daughter using'' the DEA number he had previously surrendered. *Id.* The Order further alleged that this prescription ''was refilled on July 14, 2009[,]'' and that Respondent's ''prescribing of this controlled substance'' violated 21 U.S.C. 822 and 841(a) and 21 CFR 1301.11 and 1301.13. *Id.*

Respondent requested a hearing on the allegations and the matter was placed on the docket of the Office of Administrative Law Judges (ALJ). Thereafter, an ALJ proceeded to conduct pre-hearing procedures, during which the Government raised additional allegations that following the voluntary surrender of his registration, Respondent issued prescriptions and hospital orders for controlled substances. More specifically, the Government alleged that Respondent: (1) Issued four prescriptions for diazepam, a schedule IV controlled substance, in the name of his wife, ''which were filled from March 11 * * * through June 17, 2009''; (2) issued at least nine prescriptions for Androgel (testosterone), a schedule III controlled substance, in both his own name and that of another person, which ''were filled from July 16, 2009 through April 19, 2010''; 3) issued ''[a]t least ten prescriptions for [t]emazepam * * * in the names of [his] daughter and [his former] son-in law, [which] were filled from March 18 * * * through May 24, 2009''; and 4) ''continued to issue orders for controlled substances [including morphine, hydromorphone, oxycodone, hydrocodone, meperidine, alprazolam, clonazepam, and zolpidem] for patients he was treating at AtlantiCare Regional Medical Center.'' ALJ Ex. 7, at 1–2. The Government further alleged that Respondent's conduct violated 21 U.S.C. 841(a)(1) and 843(a)(2) & (3). *Id.* at 2.

On May 3–5, 2011, the ALJ conducted a hearing at which both parties called witnesses to testify and submitted various exhibits into the record. Following the hearing, both parties submitted briefs containing their proposed findings of fact and conclusions of law.

Thereafter, the ALJ issued her recommended decision. Therein, the ALJ applied the five public interest factors and found that while the ''[d]enial of the Respondent's application can be justified by this record,'' recommended that ''a less severe action be taken in this case'' and that Respondent be granted a new registration subject to various conditions. ALJ at 28.

With respect to factor one—the recommendation of the State licensing board—the ALJ noted that the board had elected not to take ''adverse action'' against Respondent upon learning that he was writing tramadol prescriptions for both himself and his daughter and had ordered him ''to cease all self-prescribing and prescribing for his daughter's pain issues'' but had otherwise placed no restrictions on his medical practice. *Id.* at 23. The ALJ further noted that the Board was actively monitoring Respondent's recovery from drug addiction, that Respondent was required to participate in drug screening and that if Respondent had an ''illegitimate positive urine test result,'' his license was subject to suspension. *Id.* The ALJ thus concluded ''that the Board's recommendation, in light of the overlapping facts it considered, weighs in favor of the Respondent's registration.[1]'' ALJ at 23–24.

Next, the ALJ considered factors two and four—the applicant's experience in dispensing controlled substances and compliance with applicable laws related to controlled substances. *Id.* at 24–26. Here, the ALJ found that prior to surrendering his registration in February 2009, Respondent wrote prescriptions for controlled substances in the name of his deceased mother-in-law for his own use. *Id.* at 24. Moreover, the ALJ found that following the surrender of his registration, Respondent prescribed testosterone to both himself and one of his patients. *Id.*

The ALJ further found that following the surrender of his registration, Respondent wrote hospital orders for controlled substances for inpatients that he was treating. *Id.* Regarding these violations, the ALJ further noted that ''[w]hen asked if he had consciously violated his lack of DEA registration, unfortunately the Respondent denied that violation * * * explain[ing] that he thought he was acting under the auspices of the hospital.'' *Id.* at 24–25.

Finally, the ALJ found that ''Respondent failed to adequately supervise his staff and their placement of phone-in and fax-in prescriptions for controlled substances.'' *Id.* at 25. While the ALJ found that ''[t]he majority of these prescriptions were initially phoned in while the Respondent was receiving inpatient treatment'' and ''it credible that [he] did not place phone-in orders for controlled substances during that time,'' she further found that he ''left his prescription pads with his controlled substances registration number at the office during his absence.'' *Id.* Noting that Respondent's failure to safeguard his registration ''is not conduct indicative of a responsible registrant,'' as well as Agency precedent that ''[w]rongful conduct by the registrant's agent is imputed to the registrant,'' the ALJ concluded that he was responsible for the phoned and faxed-in prescriptions. *Id.* The ALJ thus held that factors two and four provided grounds to deny Respondent's application.

As for factor five—such other conduct which may threaten public health and safety—the ALJ cited several findings. More specifically, the ALJ noted Respondent's history of drug addiction which included two relapses, ''his pattern of prescribing medications for family members and then consuming them himself [which] continued with [his] prescribing of [t]ramadol for his daughter and then consuming some of the medication himself,'' and his having lied to a DEA agent when he denied that he was consuming the tramadol which he prescribed for his daughter. *Id.* at 26. The ALJ concluded that this conduct ''is not consistent with the responsibilities of a DEA registrant.'' *Id.*

However, the ALJ then noted Respondent had presented evidence of mitigating circumstances. This evidence included that he was actively participating in his recovery, and that a

[1] The ALJ also found that Respondent has not been convicted of any offense related to the handling of controlled substances (factor three). ALJ at 25–26.

treating professional with the State's Professional Assistance Program (PAP), who has worked with him for two years, had credibly testified that Respondent is in ''sustained full remission.'' *Id.* at 27.

In addition, the ALJ found that Respondent acknowledged his wrongdoing in prescribing testosterone. *Id.* Finally, the ALJ found that Respondent had provided various assurances of his future compliance including that ''he would no longer allow his staff to phone in or fax in prescriptions for controlled substances'' and that ''his daughter would no longer work in his office.'' *Id.* Also, Respondent acknowledged that DEA ''might want to obtain more oversight of the Respondent's handling of controlled substances.'' *Id.*

The ALJ thus recommended that Respondent be granted a restricted registration. The Government filed exceptions to the ALJ's decision and Respondent filed a response to the exceptions. Thereafter, the record was forwarded to my office for Final Agency Action.

Having considered the entire record including the parties' submissions and the ALJ's recommended decision, I agree with the ALJ's conclusion that grounds exist to deny Respondent's application. However, I disagree with the ALJ's recommendation that I grant Respondent's application because he has failed to acknowledge his misconduct with respect to most of the violations proved on this record and failed to demonstrate that he can be entrusted with a new registration. I make the following findings of fact.

Findings

Respondent is a medical doctor who is board certified in urology. RX 3, at 2. Respondent has been licensed by the New Jersey State Board of Medical Examiners since 1981; Respondent currently holds an active license. *Id.*

Respondent formerly held a DEA Certificate of Registration, which authorized him to dispense controlled substances as a practitioner. GX 9. However, on February 20, 2009, DEA Diversion Investigators (DIs) interviewed Respondent regarding information that he was writing prescriptions in the name of his deceased mother-in-law (who had died in May 2002) for Percocet and Roxicodone, both of which are schedule II narcotic controlled substances which contain oxycodone. GX 18, at 2; GXs 4 and 8. According to the evidence, Respondent began writing these prescriptions on approximately March 4, 2003 and continued doing so until shortly before the interview. GX 18, at 2; GX 4. During the interview, Respondent admitted that he wrote the prescriptions to obtain the narcotics for his own use. GX 18, at 2. Respondent denied selling or giving the drugs to anyone else. *Id.*

During the interview, Respondent executed a voluntary surrender form (DEA–104) for his DEA registration. *Id.; see also* GX 9. Among other things, the form stated: ''I understand that I will not be permitted to order, manufacture, distribute, possess, dispense, administer, prescribe, or engage in any other controlled substances activities whatever, until such time as I am again properly registered.'' GX 9. On or about June 3, 2009, Respondent submitted an application for a new registration. GX 18, at 2.

On March 2, 2009, Respondent re-entered the ARP [2] with a diagnosis of opiate dependence.[3] RX 8, at 5. According to a follow-up report, Respondent had previously been in the ARP but ''had relapsed into the use of Oxycodone and has been unable to discontinue use.'' *Id.* Respondent ''was advised to stop practice[ing] immediately'' and was ''referred to inpatient treatment at Behavioral Health of the Palm Beaches.'' *Id.*

Respondent was an in-patient at Behavioral Health of the Palm Beaches ''from 3/2/09 till 4/3/09.'' RX 11, at 1. During the initial phase of this treatment, Respondent was unable to make telephone calls. Tr. 385. Moreover, while thereafter Respondent was allowed to make phone calls, any calls would have been monitored. *Id.*

Respondent successfully completed the inpatient treatment and was discharged. Tr. 255, RX 11, at 1. Thereafter, Respondent has been involved in weekly 12-step recovery meetings, sessions with a psychologist, meetings with both a Professional Assistance Program (PAP) monitor (every other month) and the program's chairman (once a quarter), and random urine drug screens (UDSs). RX 11, at 1; RX 8, at 3. For the first year following the completion of his inpatient treatment, Respondent was subject to twice weekly UDSs, followed by weekly UDSs for the second year, and is now subject to twice-monthly screening. RX 11, at 1. Respondent has not tested positive for any non-prescribed drug, but has tested positive for tramadol. RX 13. Moreover, according to the Assistant Director of the PAP, Respondent is in ''sustained full remission.'' Tr. 388.

Following the receipt of Respondent's application, DEA DIs received information from a pharmacist that Respondent was writing prescriptions for tramadol [4] in the name of his daughter; however, Respondent brought the prescriptions to the pharmacy and filled them. GX 18, at 3. Making inquiries to other area pharmacies, the DIs determined that in one six-week period during June and July 2009, Respondent had written ten tramadol prescriptions in his daughter's name for a total of 810 dosage units; the prescriptions were filled at six different pharmacies. *Id.* at 3; *see also* GX 11.[5]

On July 21, 2009, two DIs and a State Investigator met with Respondent at his office and questioned him about the tramadol prescriptions. *Id.* at 4. During the interview, Respondent admitted that he had written the prescriptions for his daughter claiming they were for an injury; but while Respondent had a patient file for his daughter, the file ''did not show his prescribing of any tramadol to her.'' *Id.* Respondent further admitted that he had picked up the prescriptions at the pharmacies but said he did so routinely. *Id.*

While she was still at Respondent's office, the DI called Respondent's daughter who stated that she had received only a single tramadol prescription from her father which she had refilled two times. *Id.* Upon being told by the DI that his daughter had ''only confirmed receipt of one of the numerous [t]ramadol prescriptions in question,'' Respondent ''stated that his daughter must be mistaken and that she

[2] The ''ARP'' or ''Alternative Resolution Program'' is a program established ''for those subject to Board jurisdiction who are suffering from chemical dependencies and other impairments which shall permit such licensees to disclose their status to an entity which would allow for confidential oversight.'' N.J. Admin. Code 13:35–11–1.

[3] Respondent had previously entered the ARP on May 21, 1997 as ''a self-referral * * * because of [his] intermittent use of codeine-containing cough syrups over the course of approximately eight years and [his] consuming approximately a pint a day.'' RX 8, at 13. Respondent also testified that he had been enrolled in the Professional Assistance Program from 1978 to either 1983 or 1985. Tr. 253. After giving this testimony, Respondent was asked ''[w]ere there other times that you were enrolled as well?'' *Id.* Respondent answered ''no,'' *id.,* notwithstanding the other documentary evidence establishing that he enrolled in the program in May 1997.

[4] While tramadol (ULTRAM) is not a controlled substance, the FDA now requires that its label include the following statement:

ULTRAM may induce psychic and physical dependence of the morphine-type (μ-opioid). Dependence and abuse, including drug-seeking behavior and taking illicit actions to obtain the drug are not limited to those patients with prior history of opioid dependence. The risk in patients with substance abuse has been observed to be higher. ULTRAM is associated with craving and tolerance development. Withdrawal symptoms may occur if ULTRAM is discontinued abruptly.

GX 16, at 1.

[5] Many of the prescriptions include the notation ''PRN Pain.'' GX 11.

received all of the prescriptions he wrote for her.'' *Id.* at 5. Respondent further maintained that ''he did not ingest any of the [t]ramadol himself.'' *Id.* Respondent ''stated that he would not write any more [t]ramadol prescriptions for his family members'' and reiterated that he was not diverting the drug for himself. *Id.*

Thereafter, the DI notified Dr. Baxter, the PAP's Executive Medical Director regarding Respondent's use of tramadol. *Id.* The Executive Director told the DI that Respondent needed to get permission from the PAP to be prescribed tramadol and that he would speak with Respondent. *Id.* In a subsequent phone conversation, the Executive Director told the DI that Respondent had ''admitted that he had used the [t]ramadol that he obtained by writing prescriptions in his daughter's name.'' *Id.* However, at the hearing, Respondent testified that while he picked up some of the tramadol prescriptions he issued for his daughter, he ''never used [t]ramadol written in [his] daughter's name.'' Tr. 323.

On July 31, 2009, Dr. Baxter wrote a letter to the Executive Director of the State Board of Medical Examiners. RX 8, at 16. Therein, Dr. Baxter reported that he had confronted Respondent about his writing tramadol prescriptions in his daughter's name and his positive UDSs for tramadol. *Id.* Dr. Baxter wrote that Respondent had stated ''that he 'did not know that he could not use [t]ramadol since it was not a controlled substance.''' *Id.* Dr. Baxter further wrote that Respondent's daughter had ''initially confirmed that he had written her one prescription and later said that there were more'' and that Respondent ''dispute[s] the number of prescriptions that the DEA reported.'' *Id.* Dr. Baxter also wrote that he ''admonished [Respondent] for self-prescribing'' and that Respondent was told ''to get his treating physician . . . to write any future prescriptions.'' *Id.* Finally, Dr. Baxter wrote that Respondent had yet to start therapy with a psychologist and that he was instructed to do so ''immediately.'' *Id.*

Several weeks later, the DI received information from a pharmacy that Respondent was receiving tramadol prescriptions from two different physicians (Dr. M. & Dr. C.).[6] GX 18, at 5–6. In his testimony, Respondent acknowledged that he had received tramadol prescriptions from both Dr. C. and Dr. M. Tr. 259–64. According to Respondent, Dr. C. is an orthopedic surgeon who treated him for a back injury he suffered in a January 2008 motor vehicle accident and who had prescribed the tramadol to him to treat his back pain. *Id.* at 259–60, 262, 316. Respondent also testified that eight months after the accident, he was walking with a cane and tripped, breaking his hip, thus requiring hip replacement surgery. *Id.* at 317; RX 11, at 1. Respondent testified that Dr. M. was treating him for his hip and prescribed the tramadol for that purpose.[7] *Id.* at 263–64.

On September 23, 2009, the DIs went to Respondent's office to ask him to withdraw his application. GX 18, at 6. Respondent declined to do so and again stated that he had not used any of the tramadol he prescribed for his daughter. *Id.* Respondent's daughter was also present and stated that she was now receiving tramadol from another physician, and that she was ''trying to get off of Percocet.'' *Id.*

On December 14, 2009, the DIs, accompanied by the Resident Agent in Charge, again met with Respondent at the local DEA office. *Id.* During this interview, Respondent was asked ''if the Percocet he previously diverted under [his late mother-in-law's name] was for himself or his daughter?'' *Id.* at 7. Respondent stated ''that 60 percent was for him, and 30 percent was for his daughter, but * * * then recanted and said that all of the Percocet he diverted was for himself.'' *Id.* Respondent then stated that he had misunderstood the question and that the above percentages referred to the tramadol prescriptions he had written. *Id.* As found above, in the July 21 as well as September 23 interviews, Respondent had denied ingesting any of the tramadol. *Id.* at 5–6. Moreover, at the hearing, Respondent testified that when the DI asked him whether he had diverted the tramadol prescriptions issued in his daughter's name, his ''answer was why would I divert something like that when I get it from my own doctor.'' Tr. 304. And when asked if he had admitted to Dr. Baxter (the PAP Medical Director) that he had used some of the tramadol obtained from the prescriptions he issued in his daughter's name, Respondent testified: ''I never used [t]ramadol written in my daughter's name.'' *Id.* at 323. However, as did the ALJ, I find that Respondent wrote prescriptions in his daughter's name for tramadol to obtain the drug for his personal use. ALJ at 10.

During the December 2009 interview, the DI asked Respondent whether his daughter had a drug problem; Respondent stated '''yes''' but that ''she was doing better.'' GX 18, at 7. Respondent admitted that he had not previously told investigators about his daughter's drug problem and stated that ''he did not realize how bad his daughter's problem was until he got out of drug rehabilitation himself and became sober.'' *Id.* Respondent further stated that he had prescribed tramadol for his daughter to help her get off of Percocet. *Id.* However, previously, Respondent had stated that he had prescribed the tramadol to her for an injury. *Id.* One of the DIs then told Respondent that he was not authorized to prescribe controlled substances for addiction treatment.[8] *Id.*

Several days later, the DI and a Special Agent went to a Rite Aid pharmacy in Northfield, New Jersey and spoke with the pharmacist about two prescriptions for temazepam which were authorized for Respondent's daughter. *Id.* at 8. The pharmacist stated

[6] According to the DI's affidavit, she met with one of the physicians, Dr. M., who acknowledged writing a prescription for 200 dosage units because Respondent claimed he was having insurance issues; Dr. M. further stated that he did not know that Respondent was also seeing another physician. GX 18, at 6. *Id.* The DI then called Dr. C., who confirmed that Respondent was his patient and that he had written him a prescription for tramadol. *Id.* The DI's statement does not address whether she asked Dr. C. if he knew Respondent was being treated by Dr. M. *Id.*

While Dr. M.'s statement, which apparently was unsworn, that he had written a prescription for 200 dosage units is corroborated by other evidence, *see* GX 14, there is no evidence corroborating his statement that he did not know that Respondent was seeing another physician. Dr. C.'s statements that Respondent was his patient and that he had written him a tramadol prescription was corroborated by Respondent's testimony and documentary evidence. *See* GX 13; Tr. 259–60.

[7] Subsequently, Respondent appeared before the New Jersey Board's Preliminary Evaluation Committee to discuss his ''positive urine screens for Ultram [tramadol] and to discuss prescriptions issued in the name of his daughter.'' RX 8. Subsequently, the Board permitted Respondent ''to remain in the ARP'' and asked the Director of the PAP ''to enter into a new agreement with [Respondent] which makes clear that he must notify [the PAP] of all of his treating physicians, as well as any medications he ingests pursuant to prescription.'' *Id.* at 1.

The Committee also noted that it had discussed with Respondent ''the prescriptions written by him for his daughter'' and that it ''was troubled that [he] did not appear to keep routine medical records for family members.'' *Id.* at 8. However, ''[t]he Board accepted the Committee's representation that [Respondent] is now aware of the need to maintain such records.'' *Id.*

Moreover, according to the Assistant Director of the PAP, the Board and the PAP ''are in agreement that [the] monitoring protocol is an effective way of monitoring his recovery as well as protecting the public safety'' and ''[t]he Board has also determined not to restrict his prescribing privileges (other than for himself and family members).'' RX 11, at 2.

[8] One of the DIs interviewed Respondent's daughter, who had come with him to the DEA office. GX 18, at 7. She denied having previously told the DI that she had not received all of the tramadol prescriptions and asserted that she had taken all of the tramadol her father had prescribed. *Id.* at 8.

that on June 16, 2009, Linda, an employee in Respondent's office, had called in a temazepam prescription for his daughter with three refills. *Id.* This statement is corroborated by a Telephone Prescription Order dated ''6/16/09'' for 60 temazepam 30mg, with three refills, listing Respondent's daughter as the patient, Respondent as the prescriber, and noting that the prescription was ''phoned in by Linda.'' GX 33, at 3. According to a Physician's Activity Report compiled by the pharmacy, both the prescription and a refill of it were dispensed, the latter occurring on July 14, 2009. GX 33, at 1; *see also* GX 22, at 4.

In addition, another Physician's Activity Report for Respondent lists a prescription for 60 tablets of temazepam 15mg (#46128) issued for his daughter which was refilled on March 5 and 30, 2009, as well as a new prescription for 30 tablets of temazepam 30mg (#55132) which was issued on April 27 and refilled on May 24, 2009. GX 32, at 1. The latter prescription was phoned in and has the notation ''Linda'' written on top.[9] *Id.* at 2.

On March 9, 2011, a DI sought additional records from both CVS and Rite Aid for the period beginning on February 20, 2009, the date on which Respondent had surrendered his registration. GX 24. These records showed that on March 11, 2009, a prescription for Respondent's wife was called into a CVS Pharmacy (located in Somers Point, NJ) for 30 diazepam; this prescription was refilled on March 30, May 19, and June 17, 2009. *Id.* at 2. The records from Rite Aid also showed both the April 27 and June 16, 2009 prescriptions for temazepam for Respondent's daughter. *Id.* at 3–4.

The records further showed that on March 18, 2009, a prescription for Respondent's former son-in-law was called into a CVS (located in Ventnor, NJ) for 60 temazepam; this prescription was refilled on April 15, May 12, and June 9, 2009. *Id.* at 3. Also, on July 6, 2009, an additional prescription for 60 temazepam for Respondent's son-in-law was faxed in to the same pharmacy by R.M., an employee of Respondent; this prescription was refilled on August 30, 2009. *Id.* at 3; *see also* GX 26.

Next, various records show that Respondent issued prescriptions for Androgel (testosterone), a schedule III controlled substance, for both D.S., who was a patient, and for himself. GX 24, at 2. Respondent wrote the first prescription for D.S. on July 16, 2009; this prescription was refilled on August 10, 2009. *Id.* Respondent wrote the second prescription for D.S. on September 10, 2009; this prescription was refilled on October 17 and November 27. *Id.*

Respondent called in the first Androgel prescription for himself on July 12, 2009. *Id.* Respondent called in a refill of this prescription on December 6, 2009; however, there were no refills remaining. *Id.* at 3; GX 29. Respondent then authorized a second prescription for himself, which he refilled on January 25 and April 19, 2010. GX 24, at 3; GX 25; GX 29.

In addition, the Government subpoenaed pharmacy records from the AtlantiCare Health System, a hospital at which Respondent held privileges and treated patients. GX 35. These records, which covered the period from February 21, 2009 through April 13, 2011, showed that on numerous occasions following the surrender of his registration, Respondent issued orders for the administration of controlled substances to patients he was treating at the hospital. More specifically, during the year 2009 (and following the surrender of his registration), Respondent issued eight orders for controlled substances. *Id.* at 4–5. Moreover, during 2010, Respondent issued an additional twenty hospital orders for controlled substances, the last being issued on October 12th of that year.[10] *Id.* at 6–8. Finally, Respondent issued six additional hospital orders for controlled substances through April 2011. GX 36.

Regarding the post-surrender prescriptions and hospital orders, Respondent denied issuing the March 11, 2009 diazepam prescription for his wife, noting that this prescription was called in to the pharmacy during the period in which he was an inpatient at Behavioral Health of Palm Beach. Tr. 311–12. Respondent also denied issuing the March 18, 2009 prescription for temazepam for his former son-in-law (on which date he was still an inpatient in Palm Beach), as well as the July 6, 2009 authorization for an additional prescription which was faxed into the pharmacy. Tr. 272, 330–31. With respect to the July 6 prescription, which was faxed into the pharmacy, Respondent testified that R.M., the employee whose name is listed as having faxed in the request on behalf of Respondent, denied having sent in the prescription. *Id.* at 331. While Respondent ''ha[d] no idea'' why the prescription was faxed in and stated that he did not authorize it, he did not deny that it originated from his office. Tr. 272.

Respondent also denied authorizing all of the temazepam prescriptions for his daughter including the April 27 and June 16, 2009 prescriptions which were called in by Linda. Indeed, Respondent denied having issued any of the temazepam prescriptions. *Id.* at 315. He also testified that Linda had denied authorizing the prescriptions and stated that he believed her. *Id.* at 330–31. However, when asked if someone in his office had authorized the prescriptions, Respondent replied that he ''ha[d] no idea what happened'' and did not ''know anything about it.'' *Id.* at 270.

Respondent acknowledged that his daughter had a drug abuse problem and had undergone treatment shortly before the hearing in this matter. *Id.* at 315. Respondent further testified that his daughter had worked at his office,

[9] On April 27, 2009, the same day, another prescription (for tramadol) was called in to a CVS Pharmacy by ''Linda'' for Respondent's daughter. GX 10, at 1.

[10] According to a representative of the hospital, the spreadsheets showed hospital orders that ''were placed into the system by a pharmacist and were assigned to [Respondent] as the attending physician.'' Tr. 30.

With respect to the hospital orders, Respondent contends that the reports provided by the hospital are unreliable because a patient may have had both an attending and an admitting physician, each of whom could have issued an order for a controlled substance. Resp. Br. 9. The hospital representative further testified that the practice of the pharmacy department was to list the attending physician as the prescriber unless the signature of the prescribing physician was legible. Tr. 77–79. In addition, the hospital representative testified that ''[r]esidents do not have independent prescribing authority at the hospital'' and that any orders placed by a resident had ''to be cosigned by the attending physician'' that the order is assigned to. *Id.* at 32–33.

While Respondent testified that ''there are times when I'll call in and there will be a resident or he'll call me and ask me what I think, and I'll tell him what to do'' and ''[t]here are various ways to order things,'' *id.* at 278, as found above, residents did not have independent prescribing authority at the hospital. Likewise, Respondent was required to approve any order called or faxed in by a nurse. *Id.* at 59. Moreover, Respondent offered no testimony that any of the hospital orders were authorized by another physician who had independent prescribing authority.

It is further noted that the hospital representative testified that he had ''one hundred percent confidence'' in the accuracy of the spreadsheets, *id.* 57–58; he also testified that he had retrieved the medical files for seven of the patients and confirmed that Respondent had actually signed the forms ordering controlled substances for them. *Id.* at 60–62. Six of these orders cover the period following the date on which Respondent surrendered his registration and included two orders from May and June 2010. *See* GX 36. Moreover, a further spreadsheet listed multiple orders that were issued in April 2011.

In her decision, the ALJ noted in a footnote that the ''[t]he parties dispute the number of hospital orders issued by Respondent.'' ALJ, at 13 & n.8. However, as ultimate factfinder, I reject Respondent's various contentions as to the reliability of the spreadsheet. As explained above, I find that Respondent issued thirty-four hospital orders for controlled substances following his surrendering of his registration.

including during the period in which he was an inpatient at Behavioral Health and that she was authorized to call in prescriptions. *Id.* at 316; 328–29. However, when asked if he thought it was ''a good idea'' to authorize his daughter to call in prescriptions ''when she had a drug problem,'' Respondent asserted that ''[n]obody was authorized to refill narcotic prescriptions at all.'' *Id.* at 329; *see also id.* at 335.

Moreover, when asked how he monitored his staff to ensure that this did not happen, Respondent replied: ''Well it's a matter of trust. How would you know?'' and added that ''[t]he only way you would know is if you get a fax that something was called in that I didn't authorize.'' *Id.* at 329. Respondent then acknowledged that his office staff had access to his DEA number, *id.* at 330, and that while he would ''absolutely'' fire an employee who was inappropriately using his DEA number, there was not enough evidence to convince him that any of his employees had actually called in the prescriptions with his surrendered number. *Id.* at 332. Respondent also testified that his daughter no longer works for him. *Id.* at 337.

Respondent did admit to having issued the Androgel prescriptions for both D.S. and himself. *Id.* at 273. Respondent claimed that he did not realize that Androgel is a controlled substance, but testified that he was wrong to have issued the prescriptions and said he was ''sorry.'' *Id.* at 274.

As for the hospital orders, Respondent asserted that he ''was a staff physician'' at AtlantiCare. *Id.* at 275. While Respondent then acknowledged that his status as ''a staff physician'' did not mean that he was an employee, he then claimed that ''when I'm on call, I'm considered an employee.'' *Id.* at 276. However, according to the letter submitted by AtlantiCare's Associate General Counsel in response to the Government's subpoena for the records of Respondent's patients and hospital orders, Respondent was not employed by AtlantiCare. GX 35, at 1. Indeed, Respondent testified that he was ''self-employed.'' Tr. 250.

Respondent also testified that he ''felt obliged to treat'' the hospital patients and that while ''looking back * * * it's kind of a silly thing to do * * * I had no else to ask to treat these people. I was responsible for them. That was my job.'' Tr. 309. Respondent's counsel then asked him if he was ''consciously violating [his] lack of a DEA license?'' *Id.* Respondent replied: ''Not really. I really felt I was acting under the auspices of the hospital and in the patient's best interest, and that's the way I was trained. The patients always come first.'' *Id.* at 309–10. However, an employee of AtlantiCare testified that it has physicians known as hospitalists who were available to order any controlled substances necessary to treat Respondent's patients. *Id.* at 81. Moreover, when asked whether the effect of his surrendering his registration was that he was ''not allowed to prescribe,'' Respondent acknowledged that this was ''correct'' and added that he did not think he was allowed to administer controlled substances. Tr. 251.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that the Attorney General ''may deny an application for [a practitioner's] registration if he determines that the issuance of such a registration is inconsistent with the public interest.'' 21 U.S.C. § 823(f). In making the public interest determination, the CSA directs that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for a registration. *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Where the Government has met its *prima facie* burden of showing that issuing a new registration to the applicant would be inconsistent with the public interest, the burden then shifts to the applicant to ''present sufficient mitigating evidence'' to show why he can be entrusted with a registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995); *Hoxie v. DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[ ]'' in the public interest determination).

Factor One—The Recommendation of the State Licensing Board

The ALJ found that this factor supported granting Respondent's application. More specifically, the ALJ noted that the PAP is actively monitoring Respondent's compliance with his aftercare plan and that he remains subject to UDSs. ALJ at 23. Moreover, in the event of a positive test result for a drug which has not been prescribed to him, his state license is subject to suspension.[11] Also, with respect to his writing of tramadol prescriptions in his daughter's name and his positive urine screens for tramadol, the ALJ noted that he had appeared in front of the State Board and that the Board had declined to ''taken any adverse action.'' *Id.* The ALJ thus concluded that the Board's action, ''although not dispositive, deserve[s] consideration in determining the public interest.'' *Id.* The ALJ thus concluded ''that the Board's recommendation, in light of the overlapping facts it considered, weighs in favor of the Respondent's registration.[12]'' ALJ at 23–24.

Were this case limited to Respondent's prescribing of tramadol (which is not a controlled substance), I would likely adopt the ALJ's conclusion

[11] Citing the testimony of a PAP professional, the ALJ found that ''[i]f an illegitimate positive urine test result is reported, the Board will suspend the Respondent's license.'' ALJ at 23. However, while ''[a]ny non-prescribed positive test would result in an immediate notification to the Board,'' RX 11, at 1; it seems likely that the Board retains discretion as to whether to suspend his license.

[12] It is noted that the Board itself has made no recommendation to DEA in this matter and there is no evidence that the Assistant Director of the PAP is authorized to make recommendations on behalf of the Board. In discussing this factor, I assume without deciding that the Board's continuation of Respondent's license constitutes a recommendation of the state licensing or disciplinary authority as contemplated by 21 U.S.C. 823(f)(1).

as to the weight to be given this factor. However, while Respondent's self-prescribing and fraudulent prescribing to his daughter of tramadol may have been considered by the Board, as explained below, the record here contains substantial evidence of multiple violations of the Controlled Substances Act. Thus, not only did the state board not consider the entire scope of Respondent's misconduct, DEA has held that it has separate oversight responsibility (apart from that which is vested in state authorities) with respect to the handling of controlled substances and a statutory obligation to make its independent determination as to whether granting a registration would be consistent with the public interest. *See Jayam Krishna-Iyer,* 74 FR 459, 461 (2009); *Mortimer B. Levin,* 55 FR 8209, 8210 (1990). Thus, while Respondent's continued licensure by the State renders him eligible to hold a DEA registration,[13] this factor neither supports nor weighs against a finding that granting his application would be consistent with the public interest.[14] *See* 21 U.S.C. 823(f).

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

The ALJ found that factors two and four support the denial of Respondent's application. *See* ALJ at 24–25. I agree noting that the record establishes that Respondent has committed numerous violations of the CSA and has only accepted responsibility for a small portion of them.

First, Respondent issued prescriptions for schedule II controlled substances including Roxicodone (oxycodone) 15 mg in the name of his deceased mother-in-law to obtain drugs which he personally abused. Moreover, Respondent engaged in this conduct for a period of approximately six years. In issuing these prescriptions, Respondent committed felony violations of federal law. *See* 21 U.S.C. 843(a)(3) (''It shall be unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge[.]'').[15]

Second, on February 20, 2009, Respondent voluntarily surrendered his registration, thereby relinquishing his authority to prescribe, dispense, and administer controlled substances. Respondent nonetheless proceeded to issue numerous prescriptions and/or hospital orders for controlled substances. Respondent's conduct in doing so also violated federal law.

Under federal law, ''[e]very person who dispenses * * * any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him.'' 21 U.S.C. 822(a)(2). *See also* 21 CFR 1301.11(a) (''Every person who manufactures, distributes, [or] dispenses * * * any controlled substance * * * shall obtain a registration unless exempted by law or pursuant to [21 CFR] 1301.22 through 1301.26.''). In addition, ''[e]xcept as authorized by [the CSA], it [is] unlawful for any person knowingly or intentionally * * * to distribute [or] dispense a controlled substance.'' 21 U.S.C. 841(a)(1).

It is undisputed that following the surrender of his registration, Respondent issued prescriptions both to himself and a patient for Androgel (testosterone), an anabolic steroid and a schedule III controlled substance. In his testimony, Respondent maintained that he did not know that Androgel is a controlled substance. The ALJ was not, however, favorably impressed by this testimony, noting that ''even if true, such denial does not relieve the Respondent from his responsibility to know such facts in the practice of his profession.'' ALJ at 24. I agree with the ALJ. Indeed, given that Respondent testified that prescribing testosterone was his ''specialty'' and that ''[p]art of urology [his practice specialty] is to treat male hypogonadism,'' Respondent has no excuse for not knowing that testosterone is an anabolic steroid and a controlled substance. *See* 21 U.S.C. 802(41) (''The term 'anabolic steroid' means any drug or hormonal substance, chemically and pharmacologically related to testosterone[.]''); *id.* § 812(c) Schedule III(e). However, Respondent did acknowledge his wrongdoing in having issued these prescriptions.

The same cannot be said for his misconduct in issuing hospital orders for controlled substances. As found above, for more than two years after he surrendered his registration, Respondent issued hospital orders for controlled substances; this conduct was still occurring up until a month before the hearing in this matter. Moreover, while the Show Cause Order did not specifically refer to the hospital orders, it did allege that he had violated federal law and DEA regulations by authorizing prescriptions without a registration. ALJ Ex. 1, at 2 (citing 21 U.S.C. 822 and 841(a); 21 CFR 1301.11 and 1301.13). Yet for months after being served with the Show Cause Order, Respondent continued to issue hospital orders without a registration.

In defense of his actions, Respondent contends that there was no one else who could treat his patients and that he was acting in their best interests. While one would expect nothing less from a physician than to act in the best interest of his patients, this does not excuse his violations, and in any event, other record evidence establishes that AtlantiCare has physicians on staff who could have legally prescribed controlled substances to his patients.

Respondent also attempted to justify the violations contending that he believed that: (1) He acted as an employee of the hospital when he was on call, and (2) he was ''acting under the auspices of the hospital.'' Tr. 309–10. As to the first contention, Respondent conceded that he was self-employed and not an employee of the hospital.

As for the second contention, it is true that under federal law and DEA regulations, ''[a]n individual practitioner who is an agent * * * of a hospital, may, when acting in the normal course of business * * *, administer, dispense, or prescribe controlled substances under the registration of the hospital * * * which is registered in lieu of being registered himself * * * provided'' six conditions are met. 21 CFR 1301.22(c); *see also* 21 U.S.C. 822(c). While Respondent met some of these conditions (in that there is no evidence that he acted outside of

[13] *See* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * controlled substances . . . if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''); *id.* § 802(21) (''The term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by the * * * jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice or research.'').

[14] It is also noted that Respondent has not been convicted of an offense related to the distribution or dispensing of controlled substances (factor three). However, because there are multiple reasons why an applicant or registrant may not have been convicted or even prosecuted for such an offense, the absence of such a conviction ''is of considerably less consequence in the public interest inquiry.'' *Krishna-Iyer,* 74 FR at 461; *Edmund Chein,* 72 FR 6580, 6593 n.22 (2007), *pet. for rev. denied* 533 F.3d 828 (D.C. Cir. 2008). Accordingly, this factor is not dispositive.

[15] In his post-hearing brief, Respondent argues that his ''overwhelming positive experience, totaling over 30 years as a specialist in the field of urology * * * should be a significant consideration'' in his favor. Resp. Prop. Findings & Conclusions of Law, at 14. Contrary to Respondent's assertion, factor two does not provide for an inquiry into Respondent's experience as a physician (which is beyond the expertise of this Agency) but only his experience in dispensing controlled substances. On that count, as found above, Respondent's experience is marked by his extensive and egregious misconduct in writing fraudulent prescriptions and by issuing numerous prescriptions and hospital orders without a registration.

the usual course of professional practice in issuing the orders and that he was authorized to prescribe controlled substances by the State, *see id.* 1301.22(c) (1) & (2)), Respondent produced no evidence that AtlantiCare authorized him ''to administer, dispense or prescribe controlled substances under the hospital['s] registration.'' *Id.* 1301.22(c)(5). Respondent therefore cannot credibly claim that he acted as an agent of the hospital.

With respect to Respondent's testimony regarding the hospital orders, the ALJ noted that it was ''unfortunate[ ] [that] the Respondent denied these violations.'' ALJ at 24–25. Whether it is fortunate or unfortunate is neither here nor there. It is, however, a manifestation that Respondent does not accept responsibility for a significant part of the misconduct which was proved on this record.[16] Moreover, these violations were not limited in scope but continued for more than two years after Respondent surrendered his registration.

As for the various controlled substance prescriptions that were issued in the names of Respondent's wife, daughter, and former son-in-law following the surrender of his registration, the ALJ found ''it credible that [he] did not place phone-in orders for controlled substances during that time.'' ALJ at 25. However, the ALJ found that ''Respondent left his prescription pads with his controlled substances registration number at the office during his absence'' and that ''[s]omeone utilized that number to call in prescriptions for controlled substances.'' *Id.* Under DEA precedent, a practitioner is strictly liable for misuse of his registration by his employees. *Edmund Chein,* 72 FR 6580, 6593 (2007) (citing *Leonard Merkow,* 60 FR 22075, 22076 (1995)), *pet. for rev. denied* 533 F.3d 828 (D.C. Cir. 2008).

Moreover, even accepting the ALJ's credibility finding that Respondent did not call in the prescriptions during the period in which Respondent was an inpatient at Behavioral Health, as found above, additional controlled substance prescriptions were either called-in or faxed-in from his office (for his daughter and son-in-law) after he returned from rehab. In his testimony, Respondent denied having authorized these prescriptions. It is unclear, however, whether the ALJ found this testimony credible.[17] *See* ALJ at 10–11 (noting Respondent's denial of having authorized April 2009 temazepam prescription for his daughter yet not making credibility finding as she did with other findings of fact); *id.* at 12 (noting that Respondent denied authorizing the July 2009 temazepam prescription for his son-in-law but not making credibility finding).

However, even if it is true that Respondent did not authorize these prescriptions, he ''ha[d] no idea'' as to how the prescriptions were authorized and who had called or faxed them in to the respective pharmacies. Likewise, while Respondent testified that he would ''absolutely'' fire an employee who was inappropriately using his DEA number, he then asserted that there was not enough evidence to convince him that any of his employees had actually called in the prescriptions with his former number.[18]

Obviously, someone in his office called or faxed in the prescriptions. As noted above, under Agency precedent, Respondent is responsible for violations of the CSA committed by his employees and his practice's failure to comply with the Act. *Chein,* 72 FR at 6593. Having failed to explain why the temazepam prescriptions were called in, Respondent has offered no credible assurance that similar acts will not occur in the future.

Accordingly, as did the ALJ, I conclude that the Government's evidence pertaining to factors two and four makes out a *prima facie* case that granting Respondent's application would be inconsistent with the public interest. *See* ALJ at 25 (holding that ''grounds do exist for denying the Respondent's'' application).

Factor Five—Such Other Conduct Which May Threaten Public Health and Safety

With respect to factor five, the ALJ noted that ''Respondent has now had two relapses in his history of drug addiction'' and that ''[h]is pattern of prescribing medications for family members and then consuming them himself continued with [his] prescribing of [t]ramadol for his daughter and then consuming some of the medications himself.'' ALJ at 26. The ALJ further found that ''when first confronted with the information that DEA believed the Respondent had engaged in such conduct, the Respondent lied to the DEA agent and denied consuming such medication himself.'' *Id.* The ALJ thus noted that Respondent's ''conduct is not consistent with the responsibilities of a DEA registrant.'' *Id.* I agree with the ALJ that substantial evidence supports both the findings that he consumed some of the tramadol he prescribed in his daughter's name and then lied to DEA Investigators when he denied having done so.

However, the ALJ then noted that Respondent had presented ''mitigating evidence in the form of his active participation in his recovery'' and that the PAP's assistant director testified that Respondent is in ''sustained full remission.'' *Id.* at 26–27. The ALJ also noted that Respondent had acknowledged his wrongdoing in prescribing testosterone and had provided assurances of his future compliant behavior including that ''he would no longer allow his staff to phone in or fax in prescriptions for controlled substances and ''his daughter would no longer work in his office.'' [19] *Id.* at 27.

In his post-hearing brief, Respondent contends ''[t]hat DEA['s] argu[ment] that [his application] should be denied for being prescribed tramadol is by definition arbitrary and capricious.'' Resp. Prop. Findings of Fact, Conclusions of Law, and Argument, at

[16] To make clear, I acknowledge that there is no evidence that any of the hospital orders lacked a legitimate medical purpose. Nonetheless, federal law prohibits the dispensing of a controlled substance except as authorized by the CSA.

[17] For example, in her discussion of factors two and four, the ALJ wrote with respect to the prescriptions that were called in when he was at Behavioral Health, ''I find it credible that the Respondent did not place phone-in orders for controlled substances during that time.'' ALJ at 25. The ALJ did not explain whether she found credible Respondent's denials of having authorized the temazepam prescriptions that were issued for his daughter and ex son-in-law following his return from rehab. *Id.*

It is not entirely clear why the ALJ failed to address in her discussion of the public interest factors the prescriptions which were authorized following his return. However, her opinion suggests that she did not do so because ''[t]he majority of these prescriptions were initially phoned in while the Respondent was receiving inpatient treatment.'' ALJ at 25. Even so, the record shows that there were multiple prescriptions with refills issued following Respondent's return from inpatient treatment. Unlike the ALJ, I decline to ignore the evidence regarding these prescriptions and Respondent's explanation (or lack thereof) regarding why they were issued.

[18] As found above, in a December 2009 interview Respondent admitted that his daughter had a drug problem but that ''he did not realize how bad [her] problem was until he got out of drug rehabilitation * * * and became sober.'' GX 18, at 7. The Government did not, however, further clarify whether Respondent was aware of his daughter's drug problem before he went to rehab (even if he then did not realize ''how bad'' it was) nor the approximate date on which he finally realized ''how bad'' it was. Thus, I do not address the propriety of Respondent's having authorized his daughter to call in prescriptions.

[19] The ALJ did not, however, make a finding as to whether this factor supports or weighs against granting Respondent's application. ALJ at 27–28. However, in her conclusion and recommendation, the ALJ, while acknowledging that ''[d]enial of the Respondent's application can be justified by this record,'' recommended that ''a less severe action be taken.'' *Id.* at 28.

16. Respondent notes that ''tramadol is not even a controlled substance'' and that he ''is entitled to pain relief.'' *Id.* at 16–17.

It is undeniable that Respondent is entitled to be treated (and receive lawfully issued prescriptions) for a legitimate pain condition.[20] However, the evidence shows that Respondent wrote numerous prescriptions in his daughter's name to obtain the drugs for his own use and thereby committed prescription fraud. *See* N.J. Stat. Ann. § 2C:35–10.5(d). Moreover, as found above under factors two and four, Respondent had previously obtained controlled substances by writing fraudulent prescriptions in the name of his deceased mother-in-law and did so for years. Thus, even though tramadol is not a controlled substance, Respondent's continuing to write fraudulent prescriptions even after he was confronted by DEA personnel about the fraudulent prescriptions he wrote for controlled substances is properly considered in assessing the likelihood that he will comply with the CSA were he granted a new registration. *See Paul Weir Battershell,* 76 FR 44359, 44368 (2011) (holding that violation of Federal law for introducing a misbranded drug into interstate commerce was not dispositive but could be considered under factor five ''for the limited purpose of assessing the likelihood of Respondent's future compliance with the CSA''); *Wonderyears, Inc.,* 74 FR 457, 458 n.2. (2009) (noting that violations of federal and state laws in distributing and importing a non-controlled drug were ''relevant in assessing whether [pharmacy] would comply with the'' CSA). *See also Terese, Inc., D/B/A Peach Orchard Drugs,* 76 FR 46843, 46848 (2011) (noting that while agency case law interpreting factor five ''has generally recognized that the misconduct must be related to controlled substances * * * there may be other acts, which do not directly involve controlled substances, but which threaten public health and safety and create reason to conclude that a person will not faithfully adhere to [his] responsibilities under the CSA''). The commission of prescription fraud clearly has a sufficient nexus to a registrant's obligations under the CSA to warrant consideration under factor five. *See* 21 U.S.C. 843(a)(3).

As noted above, the ALJ also found that Respondent had lied to the DEA Investigators ''when first confronted'' by them about whether he was using the tramadol he obtained by issuing prescriptions in his daughter's name. ALJ at 26. It further follows that Respondent gave false testimony under oath in this proceeding when he denied having ever admitted to the PAP Director that he had used some of the tramadol obtained from these prescriptions and then added that: ''I never used [t]ramadol written in my daughter's name.'' Tr. 323. Respondent's lack of candor both during the investigation and at the hearing is an important factor in the public interest determination. *See Hoxie,* 419 F.3d at 483 (''DEA properly considers the candor of the physician and his forthrightness in assisting in the investigation and admitting fault important factors in determining whether the physician's registration'' is consistent with the public interest.'');[21] *see also Edmund Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008) (affirming order revoking practitioner's registration and denying application noting physician's ''continued dispensing of controlled substances even after his DEA registration was suspended'' and failure to ''accept[ ] responsibility for his misconduct'').

To be sure, Respondent presented substantial evidence that he is currently in remission. If the proven misconduct was limited to Respondent's self-abuse of controlled substances, the ALJ's recommendation that I grant him a restricted registration might be well taken. But it is not. While Respondent acknowledged his wrongdoing with respect to his issuance of the testosterone prescriptions without a registration, he failed to do so with respect to his issuance of hospital orders notwithstanding that he issued them for more than two years following the surrender of his registration and continued doing so even after being served with the Show Cause Order which notified him that his issuance of controlled substances without a registration was a violation of federal law. *See Hoxie,* 419 F.3d at 483 (noting that ''DEA properly considers * * * admitting fault [to be an] important factor[ ]'' in public interest determination); *see also Medicine Shoppe,* 73 FR at 387; *Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995).

Also, in his own words, Respondent ''had no idea'' and ''did not know anything about'' why the temazepam prescriptions for his daughter and former son-in-law, which he denied issuing, continued to be called or faxed in to pharmacies after his return from inpatient treatment. Thus, even if it is true that Respondent did not authorize the prescriptions, he has failed to establish that this problem will not occur in the future. Respondent has therefore failed to ''present sufficient mitigating evidence'' to show why he can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR at 387 (quoting *Jackson,* 72 FR at 23853 (quoting *Leo R. Miller,* 53 FR at 21932 (1988))). Respondent's conduct in issuing fraudulent prescriptions and giving less than truthful statements and testimony reinforces this conclusion.

Accordingly, I reject the ALJ's recommended sanction[22] and will deny Respondent's application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b),

[20] In its Exceptions, the Government notes that ''Respondent was concurrently receiving tramadol prescriptions from two different physicians.'' Exceptions at 2. While the Government notes that ''Respondent explained that he was being treated for a different medical condition by each physician,'' it then contends that ''Respondent did not contest the fact that neither doctor knew about the other or that Respondent was receiving the same medication from each doctor.'' *Id.* The Government then asserts that it ''does not believe that Respondent demonstrated the legitimacy of his prescriptions, because he failed to fully inform his treating physicians of his medical condition, of his treatment by the other physician and of his other prescriptions.'' *Id.* (citing GX 18, ¶ 11).

It is noted, however, that the Government called Respondent as a witness and yet never asked him whether he informed his treating physicians that he was receiving prescriptions from another physician. Moreover, the Government did not introduce any medical records maintained by the physicians on Respondent which may have shown that Respondent did not disclose that he was being treated by other doctors, and Dr. M.'s statements (which were related in GX 18) that he did not know that Respondent was seeing Dr. C. and receiving tramadol prescriptions were unsworn and not corroborated by any other evidence of record.

However, one of Respondent's Exhibits shows that on July 28, 2009 he was admonished by the Executive Medical Director of the PAP for ''his self-prescribing'' and told ''to get his treating physician, Dr. [B.], his orthopedic surgeon, to write any future prescriptions.'' RX 8, at 19; *see also id.* at 18. (Sept. 16, 2009 memo from Executive Medical Director, PAP, to State Board of Medical Examiners) (Respondent ''was instructed to have his orthopedic surgeon, Dr. [B.], write for any medication he needed for pain (7/28/09).''). Yet after that date, Respondent obtained prescriptions for tramadol from both Dr. C. (on Aug. 10) and Dr. M. (on Aug. 20). *See* GXs 13 & 14. While Respondent testified that Dr. M. and Dr. B. were in the same group, Tr. 260–61, he offered no evidence that Dr. C. was as well. This suggests that Respondent did not comply with the PAP Executive Director's instruction.

[21] I thus reject Respondent's contention that he has cooperated with DEA and ''exhibited'' candor ''throughout the process, including at the hearing.'' Resp. Prop. Findings at 16.

[22] As the ALJ herself recognized, the Government ''presented preponderating evidence of * * * Respondent's illegal conduct in handling controlled substances after the voluntary surrender of his DEA registration'' and the ''[d]enial of [his] application can be justified by this record.'' ALJ at 28.

I order that the application of John V. Scalera, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective March 25, 2013.

Dated: February 12, 2013.

Michele M. Leonhart,

Administrator.

[FR Doc. 2013–03879 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Meda Pharmaceuticals, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on December 4, 2012, Meda Pharmaceuticals, Inc., 705 Eldorado Street, Decatur, Illinois 62523, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance as a finished drug product in dosage form for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule II, which falls under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 25, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic classes of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03905 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Mallinckrodt, LLC.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on November 30, 2012, Mallinckrodt, LLC., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for the manufacture of controlled substances in bulk for distribution to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw or coca leaves. Comments and requests for hearings on applications to import narcotic raw material are not appropriate, in accordance with 72 FR 3417 (2007).

In reference to Phenylacetone (8501), the company plans to import the controlled substance for the bulk manufacture of amphetamine products for sale to its customers. Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 25, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03898 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Caraco Pharmaceutical Laboratories, LTD.

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on November 22, 2012, Caraco Pharmaceutical Laboratories, Ltd., 270 Prospect Plains Road, Cranbury, New Jersey 08512, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Fentanyl (9801), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance in finished dosage form for clinical trials, and research.

The import of the above listed basic class of controlled substance is granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form

for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance listed in schedule II, which falls under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952(a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 25, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03902 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Mallinckrodt, LLC

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 30, 2012, Mallinckrodt, LLC, 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 22, 2013.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03892 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Pharmagra Labs, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 3, 2012, Pharmagra Labs, Inc., 158 McLean Road, Brevard, North Carolina 28712, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of pentobarbital (2270), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed substance for analytical research and clinical trials.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 22, 2013.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03888 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Sigma Aldrich Research Biochemicals, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 21, 2012, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760–2447, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I

Drug	Schedule
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocybin (7437)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (TCP) (7470).	I
N-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Remifentanil (9739)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 22, 2013.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03893 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; GE Healthcare

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 31, 2012, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture a radioactive product to diagnose Parkinson's disease; and to manufacture a bulk investigational new drug (IND) for clinical trials.

Any other such applicant, and any person who is presently registered with DEA to manufacture such a substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 22, 2013.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03895 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application; Alltech Associates, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 19, 2012, Alltech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
5-Methoxy-N–N-dimethyltryptamine (7431).	I
2C–E (2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine) (7509).	I
2C–H (2-(2,5-Dimethoxyphenyl)ethanamine) (7517).	I
2C–T–4 (2-(4-isopropylthio)-2,5-dimethoxyphenyl) ethanamine) (7532).	I

The company plans to manufacture high purity drug standards used for analytical applications only in clinical, toxicological, and forensic laboratories.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 22, 2013.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03919 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cody Laboratories, Inc.

By Notice dated November 1, 2012, and published in the **Federal Register** on November 9, 2012, 77 FR 67398, Cody Laboratories, Inc., ATTN: Richard Asherman, 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333).	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans on manufacturing the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Cody Laboratories, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cody Laboratories, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03881 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cedarburg Pharmaceuticals, Inc.

By Notice dated November 5, 2012, and published in the **Federal Register** on November 13, 2012, 77 FR 67676, Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-Anilino-N-phenethyl-4-piperidine ANPP) (8333).	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers. Regarding the drug code (8333), the company plans to use this controlled substance to manufacture another controlled substance.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Cedarburg Pharmaceuticals, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cedarburg Pharmaceuticals, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03885 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; INB Hauser Pharmaceutical Services, Inc.

By Notice dated November 1, 2012, and published in the **Federal Register** on November 9, 2012, 77 FR 67398, InB Hauser Pharmaceutical Services, Inc., 6880 N. Broadway, Suite H, Denver, Colorado 80221, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 4-Anilino-N-phenethyl-4-piperidine (8333), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution and sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of InB Hauser Pharmaceutical Services, Inc., to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated InB Hauser Pharmaceutical Services, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems; verification of the company's compliance with state and local laws; and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: February 8, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013–03886 Filed 2–20–13; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Proposed Collection of Information; Comment Request

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice. Proposed collection; comment request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial

resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning conducting new information collection on arts activities that involve live audiences and that are funded through its Art Works program. A copy of the survey instrument to be used in the information collection can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before April 16, 2012. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the 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 submissions of responses.

ADDRESSES: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

Dated: February 15, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–03937 Filed 2–20–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Submission for OMB Review, Comment Request, Proposed Collection: Public Needs for Library and Museum Services (PNLMS) Survey

AGENCY: Institute of Museum and Library Services.

ACTION: Submission for OMB Review, Comment Request.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 20, 2013.

IMLS is particularly interested in comments that help the agency to:

- 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 submissions of responses.

ADDRESSES: Deanne Swan, Senior Statistician, Office of Planning, Research, and Evaluation, Institute of Museum and Library Services, 1800 M St. NW., 9th Floor, Washington, DC 20036. Dr. Swan can be reached by Telephone: 202–653–4769, Fax: 202–653–4601, or by email at *dswan@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 17,500 museums. The Institute's mission is to create strong libraries and museums that connect people to information and ideas. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS is responsible for identifying national needs for, and trends of, museum and library services funded by IMLS; reporting on the impact and effectiveness of programs conducted with funds made available by IMLS in addressing such needs; and identifying, and disseminating information on, the best practices of such programs. (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

Abstract: Consistent with this (20 U.S.C. Chapter 72, 20 U.S.C. 9108), the intention of the PNLMS (formerly the PDMLS, Public Demand for Museum and Library Services Survey) is to monitor expectations of and satisfaction with library and museum services. A wide range of topics will be covered, with a small number of questions about each topic included on the questionnaire. The PNLMS will include a core set of demographic questions (e.g., age, gender, race) and a core set of questions based on critical information needs within IMLS (e.g., satisfaction with the library and museum services; frequency of utilization of various services; physical and virtual access to services).

The purpose of this collection is to determine attitudes, to assess awareness of issues related to library and museum services, and to track trends. The survey will be used to gather information on a wide range of library and museum services. The design of the PNLMS will be a random digital dial (''RDD'') telephone survey of the adult, non-institutionalized U.S. population which will yield a minimum of 3,525 cases.

Current Actions: This notice proposes clearance of the Public Needs for Library and Museum Services (PNLMS) Survey. The 60-day notice for the PDMLS (now PNLMS) Survey was published in the **Federal Register** on November 29, 2010, (FR vol. 75, No. 228, pgs. 73132–73133). The agency has taken into consideration the comment that was received under this notice.

Agency: Institute of Museum and Library Services.

Title: Public Needs for Library and Museum Services Survey.

OMB Number: To Be Determined.

Agency Number: 3137.

Affected Public: Individuals or households.

Number of Respondents: 3,525.

Frequency: Anticipated for Every Three Years.

Estimated Average Burden per Response: 18 minutes.

Estimated Total Annual Burden: 1,058 hours.

Total Annualized capital/startup costs: n/a.

Total Annualized cost to respondents: $21,130.

Total Annual costs to Federal Government: $601,306.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: February 14, 2013.

Kim Miller,

Management Analyst.

[FR Doc. 2013–03920 Filed 2–20–13; 8:45 am]

BILLING CODE 7036–01–P

PEACE CORPS

Public Availability of Office of Acquisitions and Contract Management FY 2012 Service Contract Inventory

AGENCY: Office of Acquisitions and Contract Management (OACM), Peace Corps.

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 (Pub. L. 111–117), the Office of Acquisitions and Contract Management 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/servicecontract-inventories-guidance-11052010.pdf.* The Office of Acquisitions and Contract Management has posted its inventory and a summary of the inventory on the Peace Corps homepage at the following link: *http://www.peacecorps.gov/open/documents/.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Sandra R. Harrell in the Office of Acquisitions and Contract Management/Procurement Policy at 202–692–1107 or *sharrell@peacecorps.gov.*

Dated: February 12, 2013.

Sandra R. Harrell,

Chief of Procurement Policy, Office of Acquisitions and Contract Management.

[FR Doc. 2013–03985 Filed 2–20–13; 8:45 am]

BILLING CODE 6015–01–P

OFFICE OF PERSONNEL MANAGEMENT

Debarment, Suspension, and Ineligibility of Contractors

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: The U.S. Office of Personnel Management (OPM) is providing notice of its intent to adopt the policies and procedures contained in the Federal Acquisition Regulation (FAR) regarding the debarment, suspension, and ineligibility of government contractors. As an executive agency, OPM follows the FAR as appropriate and applicable. As OPM's procurement rules are not contained in the Code of Federal Regulations, these new rules will be contained in an internal OPM document referred to as ''Contracting Policy No. 9.4: OPM Suspension and Debarment Program'' (hereinafter, OPM's contracting policy). As such, the proposed policy regarding debarment and suspension will be added to OPM's contracting policies. However, persons or entities seeking Government contracts could potentially be adversely affected if, pursuant to the proposed policy, they were debarred, suspended, or proposed for debarment by OPM. As such, OPM is providing interested persons an opportunity for notice and comment on this proposed policy.

DATES: Comments must be received on or before March 25, 2013.

OPM will publish the effective date of the proposed policy when responding to comments in a future notice.

ADDRESSES: Address all comments concerning this proposed policy to: U.S. Office of Personnel Management, Contracting; Attention: Contracting Policy, 1900 E Street NW., Washington, DC 20415; or email *patricia.broome@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia W. Broome, Director, Contracting Policy, 202–606–2952.

SUPPLEMENTARY INFORMATION: OPM is required by law to seek comments before issuing a policy that has general applicability and legal effect. OPM invites interested persons to comment on this proposed policy by submitting written comments. OPM will consider all comments received on or before the closing date for comments and may change the proposed policy based on the comments received.

Under OPM's proposed policy, OPM will follow FAR Subpart 9.4. OPM's Contracting Policy 9.4 states that it is OPM's policy to follow the FAR, and OPM has long-maintained procedures, consistent with FAR Subpart 9.4, that ensure that it contracts only with those entities and individuals (hereinafter, contractors) who are responsible. To make clear that FAR Subpart 9.4 applies, OPM has developed its Contracting Policy to formally and explicitly adopt FAR Subpart 9.4.

Except as provided in FAR Subpart 9.4, OPM will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List System on the System for Award Management (SAM/EPLS), which is maintained by the General Services Administration. Further, if OPM debars, proposes for debarment, or suspends a contractor, OPM will, consistent with FAR Subpart 9.4, list that contractor in the SAM/EPLS. Consistent with FAR 9.405–1, OPM may continue an existing contract with a contractor despite the fact that the contractor has subsequently been debarred, proposed for debarment, or suspended if it is determined in the best interest of the Government to do so.

Consistent with the definitions of ''debarring official'' and ''suspending official'' contained at FAR 9.403, the Director, as the head of OPM, will serve as the debarring official and suspending official (hereinafter, debarment/suspension official). The Director may designate another OPM official to serve as the debarment/suspension official. The Director or other designated Debarment Official will also be responsible for deciding whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment, and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

OPM's Contracting Policy Office (CPO), which is responsible for the majority of OPM's contracting activities, will be designated as the OPM unit with primary responsibility for investigating and referring potential debarment and suspension actions to the debarment/suspension official for his or her consideration. OPM's procurement activities are largely centralized in CPO,

which is staffed by contracting officers and other acquisition professionals. As such, CPO staff has the required technical knowledge to handle debarment and suspension referrals and is in the best position to learn of matters that may warrant debarment and/or suspension. Moreover, CPO is the first point of contact for Office of Inspector General (OIG) personnel and Contracting Officer's Representatives, who have direct knowledge of any problems with contractor conduct and/or performance. Thus, individuals—including OPM employees and members of the public—who believe that there may be grounds to debar or suspend a contractor should contact CPO and provide them with all relevant information. Whenever CPO learns of information that indicates there may be grounds for debarring or suspending a contractor, CPO will gather appropriate information and refer the matter to the debarment/suspension official if warranted. All such referrals will include a recommendation by the OPM Suspension and Debarment Committee (SDC) as to a proposed course of action. Likewise, CPO will have responsibility for recommending to the Director or other designated Debarment Official whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment.

Given its central role in OPM's procurement process, CPO, in consultation with OPM's Office of General Counsel, will also be responsible for establishing written procedures that address the key aspects of OPM's debarment/suspension program.

Accordingly, the OPM proposes to adopt the following policy and incorporate it into its contracting policies:

OPM will follow the policies and procedures contained at FAR Subpart 9.4—Debarment, Suspension, and Ineligibility. OPM will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List (SAM/EPLS), except as otherwise provided for in FAR Subpart 9.4. OPM will report to the SAM/EPLS any contractor OPM debars, suspends, or proposes for debarment. Such action will have Government-wide reciprocity. Notwithstanding the debarment, suspension, or proposed debarment of a contractor, OPM may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment, unless the Director or other designated Debarment Official directs otherwise.

The Director or a designee will serve as the debarring official and suspending official (debarment/suspension official). The Director or designee will also decide (1) whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment, and (2) whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

CPO will have primary responsibility for investigating and submitting potential debarment/suspension actions to the SDC, which will have the responsibility for reviewing and referring actions to the debarment/suspension official for consideration. As such, any person who believes that there may be grounds to debar or suspend a person or entity from contracting with OPM should contact CPO and provide them with all relevant information.

CPO, in conjunction with the SDC, will also have responsibility for recommending to the Director or designee whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment. In consultation with the Office of General Counsel, CPO will establish and maintain written procedures for:

(1) The prompt reporting, investigation, and referral to the debarment/suspension official of matters appropriate for that official's consideration. All debarment/suspension referrals shall include a recommendation by the SDC as to a proposed course of action;

(2) The debarment decision-making process, which shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment;

(3) The suspension decision-making process, which shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through presentation, information and argument in opposition to the suspension;

(4) Recommending to the Director or designee whether or not to solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment; and

(5) Recommending to the Director or designee whether or not to continue current contracts with a contractor or subcontractor who is debarred, suspended, or proposed for debarment.

OPM's Office of General Counsel will review for legal sufficiency:

(1) Referrals by CPO and SDC to the debarment/suspension official;

(2) Recommendations by CPO to the Director or designee that OPM solicit offers from, award contracts to, or consent to subcontracts with a contractor who is listed in the SAM/EPLS as debarred, suspended, or proposed for debarment;

(3) Recommendations by CPO and SDC to the Director or designee to terminate a current contract because a contractor or subcontractor was subsequently debarred, suspended, or proposed for debarment; and

(4) Notices of proposed debarment, notices of suspension, or any other communication to a contractor regarding that contractor's potential or actual suspension or debarment.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2013–03962 Filed 2–20–13; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Scheduling of Council Meetings.

SUMMARY: The Hispanic Council on Federal Employment will hold its 2013 Council meetings on the dates and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Chair of the National Hispanic Leadership Agenda (NHLA).

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at any of the meetings. The

manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES:

March 7, 2013 from 2 p.m.–4 p.m.
April 25, 2013 from 2 p.m.–4 p.m.
June 27, 2013 from 2 p.m.–4 p.m.
August 29, 2013 from 2 p.m.–4 p.m.
October 31, 2013 from 2 p.m.–4 p.m.
December 12, 2013 from 2 p.m.–4 p.m.

Location: U.S. Office of Personnel Management, 1900 E St. NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St. NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–0020 Fax (202) 606–2183 or email at *veronica.villalobos@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2013–03961 Filed 2–20–13; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–1; Order No. 1659]

New Postal Product; Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to the existing Express Mail & Priority Mail Contract 11 Negotiated Service Agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 21, 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

On February 13, 2013, the Postal Service filed notice that it has agreed to an amendment to the existing Express Mail & Priority Mail Contract 11 subject to this docket.[1] The Postal Service includes one attachment in support of its Notice:

- Attachment A—a redacted copy of the amendment to the existing Express Mail & Priority Mail Contract 11.

The Postal Service also filed the unredacted amendment under seal. It asserts that the ''supporting financial documentation and financial certification initially provided in this docket remain applicable.'' *Id.* at 1. It also seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of customer-identifying information that it has filed under seal. *Id.*

The amendment changes the definition of the term ''Contract Quarters'' to provide that the first contract quarter begins on October 1 rather than July 1. *Id.* Attachment A at 1. The Postal Service intends for the amendment to become effective on the day after the date that the Commission completes its review of the Notice. *Id.*

II. Notice of Filings

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice 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 February 21, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lawrence E. Fenster to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission shall review the Notice of United States Postal Service of Amendment to Express Mail & Priority Mail Contract 11 with Portions Filed Under Seal, filed on February 13, 2013 in Docket No. CP2013–1.

2. Pursuant to 39 U.S.C. 505, Lawrence E. Fenster is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in these proceedings are due no later than February 21, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–03900 Filed 2–20–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Amendment to Express Mail & Priority Mail Contract 11, With Portions Filed Under Seal, February 13, 2013 (Notice).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–5; SEC File No. 270–155, OMB Control No. 3235–0123.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–5 (17 CFR 240.17a–5), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–5 is the basic financial reporting rule for brokers and dealers.[1] The Rule requires the filing of Form X–17A–5, the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The Rule also requires the filing of an annual audited report of financial statements.

The FOCUS Report consists of: (1) Part I, which is a monthly report that must be filed by brokers or dealers that clear transactions or carry customer securities; (2) one of three alternative quarterly reports: Part II, which must be

[1] Rule 17a–5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235–0199).

filed by brokers or dealers that clear transactions or carry customer securities; Part IIA, which must be filed by brokers or dealers that do not clear transactions or carry customer securities; and Part IIB, which must be filed by specialized broker-dealers registered with the Commission as OTC derivatives dealers; [2] (3) supplemental schedules, which must be filed annually; and (4) a facing page, which must be filed with the annual audited report of financial statements. Under the Rule, a broker or dealer that computes certain of its capital charges in accordance with Appendix E to Exchange Act Rule 15c3–1 must file additional monthly, quarterly, and annual reports with the Commission.

The variation in the size and complexity of brokers and dealers subject to Rule 17a–5 and the differences in the FOCUS Report forms that must be filed under the Rule make it difficult to calculate the cost of compliance. However, we estimate that, on average, each report will require approximately 12 hours. At year-end 2011, the Commission estimates that there were approximately 4,802 brokers or dealers, and that of those firms there were approximately 513 brokers or dealers that clear transactions or carry customer securities. The Commission therefore estimates that approximately 513 firms filed monthly reports, approximately 4,134 firms filed quarterly reports, and approximately 63 firms filed annual reports. In addition, approximately 4,650 firms filed annual audited reports. As a result, there were approximately 27,405 total annual responses ((513 × 12) + (4,134 × 4) + 63 + 4,650 = 27,405). This results in an estimated annual burden of 328,860 hours (27,405 annual responses × 12 hours = 328,860).

In addition, we estimate that approximately 9 brokers or dealers will elect to use Appendix E to Rule 15c3–1 to compute certain of their capital charges (as of September 2012, six brokers or dealers have elected to use Appendix E). We estimate that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is about 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, we estimate that the total additional annual burden for these 9 brokers or dealers is approximately 1,080 hours ((48 + 32 + 40) × 9 = 1,080).

The Commission therefore estimates that the total annual burden under Rule 17a–5 is approximately 330,000 hours (328,860 + 1,080 = 329,940, rounded to 330,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to *PRA_Mailbox@sec.gov.*

Dated: February 15, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03972 Filed 2–20–13; 8:45 am]

BILLING CODE 8011–01–P

[2] Part IIB of Form X–17A–5 must be filed by OTC derivatives dealers under Exchange Act Rule 17a–12 and is subject to a separate PRA filing (OMB Control Number 3235–0498).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68934; File No. TP 13–06]

Order Extending Temporary Exemptions From Certain Rules of Regulation SHO Related to Hurricane Sandy

February 14, 2013.

On December 12, 2012, the Commission issued an order (the ''Order'') pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') granting exemptions from certain requirements of Regulation SHO under the Exchange Act [1] in response to the impact of Hurricane Sandy on the Depository Trust & Clearing Corporation vault at 55 Water Street in Manhattan (the ''Vault'').[2] Specifically, the Order granted exemptions from the ''locate,'' short sale price test, and close-out requirements of Regulation SHO for sales of Vault Securities.[3] The Order specified that, absent further action by the Commission, these exemptions would expire on February 1, 2013.

SIFMA has requested an extension until May 5, 2013, because the process for restoring Vault Securities is not complete at the present time.[4] As a result, SIFMA states that sales of Vault Securities continue to experience settlement delays that have implications for compliance with Regulation SHO. For this reason and the reasons stated in the Order, the Commission finds that extending the Order, pursuant to our authority under Section 36 of the Exchange Act,[5] is appropriate in the public interest, and is consistent with the protection of investors.

Therefore, it is ordered, pursuant to Section 36 of the Exchange Act, that the Order is extended until 11:59 p.m. E.D.T. on May 5, 2013.

The temporary exemptions granted in the Order and extended herein are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this order are directed to the anti-fraud and anti-

[1] 17 CFR 242.200 *et seq.*

[2] Order Granting Exemptions from Certain Rules of Regulation SHO Related to Hurricane Sandy, Exchange Act Release No. 68419 (Dec. 12, 2012), 77 FR 74891 (Dec. 18, 2012).

[3] The Order defines ''Vault Securities'' as owned securities, represented by physical certificates held in the Vault at the time Hurricane Sandy made landfall and whose settlement depends on the delivery of such physical certificates (or documentation with equivalent effect).

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 14, 2013. SIFMA informally contacted Commission staff on January 31, 2013, to discuss the possibility of extending the temporary exemptions.

[5] Subject to certain exceptions, Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm.

manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act,[6] and Rule 10b–5 thereunder.[7] Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03899 Filed 2–20–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78j(b).

[7] 17 CFR 240.10b–5.

[8] *See* 17 CFR 200.30–3(a)(11).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68930; File No. SR–NYSEArca–2013–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Listing and Trading of Shares of the Cambria Shareholder Yield ETF Pursuant to NYSE Arca Equities Rule 8.600

February 14, 2013.

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 January 31, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 13, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Cambria Shareholder Yield ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares [5] on the Exchange: Cambria Shareholder Yield ETF (the ''Fund'').[6] The Shares of the Fund will be offered by Cambria ETF Trust (the ''Trust''). The Trust will be registered with the Securities and Exchange Commission (''Commission'') as an open-end management investment company.[7] Cambria Investment Management, L.P. will serve as the investment adviser to the Fund (the ''Adviser''). SEI Investments Distribution Co. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. SEI Investments Global Funds Services (the ''Administrator'') will serve as administrator for the Fund. Brown Brothers Harriman & Co. will serve as the custodian and transfer agent for the Fund (''Custodian'' and ''Transfer Agent,'') respectively.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition of and/or changes to such investment company portfolio. Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[8] Commentary

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange: (1) made technical changes to the proposed rule change to clarify how the net asset value of the Cambria Shareholder Yield ETF would be calculated; and (2) stated that quotation and last-sale information for many securities held by the Cambria Shareholder Yield ETF would be available via the Consolidated Tape Association high speed line.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing and trading of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF).

[7] The Trust will be registered under the 1940 Act. On July 6, 2012, the Trust filed an amendment to the Trust's registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–180879 and 811–22704) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Trust filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13959), dated November 13, 2012 (''Exemptive Application''). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30340 (January 4, 2013) (''Exemptive Order''). Investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their

.06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not affiliated with any broker-dealers. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

Fund Investments

According to the Registration Statement, the Fund seeks income and capital appreciation with an emphasis on income from investments in the U.S. equity market. The Fund will seek to achieve its investment objective by investing, under normal market conditions,[9] primarily in equity securities that provide a high ''shareholder yield.'' The Adviser views equity securities as providing a high shareholder yield if they exhibit strong cash flows, as reflected by their payment of dividends to shareholders and their return of capital to shareholders in other forms, such as through net stock buybacks, net debt paydown, mergers, acquisitions and other forms of reinvestment in the business. The Adviser believes that, while any one of these measures of a company's cash flows, in isolation, is inadequate to determine the attractiveness of its equity securities, considered together these measures have the potential to result in the construction of a portfolio of companies with better cash flows, stronger growth potential and higher yield characteristics. Considering these measures, which comprise shareholder yield, together, therefore may result in a more attractive investment portfolio.

The Fund will invest primarily in equity securities, including the common stock, of U.S. companies. The Fund may obtain a limited amount of foreign and emerging markets exposure through investments in depositary receipts, including American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs''). [10] The Fund may invest in securities of companies in any industry and of any market capitalization. Although the Fund generally expects to invest in companies with larger market capitalizations, the Fund may invest in small- and mid-capitalization companies.

Cambria will utilize a quantitative model to identify which securities the Fund might purchase and sell and opportune times for purchases and sales. While the Fund will invest in approximately 100 of the top equity securities as determined by their shareholder yield, the quantity of holdings in the Fund will be based on a number of factors, including the asset size of the Fund and the number of companies that satisfy the Adviser's quantitative measurements at any one time. Filters will be implemented to screen for companies that pass various market capitalization, sector concentration, and liquidity requirements. The Fund's portfolio will be rebalanced to the Adviser's internal target allocations, developed pursuant to the Adviser's strategy described above, at least quarterly.

The Fund will not invest in non-US equity securities other than through ADRs and GDRs.[11]

Other Investments

According to the Registration Statement, to respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments. The Fund may be invested in these instruments for extended periods, depending on the Adviser's assessment of market conditions. Debt securities and money market instruments include shares of other fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements and bonds that are rated BBB or higher. While the Fund is in a defensive position, the opportunity to achieve its investment objective will be limited. Furthermore, to the extent that the Fund invests in money market mutual funds, the Fund would bear its pro rata portion of such money market fund's advisory fees and operational fees.[12]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[13]

implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] Depositary receipts are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a non-U.S. issuer. Depositary receipts are not necessarily denominated in the same currency as their underlying securities. Generally, ADRs, issued in registered form, are designed for use in the U.S. securities markets. In general, ADRs must be sponsored, but the Fund may invest in unsponsored ADRs under certain limited circumstances. It is expected that not more than 10% of the net assets of the Fund will be invested in unsponsored ADRs. GDRs are receipts typically issued by non-United States banks and trust companies that evidence ownership of either foreign or domestic securities. The Fund will invest only in ADRs and GDRs that are traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* note 25, *infra.*

[11] *See* note 10, *supra.*

[12] Circumstances under which the Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[13] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to

Continued

The Fund may make secured loans of its portfolio securities; however, securities loans will not be made if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33⅓% of its total assets (including the market value of collateral received). To the extent the Fund engages in securities lending, securities loans will be made to broker-dealers that the Adviser believes to be of relatively high credit standing pursuant to agreements requiring that the loans continuously be collateralized by cash, liquid securities, or shares of other investment companies with a value at least equal to the market value of the loaned securities.

The Fund may invest in preferred stocks. Preferred stocks include convertible and non-convertible preferred and preference stocks that are senior to common stock. Preferred stocks are equity securities that are senior to common stock with respect to the right to receive dividends and a fixed share of the proceeds resulting from the issuer's liquidation. Some preferred stocks also entitle their holders to receive additional liquidation proceeds on the same basis as holders of the issuer's common stock, and thus represent an ownership interest in the issuer.

The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a Fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The acquiring Fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the Fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

The Fund may invest in U.S. government securities and foreign government securities rated BBB or higher. U.S. government securities include securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities. Foreign government securities include securities issued or guaranteed by foreign governments (including political subdivisions) or their authorities, agencies, or instrumentalities or by supra-national agencies.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act. Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company and (iii) 10% of the Fund's total assets of investment companies in the aggregate.

The Fund will be classified as a ''diversified'' investment company under the 1940 Act.[14]

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (iii) investments in repurchase agreements collateralized by U.S. government securities.[15]

The Fund intends to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[16]

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [17] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

The Fund will not invest in options, futures or swaps. The Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at NAV in aggregations of 50,000 Shares (''Creation Units'').

The consideration for a Creation Unit of a Fund will be the ''Fund Deposit,'' which will consist of the basket of securities to be deposited to purchase Creation Units of the Fund (the ''In-Kind Creation Basket''). The Fund Deposit will consist of the In-Kind Creation Basket and an amount of cash consisting of a ''Balancing Amount'' (as described below) and a transaction fee calculated in connection with creations (together with the Balancing Amount, the ''Cash Component''), or a Cash Component that includes an all cash payment (''Cash Value'').

In addition to the In-Kind Creation Basket, a purchaser will typically pay to the Fund a ''Balancing Amount'' reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the In-Kind Creation Basket. If the NAV per Creation Unit exceeds the market value of the securities in the In-Kind Creation Basket, the purchaser will pay the Balancing Amount to the Fund. By contrast, if the NAV per Creation Unit is less than the market value of the securities in the In-Kind Creation Basket, the Fund will pay the Balancing Amount to the purchaser. The Balancing Amount ensures that the consideration paid by an investor for a Creation Unit is exactly equal to the value of the Creation Unit.

A portfolio composition file, to be sent via the National Securities Clearing Corporation (''NSCC''), will be made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), a list of the names and the required number of shares of each security in the In-Kind Creation Basket to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day). In addition, on each business day, the estimated Cash Component, effective through and including the previous business day, will be made available through NSCC.

The In-Kind Creation Basket is applicable for purchases of Creation Units of the Fund until such time as the next-announced In-Kind Creation Basket is made available. The Fund reserves the right to accept a nonconforming (*i.e.,* custom) Fund Deposit. In addition, the composition of

Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[14] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[15] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[16] 26 U.S.C. 851 *et seq.*

[17] 17 CFR 240.10A–3.

the In-Kind Creation Basket may change as, among other things, corporate actions and investment decisions by the Adviser are implemented for the Fund's portfolio.

All purchase orders must be placed by or through an ''Authorized Participant''. An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System (''Clearing Process'') of the NSCC or a participant in The Depository Trust Company (''DTC'') with access to the DTC system, and must execute an agreement with the Distributor that governs transactions in the Fund's Creation Units. In-kind portions of purchase orders will be processed through the Clearing Process when it is available.

Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Distributor and only on a business day. The redemption proceeds for a Creation Unit will consist of the basket of securities a shareholder will receive upon redemption of a Creation unit (the ''In-Kind Redemption Basket'') and an amount of cash consisting of a Balancing Amount and a transaction fee (the ''Cash Redemption Amount''), or, in certain circumstances, the Cash Value, in all instances equal to the value of a Creation Unit. In addition, investors may incur brokerage and other costs in connection with assembling a Creation Unit.

The redemption proceeds for a Creation Unit generally consist of the In-Kind Redemption Basket and a Cash Redemption Amount (''Fund Redemption''), which consists of a Balancing Amount and a Transaction Fee. In lieu of the In-Kind Redemption Basket and Balancing Amount, Creation Units may be redeemed consisting solely of cash in an amount equal to the NAV of a Creation Unit (the ''Cash Value''). In such instances, information about the Cash Value of a Creation Unit also will be published. The Fund reserves the right to accept a nonconforming (*i.e.,* custom) Fund Redemption.[18]

The right of redemption may be suspended or the date of payment postponed: (i) For any period during which the New York Stock Exchange (''NYSE'') is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

For an order involving a Creation Unit to be effectuated at the Fund's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order (''Order Cut-Off Time''). The Order Cut-Off Time for creation and redemption orders for the Fund is generally expected to be 4:00 p.m. Eastern time for In-Kind Creation and Redemption Baskets, and 2:00 p.m. Eastern time for Cash Value transactions. In-Kind Creation and Redemption Baskets are expected to be accepted until the close of regular trading on the Exchange on each business day, which is usually 4:00 p.m. Eastern time. A standard redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Detailed descriptions of the Fund's procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*www.cambriafunds.com*), as applicable.

Determination of Net Asset Value

According to the Registration Statement, the NAV of the Fund will be calculated each business day as of the close of regular trading on the NYSE, generally 4:00 p.m., Eastern time. The Fund will calculate its NAV per Share by taking the current market value of its total assets, subtracting any liabilities, and dividing that amount by the total number of Shares owned by shareholders.

When calculating the NAV of the Fund's Shares, expenses are accrued and applied daily and stocks held by the Fund will be valued at their market value when reliable market quotations are readily available. Equity securities will be valued primarily on the basis of market prices reported on stock exchanges and other securities markets around the world. If a security is listed on a national securities exchange, the security will be valued at the closing price or, if the closing price is not readily available, the mean of the closing bid and ask prices. Unlisted securities for which market quotations are readily available will be valued at the last sale price, if available, or, if the last sale price is unavailable, at the mean of the closing bid and ask prices, if both such prices are readily available, or, if both such prices are unavailable, at the last quoted bid price, as applicable. Debt securities and other assets for which market quotations are readily available will be valued at market values in the principal market in which they normally are traded, as furnished by recognized dealers in such securities or assets. Certain equity securities, debt securities and other assets will be valued differently. For instance, fixed-income investments maturing in 60 days or less will be valued primarily using the amortized cost method. Investments in open-end funds are valued at their NAVs. Both market quotations and indicative bids are obtained from outside pricing services approved and monitored pursuant to a policy approved by the Fund's Board of Trustees.

If a market price is not readily available or is deemed not to reflect market value, the Fund will determine the price of the security held by the Fund based on a determination of the security's fair value pursuant to a policy approved by the Fund's Board of Trustees.

Availability of Information

The Fund's Web site (*www.cambriafunds.com*), which will be publicly available prior to the public offering of Shares, will include a form

[18] As stated in the Exemptive Application, the Fund may, in certain circumstances, allow cash creations or partial cash creations but not redemptions (or vice versa) if: (a) There is a Balancing Amount; (b) the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) upon receiving a purchase or redemption order from an Authorized Participant the Fund determines to require the purchase or redemption to be made entirely in cash because, among other things, it would benefit the Fund and its investors; (d) the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the In-Kind Creation Basket or In-Kind Redemption Basket, respectively, solely because (i) certain instruments therein are not eligible for transfer through either the NSCC Process or DTC Process (as described in the Exemptive Application) or (ii) such instruments are not eligible for trading due to local (foreign) trading or transfer restrictions or the like; or (e) the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the In-Kind Creation Basket or In-Kind Redemption Basket, respectively, solely because (i) certain instruments therein are, in the case of the purchase of a Creation Unit, not available in sufficient quantity, (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting, or (iii) an investor would be subject to unfavorable income tax treatment based on receipt of redemption proceeds in kind. According to the Registration Statement, an additional variable charge for cash or partial cash creations, and cash or partial cash redemptions, may also be imposed to compensate the Fund for the costs associated with buying the applicable securities.

of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[19] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[20]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket will represent one Creation Unit of Shares of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares are expected to be published daily in the financial section of newspapers. Quotation and last sale information for the Shares and many securities held by the Fund will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Indicative Optimized Portfolio Value (''IOPV''),[21] which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[22] The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[23] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[24] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading

[19] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[20] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[21] The IOPV calculations will be estimates of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. The quotations of certain Fund holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States. Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Fund, which will be calculated only once a day.

[22] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from the CTA or other data feeds.

[23] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[24] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.[25]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (4) how information regarding the IOPV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[26] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Adviser is not affiliated with any broker-dealers. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. FINRA, on behalf of the Exchange, may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. It is expected that not more than 10% of the net assets of the Fund will be invested in unsponsored ADRs. The Fund will invest only in GDRs that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund may invest in U.S. government securities and foreign government securities rated BBB or higher. The Fund may invest up to 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares and many securities held by the Fund will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and FINRA, on behalf of the Exchange, may obtain information

[25] For a list of the current members of ISG, see *www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[26] 15 U.S.C. 78f(b)(5).

via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund will not invest in options, futures or swaps. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to rule-comments@sec.gov. Please include File No. SR–NYSEArca–2013–14 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 No. SR–NYSEArca-2013–14. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2013–14 and should be submitted on or before March 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68925; File No. SR–NASDAQ–2012–137]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, To Establish the Market Quality Program

February 14, 2013.

On December 7, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Market Quality Program (''MQP'' or ''Program'') on a pilot basis. On December 20, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on December 31, 2012.[3] The Commission received two comment letters on the proposed rule change.[4] On February 7, 2013, the Exchange submitted Amendment No. 2 to the proposed rule change. On February 8, 2013, the Exchange withdrew Amendment No. 2 [5] and filed Amendment No. 3 to the proposed rule change.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68515 (Dec. 21, 2012), 77 FR 77141 (Dec. 31, 2012).

[4] *See* Letter from Rey Ramsey, President & CEO, TechNet, dated January 22, 2013 and Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated January 30, 2013.

[5] The Exchange withdrew Amendment No. 2 due to a technical error in the amendment.

[6] In Amendment No. 3, the Exchange clarified: (i) that the Exchange may limit on a Program-wide basis the number of Exchange-Traded Funds (''ETFs'') per MQP Company that can participate in the MQP, and that the Exchange would not be limiting the number of actual shares issued by an MQP Company for a particular ETF participating in the Program; (ii) that the Exchange will provide in the monthly public report to the Commission relating to the MQP (a) information on the market quality of MQP Securities after they exceed the threshold and ''graduate'' from the Program pursuant to proposed Rule 5950(d)(1)(A), and (b) its analysis of the information to be included in the report and its assessment of the efficacy of the MQP; and (iii) that the Exchange will provide to the Commission data and analyses about comparable ETFs that are listed on the Exchange but that are not in the MQP, as well as any other MQP-related data and analyses requested by Commission staff for the purpose of evaluating the efficacy of the MQP. Amendment No. 3 provides clarification to the

Section 19(b)(2) of the Act[7] provides that, within 45 days of the publication of notice of the filing of a proposed rule change—or within such longer period up to 90 days (i) as the Commission may designate if it finds the longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents—the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is February 14, 2013. The Commission is extending this 45-day period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that the Commission has sufficient time to consider the proposed rule change and the comments received. The proposed rule change would, among other things, add new Rule 5950 to establish the Market Quality Program and exempt the Market Quality Program from NASDAQ Rule 2460 (Payment for Market Making).

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[8] designates March 31, 2013, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NASDAQ–2012–137).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

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proposed rule change, and because it does not materially affect the substance of the proposed rule change, Amendment No. 3 does not require notice and comment. All terms relating to the MQP that are referred to, but not defined in, this Notice of Designation of a Longer Period for Commission Action are defined in the proposed rule change, as amended.

[7] 15 U.S.C. 78s(b)(2).

[8] *Id.*

[9] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68927; File No. SR–NYSEARCA–2013–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.87 in Part and Adding a New Section To Address Errors That Involve Complex Orders

February 14, 2013.

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 February 1, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.87 in part and add a new section to address errors that involve Complex Orders. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[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 proposing to amend certain existing provisions of Rule 6.87 (''Obvious Error Rule'').[4] In addition, the Exchange is proposing to add new language to Rule 6.87 specific to how errors involving Complex Orders will be addressed.

Proposed Amendments to Existing Provisions of Rule 6.87

The Exchange adopted the Obvious Error Rule to handle situations where an order receives an erroneous execution, such as receiving a price that is higher or lower than the Theoretical Price by a specified amount.[5] The Exchange is proposing several amendments to the Obvious Error Rule. First, the Exchange is proposing to change the portion of the rule that addresses errors in series with zero or no bid. Specifically, the Exchange proposes replacing reference to ''series quoted no bid on the Exchange'' with ''series where the NBBO bid is zero.'' This is being done to ensure consistency in the language with other aspects of the existing rule that reference NBBO for determination of whether a transaction is deemed eligible for obvious error treatment. The Exchange believes the NBBO provides greater accuracy in determining the value or valueless of an option because it takes into account interest from all market participants and not just those active on the Exchange. The Exchange also believes that ensuring consistency throughout the rule text is important to help avoid investor confusion.

Second, the Exchange proposes to amend the times in which certain OTP Holders are required to notify the

[4] *See* Exchange Rule 6.87.

[5] *See e.g.* Securities Exchange Act Release Nos. 34–48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (PCX–2002–01); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (PCX–2004–08); 51723 (May 20, 2005), 70 FR 30988 (May 31, 2005) (PCX–2005–52); 52008 (July 11, 2005), 70 FR 41069 (July 15, 2005) (PCX–2005–78); 53221 (February 3, 2006), 71 FR 6811 (February 9, 2006) (PCX–2005–102); 55330 (February 21, 2007), 72 FR 9052 (February 28, 2007) (NYSEArca–2007–06); 57103 (January 4, 2008), 73 FR 1903 (January 10, 2008) (NYSEArca–2007–115); 57653 (April 11, 2008), 73 FR 20996 (April 17, 2008) (NYSEArca–2008–41); 58717 (October 2, 2008), 73 FR 60386 (October 10, 2008) (NYSEArca–2008–106); 59556 (March 11, 2009), 74 FR 11396 (March 17, 2009) (NYSEArca–2009–17); 61393 (January 21, 2010), 75 FR 4887 (January 29, 2010) (NYSEArca–2010–03); 62019 (April 30, 2010), 75 FR 25889 (May 10, 2010) (NYSEArca–2010–16); 62052 (May 6, 2010), 75 FR 26832 (May 12, 2010) (NYSEArca–2010–38); 65504 (October 6, 2011), 76 FR 63980 (October 14, 2011) (NYSEArca–2011–71).

Exchange in order to have transactions reviewed under Rule 6.87. Specifically the Exchange is proposing to extend the time Market Makers have to notify the Exchange of a potential error from five minutes to ten minutes. The Exchange believes that the change is appropriate given the increase in the number of options series, as well as the number of exchanges in operation today. Market Makers providing liquidity on multiple exchanges potentially need to call and speak with someone at each of the nine exchanges to have transactions reviewed. As such, the existing five minute time limit makes this impractical if not impossible and therefore it is appropriate to extend the time limit to ten minutes. The Exchange notes that at least one other exchange already provides Market Makers with more than five minutes to request a review under their obvious error rules.[6]

In addition, the Exchange is proposing to extend the time OTP Holders acting as agent for Customer orders have to notify the Exchange of a potential error from twenty minutes to thirty minutes. The Exchange believes that extending the time limit for Customer orders is warranted due to the degree in which many Customers are removed from the operation of the execution. For a Customer order, the brokerage firm with which the customer has an account may not actually be the routing or execution broker for the Customer's options trades. It is fairly common for brokerage firms to route their Customer order flow through a different Broker Dealer that employs a router that weighs various best execution factors in arriving at a routing decision. In such situations, Customers who receive a fill they want reviewed under the obvious error rule must first call their brokerage firm, who will in turn contact the broker-dealer that routed the order to the Exchange for execution. OTP Holders have indicated to the Exchange that Customers may need more than 20 minutes for their requests for review to reach the Exchange. Other market participants, such as Firms, non-member Market Makers, and Professional Customers tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. Hence the Exchange believes it is appropriate to extend the time to request a review for OTP Holders acting as agent for Customer orders given these facts.[7]

Proposed Amendments To Address Complex Orders

The Exchange also proposes adding new language to address Complex Orders in the context of Rule 6.87. Presently, the Obvious Error Rule is silent on how Complex Orders are handled under the bust and adjust provisions of the rule. The Exchange wants to include language that will give participants some degree of certainty regarding what they should expect when legs of a Complex Order are eligible for obvious error treatment. There are several scenarios in which Complex Orders may be involved in a transaction that is reviewed under the Obvious Error Rule. Each of those scenarios and the proposed approach will be covered below:

Scenario 1: A Complex Order trades with another Complex Order in the Complex Order Book. Under this scenario, should any leg(s) upon review qualify for obvious error treatment under the provisions of Rule 6.87, then all legs of the Complex Order will be busted unless both parties mutually agree to an adjustment price.

The Exchange believes that this approach is similar to rules of other markets[8] and appropriate due to several aspects unique to Complex Orders. In particular, the Exchange notes that Complex Orders often are used by participants to enter positions known as spreads that entail limited risk relative to an outright naked sale of a put or call. For example, buying 1 XYZ Dec 55 call and selling 1 XYZ Dec 50 call has risk limited to $5, less the premium received for the spread. If the leg of the Complex Order consisting of the long 1 XYZ Dec 55 call was eligible to be busted, the OTP Holder would be left with a riskier, naked short position in the single remaining leg of the spread. Given this, the Exchange has decided that the best approach for dealing with Complex Orders in the context of the Obvious Error Rule will be to preserve the spread whenever possible. Therefore, when a trade eligible for obvious error treatment has occurred that involves a Complex Order trading with another Complex Order in the COB, the Exchange believes it is appropriate to bust all legs of the trade involved unless both parties to the trade mutually agree to an adjustment price.

Scenario 2: A Complex Order trades with another Complex Order in the Complex Order Book where one leg qualifies for the no-bid provision of Rule 6.87(a)(6). If the only leg(s) of the Complex Order that qualifies for obvious error treatment is pursuant to the no-bid provisions of Rule 6.87(a)(6), then no legs of the Complex Order will be busted (the trade stands as executed), unless both parties to the trade mutually agree otherwise.

The Exchange believes that busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series could result in abuse. In particular, by entering a spread priced slightly away from the market, the entering party can increase the chance that one of the legs will qualify for no-bid treatment upon execution. In such a scenario, the entity entering the Complex Order would have a window of time (equal to the notification provisions of the rule) to evaluate the market before claiming relief under the Obvious Error Rule (which would result in the busting of all legs). In order to prevent manipulation and a potential increase in nullified trades, the Exchange believes it is appropriate to not permit obvious error treatment for those situations where the only error occurred in a no-bid series.

Scenario 3: A Complex Order trades with individual orders or quotes in the Consolidated Book. In such situations, each executed leg will be reviewed separately under Rule 6.87. As a result, it is possible that after such a trade, only one leg of a Complex Order may meet the Obvious Error threshold (resulting in a residual position of a single leg). When a Complex Order receives executions in the Consolidated Order Book, it is likely to involve multiple OTP Holders. Although the Exchange prefers to avoid partial execution of a Complex Order, it does not seek to nullify a valid execution in the Consolidated Order Book of an OTP Holder who unknowingly interacted with a leg of a Complex Order. While this is not a change from how the Exchange currently handles all Complex Orders, language is being added to the Obvious Error Rule for purposes of clarification.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of

[6] *See* CBOE Rule 6.25(b)(1).

[7] While the Exchange acknowledges that extending the time a party can notify the Exchange of a potential error can increase uncertainty regarding the standing of a trade, it believes that such uncertainty will be limited only to those trades that are so outside of normal trading that they might qualify for obvious error treatment.

[8] *See* PHLX Rule 1092(c)(v).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

trade, 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 relating to the handling of transactions in series quoted no bid at the NBBO will promote just and equitable principles of trade by adding more certainty and consistency to the obvious error. The proposed rule change to increase the time limit for both Market Makers and OTP Holders acting as agent for Customers to request a review of a transaction under the provisions of Rule 6.87 is designed to protect investors and the public interest. Granting Market Makers more time to request a review of a trade for obvious error treatment will ensure they are comfortable they can meet the deadline. This comfort level should allow Market Makers to continue to aggressively provide that liquidity in a transparent and non-discriminatory manner to all participants which is in the public interest. Further, ensuring Customers sufficient time to request a review for trades is also consistent with investor protection and furthering the public interest as it allows those market participants furthest removed from the point of execution time to evaluate each trade and have adequate time to notify the Exchange of a potential error.

The Exchange believes that the proposed rule changes that address the handling of Complex Orders involved in obvious errors are also consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Detailing how Complex Orders involved in obvious errors will be busted and/or adjusted is important since it grants investors greater certainty. Preventing a market participant from busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series furthers the protection of investors and the public interest by preventing potential abuse. In the Exchange's view, the determination of whether an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Exchange believes that the proposed rule change provides such objective guidelines for the determination of whether an obvious price error has occurred.

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. To the contrary, the proposal further promotes competition on the Exchange which should lead to tighter, more efficient markets to the benefit of market participants including public investors that engage in trading and hedging on the Exchange, and thereby make the Exchange a desirable market vis a vis other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2013–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2013–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEARCA–2013–15 and should be submitted on or before March 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03966 Filed 2–20–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68932; File No. SR–CBOE–2013–021]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Text in the Exchange Fees Schedule

February 14, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on February 6, 2013, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend the text in the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to update the text in its Fees Schedule to clarify the fee exemptions in the ''Index Options Rate Table.'' The proposed change in this filing is solely administrative and will not amend any current fees. Currently, the Index Options Rate Table Section of the Exchange Fee Schedule has two different customer transaction fees. Specifically, the Exchange charges a $0.18 transaction fee per contract for all customer transactions in all index products excluding ''SPX, SPXW, SRO, OEX, XEO, VIX and Volatility Indexes.'' In addition, however, in a recent rule filing, the Exchange has eliminated this customer transaction fee in XSP index option transactions.[3] The Exchange is proposing to clarify in the second category that the $0.18 transaction fee per contract is applicable to ''All Index Products Excluding SPX, SPXW, SRO, OEX, XEO, VIX, XSP and VOLATILITY INDEXES.''

The Exchange believes the proposed rule change will make it clear that there is no $0.18 customer transaction fee per contract in transaction [sic] in XSP index options. The Exchange believes the proposed addition of rule text will provide greater clarity for customers. Thus, more customers may engage in XSP index options trading as a result of a greater awareness of the lower fees associated with such transactions. This would bring greater liquidity to the market, which benefits all market participants.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] 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 [sic] 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)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will promote just and equitable principles of trade by clarifying to Trading Permit Holders that there is no fee for customer transaction fees in XSP index option trading. Providing a clearer representation of fees in the Exchange fee schedule will remove any confusion that may exist with the current wording in the Fees Schedule. In addition, by making the fee waiver more explicit, the proposed rule change will encourage more customer transactions in XSP index options. The proposed changes are equitable and not unfairly discriminatory because bringing clarity to the Exchange Fees Schedule benefits all Trading Permit Holders. In addition, clarifying that there are not customer transaction fees in XSP index option trading would bring greater liquidity to the market, which benefits all 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. The Exchange does not believe the proposed administrative changes to the Exchange Fees Schedule will cause any unnecessary burden on intramarket competition because nothing is changing substantively. The Exchange is merely adding additional language to create more clarity. In addition, the Exchange does not believe the propose rule change will cause any unnecessary burden on intermarket competition because the Fees Schedule will continue to function in the same way it currently does. The proposed changes are only administrative to clarify the Fees in the Exchange Fees Schedule.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such 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,

[3] *See* SR–CBOE–2013–015 (January 30, 2013) (immediately effective rule change to eliminate the customer transaction fee for XSP index options).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 C.F.R. 240.19b–4(f).

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–2013–021 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–2013–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–021, and should be submitted on or before March 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03968 Filed 2–20–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68935; File No. SR–OCC–2012–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection To Advance Notice Filing, as Modified by Amendment No. 1 Thereto, To Enter Into an Unsecured, Committed Credit Agreement

February 14, 2013.

I. Introduction

On December 18, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2012–801 pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[1] entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Title VIII'' or ''Clearing Supervision Act''). On December 21, 2012, OCC filed Amendment No. 1 to advance notice SR–OCC–2012–801.[2] The advance notice, as amended by Amendment No. 1, was published in the **Federal Register** on January 16, 2013.[3] The Commission did not receive comments on the advance notice publication. This publication serves as a notice of no objection to the advance notice.

II. Description of Proposed Rule Change

OCC filed this advance notice to permit it to enter into an unsecured, committed credit agreement (''Facility'') in an aggregate principal amount not to exceed $25 million. The Facility is designed to satisfy the Commodity Futures Trading Commission's (''CFTC'') liquidity requirement contained in Regulation 39.11(e)(2) and also to provide OCC with access to additional liquidity for working capital needs and general corporate purposes.

Among other things, CFTC Regulation 39.11(a)(2) requires a derivatives clearing organization (''DCO'') to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.[4] In turn, CFTC Regulation 39.11(e)(2) provides that these financial resources must include unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities), equal to at least six months' operating costs and that if any portion of such financial resources is not sufficiently liquid, the DCO may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.[5] Accordingly, OCC would enter into a credit agreement for the Facility with BMO Harris Bank N.A. (''Lender'') having a maximum aggregate principal loan amount not to exceed $25 million.

A condition of OCC's access to the Facility is the execution of credit agreement documents between OCC and the Lender. OCC anticipates that the parties will finalize the forms of the credit agreement documents in early 2013. Ongoing conditions governing OCC's ability to access the Facility include that no default or event of default by OCC may exist before or during an extension of credit by the Lender to OCC through the Facility and that certain representations of OCC must remain true and correct. Events of default would include, but not be limited to, failure to pay any interest, principal, fees or other amounts when due, default under any covenant or agreement in any loan document, materially inaccurate or false representations or warranties, cross default with other material debt agreements, insolvency, bankruptcy, dissolution or termination of the existence of OCC, and unsatisfied judgments.

OCC anticipates that the Facility would be available to OCC on a revolving basis for a 364-day term. According to OCC, upon notice by OCC to the Lender of a request for funds, whether in writing or by telephone, the Lender would disburse loaned funds to OCC in U.S. dollars. The date of any loan would be required to be a business day, and the loans would be unsecured and made and evidenced by a promissory note provided by OCC. Any loan proceeds would be required to be used by OCC to finance its working capital needs or for OCC's general corporate purposes. According to OCC, its ability to draw against the Facility, even though no such draw is actually made, would contribute to OCC's compliance with the liquidity requirements prescribed by CFTC Regulation 39.11(e)(2).

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

[2] Amendment No. 1 clarifies the date the proposed change was approved by the OCC Board of Directors.

[3] Notice of Filing of Advance Notice, as Modified by Amendment No. 1 Thereto, in Connection with a Proposed Change to Enter into an Unsecured, Committed Credit Agreement, Securities Exchange Act Release No. 34–68618 (January 10, 2013), 78 FR 3483 (January 16, 2013) ''(Notice of Filing of Advance Notice'').

[4] 17 CFR 39.11(a)(2).

[5] 17 CFR 39.11(e)(2).

OCC stipulates that it would have the ability to terminate the Facility at any time.[6] Termination within the first six months of the Facility would trigger a termination fee; termination after six months from the date of entering into the Facility does not trigger a termination fee. Upon five days written notice during the term of the Facility, OCC would also be permitted to reduce the overall size of the Facility at any time. Any such reductions would be required to be made in an initial amount of at least $2.5 million. Thereafter, reductions would be able to be made in multiples of $1 million. In no event, however, would OCC be permitted to reduce the size of the Facility to an amount that is less than the greater of either its aggregate principal amount of indebtedness outstanding with respect to loans from the Facility or $15 million.

The outstanding principal balance of all loans made to OCC through the Facility will accrue interest equal to a base rate (generally equal to a Prime Rate, a Federal Funds Rate, or a LIBOR rate), as in effect from time to time, plus a certain applicable margin. Regardless of which method applies to a particular portion of OCC's total outstanding loan balance, in an event of a default the calculation of the amount of interest would be subject to a 2.00% increase above the otherwise applicable rate.

The Facility would involve a variety of customary fees payable by OCC to the Lender, including, but not limited to: (1) A one-time upfront fee payable at closing to the Lender calculated as a percentage of the total commitment amount of the Facility; (2) commitment fees payable quarterly in arrears on the average daily unused amount of the Facility; (3) reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution, and delivery of the Facility and loan documentation, and costs and expenses in connection with any default, event of default, or enforcement of the Facility; and (4) termination fees if OCC elects to terminate the Facility prior to six months from the date of the credit agreement underlying the Facility.

OCC believes that any impact of the Facility on the risks presented by OCC would be to reduce such risks by providing an additional source of liquidity for the protection of OCC, its clearing members, and the options market in general. OCC also believes the Facility would provide OCC with additional liquidity for working capital needs and general corporate purposes and thereby assist OCC in satisfying the CFTC's requirements with respect to liquidity under CFTC Regulation 39.11.

Like any lending arrangement, OCC notes there is a risk that the Lender would fail to fund when OCC requests a loan, because of the Lender's insolvency, operational deficiencies, or otherwise. Even if OCC were to draw on the Facility for liquidity purposes, which it does not anticipate, OCC believes that the potential funding risk associated with the Facility is mitigated in several ways. OCC notes that the Lender is a national banking association that is subject to oversight by prudential banking regulators with respect to its safety and soundness and its ability to meet its lending obligations. Furthermore, OCC notes that the $25 million size of the Facility is relatively small when compared to the total resources available to OCC. Therefore, if the Facility proved unavailable to OCC for any reason, OCC believes that it readily would be able to access, or arrange for access, to other sources of liquidity if necessary.

According to OCC, a second risk associated with the Facility is the risk that OCC would default on its obligation to make timely payment of principal or interest. OCC believes the benefits of the Facility outweigh this risk. Finally, because the Facility would be an unsecured lending arrangement, OCC believes that it would not be at risk in an event of default of the Lender potentially liquidating OCC assets that are used to secure loaned funds.

III. Analysis of Advance Notice

Although Title VIII does not specify a standard of review for an Advance Notice, Commission staff believes that the stated purpose of Title VIII is instructive.[7] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities (''FMU'') and providing an enhanced role for the Federal Reserve Board in the supervision of risk management standards for systemically-important FMUs.[8]

Section 805(a)(2) of the Clearing Supervision Act[9] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[10] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote Robust Risk Management;
- Promote Safety And Soundness;
- Reduce Systemic Risks; and
- Support the stability of the broader financial system.

The Commission adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012 (''Clearing Agency Standards'').[11] The Clearing Agency Standards became effective on January 2, 2013 and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[12] As such, the Commission believes it is appropriate to review Advance Notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b).

OCC states that its principal reason for entering into the Facility is to help ensure that OCC is in compliance with a CFTC requirement to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable OCC to cover its operating costs for a period of at least one year, calculated on a rolling basis, and to provide OCC with additional flexibility in managing its liquid assets while ensuring continued compliance with this requirement.[13] The size of the Facility ($25 million) is unlikely to raise risk concerns commonly associated with additional leverage. The Facility allows OCC to manage its general business risks and help ensure that it has

[6] In the event that OCC seeks to terminate or reduce the overall size of the Facility, OCC will first file an advance notice with the Commission pursuant to Dodd-Frank Act Section 806(e). *See* Notice of Filing of Advance Notice.

[7] 12 U.S.C. 5461(b).

[8] *Id.*

[9] 12 U.S.C. 5464(a)(2).

[10] 12 U.S.C. 5464(b).

[11] Clearing Agency Standards, Securities Exchange Act Release No. 34–68080 (October 22, 2012), 77 FR 66219 (November 2, 2012).

[12] The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors governing the operations of designated FMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. *See* Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

[13] *See* Notice of Filing of Advance Notice.

sufficient liquid assets to cover operational costs that may arise. Consistent with Section 805(a), this added liquidity should promote the safety and soundness of OCC, reduce systemic risks to OCC members, and, as a result, support the stability of the broader financial system.

Furthermore, Rule 17Ad–22(d)(4),[14] adopted as part of the Clearing Agency Standards, requires clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secured, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. The Facility should help ensure that OCC holds an amount of financial resources that, at a minimum, exceeds the total amount that would enable OCC to cover its operating costs for a period of at least one year and, as a result, should contribute to minimizing operational risk. For these reasons, the Commission does not object to the advance notice.

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[15] that, the Commission *does not object* to the advance notice (File No. SR–OCC–2012–801).

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03969 Filed 2–20–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 240.17Ad–22(d)(4).

[15] 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68926; File No. SR–NYSEMKT–2013–12]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 975NY in Part and Adding a New Section To Address Errors That Involve Complex Orders

February 14, 2013.

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 February 1, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 975NY in part and add a new section to address errors that involve Complex Orders. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain existing provisions of Rule 975NY (''Obvious Error Rule'').[4] In addition, the Exchange is proposing to add new language to Rule 975NY specific to how errors involving Complex Orders will be addressed.

Proposed Amendments to Existing Provisions of Rule 975NY

The Exchange adopted the Obvious Error Rule to handle situations where an order receives an erroneous execution, such as receiving a price that is higher or lower than the Theoretical Price by a specified amount.[5] The Exchange is proposing several amendments to the Obvious Error Rule. First, the Exchange is proposing to change the portion of the rule that addresses errors in series with zero or no bid. Specifically, the Exchange proposes replacing reference to ''series quoted no bid on the Exchange'' with ''series where the NBBO bid is zero.'' This is being done to ensure consistency in the language with other aspects of the existing rule that reference NBBO for determination of whether a transaction is deemed eligible for obvious error treatment. The Exchange believes the NBBO provides greater accuracy in determining the value or valueless of an option because it takes into account interest from all market participants and not just those active on the Exchange. The Exchange also believes that ensuring consistency throughout the rule text is important to help avoid investor confusion.

Second, the Exchange proposes to amend the times in which certain ATP Holders are required to notify the Exchange in order to have transactions reviewed under Rule 975NY. Specifically the Exchange is proposing to extend the time Market Makers have to notify the Exchange of a potential error from five minutes to ten minutes. The Exchange believes that the change is appropriate given the increase in the number of options series, as well as the number of exchanges in operation today. Market Makers providing liquidity on multiple exchanges potentially need to call and speak with someone at each of the nine exchanges to have transactions reviewed. As such, the existing five minute time limit makes this impractical if not impossible and therefore it is appropriate to extend the time limit to ten minutes. The Exchange notes that at least one other exchange already provides Market Makers with more than five minutes to request a review under their obvious error rules.[6]

In addition, the Exchange is proposing to extend the time ATP Holders acting as agent for Customer orders have to notify the Exchange of a potential error from twenty minutes to thirty minutes. The Exchange believes that extending the time limit for Customer orders is warranted due to the degree in which many Customers are

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Rule 975NY.

[5] *See e.g.* Securities Exchange Act Release Nos. 59472 (February 27, 2008), 74 FR 9843 (March 6, 2009) (NYSEALTR–2008–14); 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (NYSEALTR–2009–24); 59736 (April 8, 2009), 74 FR 17708 (April 16, 2009) (NYSEAmex–2009–10); 61394 (January 21, 2010), 75 FR 4435 (January 27, 2010) (NYSEAmex–2010–02); 65505 (October 6, 2011), 76 FR 63966 (October 14, 2011) (NYSEAmex–2011–76); and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (NYSEAmex–2012–32).

[6] *See* CBOE Rule 6.25(b)(1).

removed from the operation of the execution. For a Customer order, the brokerage firm with which the customer has an account may not actually be the routing or execution broker for the Customer's options trades. It is fairly common for brokerage firms to route their Customer order flow through a different Broker Dealer that employs a router that weighs various best execution factors in arriving at a routing decision. In such situations, Customers who receive a fill they want reviewed under the obvious error rule must first call their brokerage firm, who will in turn contact the broker-dealer that routed the order to the Exchange for execution. ATP Holders have indicated to the Exchange that Customers may need more than 20 minutes for their requests for review to reach the Exchange. Other market participants, such as Firms, non-member Market Makers, and Professional Customers tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. Hence the Exchange believes it is appropriate to extend the time to request a review for ATP Holders acting as agent for Customer orders given these facts.[7]

Proposed Amendments To Address Complex Orders

The Exchange also proposes adding new language to address Complex Orders in the context of Rule 975NY. Presently, the Obvious Error Rule is silent on how Complex Orders are handled under the bust and adjust provisions of the rule. The Exchange wants to include language that will give participants some degree of certainty regarding what they should expect when legs of a Complex Order are eligible for obvious error treatment. There are several scenarios in which Complex Orders may be involved in a transaction that is reviewed under the Obvious Error Rule. Each of those scenarios and the proposed approach will be covered below:

Scenario 1: A Complex Order trades with another Complex Order in the Complex Order Book. Under this scenario, should any leg(s) upon review qualify for obvious error treatment under the provisions of Rule 975NY, then all legs of the Complex Order will be busted unless both parties mutually agree to an adjustment price.

The Exchange believes that this approach is similar to rules of other markets[8] and appropriate due to several aspects unique to Complex Orders. In particular, the Exchange notes that Complex Orders often are used by participants to enter positions known as spreads that entail limited risk relative to an outright naked sale of a put or call. For example, buying 1 XYZ Dec 55 call and selling 1 XYZ Dec 50 call has risk limited to $5, less the premium received for the spread. If the leg of the Complex Order consisting of the long 1 XYZ Dec 55 call was eligible to be busted, the ATP Holder would be left with a riskier, naked short position in the single remaining leg of the spread. Given this, the Exchange has decided that the best approach for dealing with Complex Orders in the context of the Obvious Error Rule will be to preserve the spread whenever possible. Therefore, when a trade eligible for obvious error treatment has occurred that involves a Complex Order trading with another Complex Order in the COB, the Exchange believes it is appropriate to bust all legs of the trade involved unless both parties to the trade mutually agree to an adjustment price.

Scenario 2: A Complex Order trades with another Complex Order in the Complex Order Book where one leg qualifies for the no-bid provision of Rule 975NY(a)(6). If the only leg(s) of the Complex Order that qualifies for obvious error treatment is pursuant to the no-bid provisions of Rule 975NY(a)(6), then no legs of the Complex Order will be busted (the trade stands as executed), unless both parties to the trade mutually agree otherwise.

The Exchange believes that busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series could result in abuse. In particular, by entering a spread priced slightly away from the market, the entering party can increase the chance that one of the legs will qualify for no-bid treatment upon execution. In such a scenario, the entity entering the Complex Order would have a window of time (equal to the notification provisions of the rule) to evaluate the market before claiming relief under the Obvious Error Rule (which would result in the busting of all legs). In order to prevent manipulation and a potential increase in nullified trades, the Exchange believes it is appropriate to not permit obvious error treatment for those situations where the only error occurred in a no-bid series.

Scenario 3: A Complex Order trades with individual orders or quotes in the Consolidated Book. In such situations, each executed leg will be reviewed separately under Rule 975NY. As a result, it is possible that after such a trade, only one leg of a Complex Order may meet the Obvious Error threshold (resulting in a residual position of a single leg). When a Complex Order receives executions in the Consolidated Order Book, it is likely to involve multiple ATP Holders. Although the Exchange prefers to avoid partial execution of a Complex Order, it does not seek to nullify a valid execution in the Consolidated Order Book of an ATP Holder who unknowingly interacted with a leg of a Complex Order. While this is not a change from how the Exchange currently handles all Complex Orders, language is being added to the Obvious Error Rule for purposes of clarification.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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 relating to the handling of transactions in series quoted no bid at the NBBO will promote just and equitable principles of trade by adding more certainty and consistency to the obvious error. The proposed rule change to increase the time limit for both Market Makers and ATP Holders acting as agent for Customers to request a review of a transaction under the provisions of Rule 975NY is designed to protect investors and the public interest. Granting Market Makers more time to request a review of a trade for obvious error treatment will ensure they are comfortable they can meet the deadline. This comfort level should allow Market Makers to continue to aggressively provide that liquidity in a transparent and non-discriminatory manner to all participants which is in the public interest. Further, ensuring Customers sufficient time to request a review for trades is also consistent with investor protection and furthering the public interest as it allows those market participants furthest removed from the

[7] While the Exchange acknowledges that extending the time a party can notify the Exchange of a potential error can increase uncertainty regarding the standing of a trade, it believes that such uncertainty will be limited only to those trades that are so outside of normal trading that they might qualify for obvious error treatment.

[8] *See* PHLX Rule 1092(c)(v).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

point of execution time to evaluate each trade and have adequate time to notify the Exchange of a potential error.

The Exchange believes that the proposed rule changes that address the handling of Complex Orders involved in obvious errors are also consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Detailing how Complex Orders involved in obvious errors will be busted and/or adjusted is important since it grants investors greater certainty. Preventing a market participant from busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series furthers the protection of investors and the public interest by preventing potential abuse. In the Exchange's view, the determination of whether an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Exchange believes that the proposed rule change provides such objective guidelines for the determination of whether an obvious price error has occurred.

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. To the contrary, the proposal further promotes competition on the Exchange which should lead to tighter, more efficient markets to the benefit of market participants including public investors that engage in trading and hedging on the Exchange, and thereby make the Exchange a desirable market vis a vis other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2013–12 and should be submitted on or before March 14,2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03965 Filed 2–20–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68928; File No. SR–ICC–2013–01]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Update Chapter 26 and Remove Schedule 502 of the ICE Clear Credit Rules

February 14, 2013.

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 January 31, 2013, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to update Chapter 26 (Cleared CDS Products) of the ICC Rules and remove Schedule 502 (List of Pre-Approved Products) from the ICC Rules. The proposed rule change also includes a conforming edit within Chapter 5 (Risk Committee) of the ICC Rules. This update will provide direct reference within the ICC Rules to the cleared products list always available on the ICC Web site (''Approved Products List'') and add additional standards for certain ICC cleared products. ICC notes that rule submissions for updates to ICC's cleared product offering will be required under certain circumstances (e.g., certain financial single names, additional single-name constituents of the Emerging Markets Index, and High Yield single names).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

ICC proposes to amend Chapter 26 of its rules to update the definitions of Eligible CDX.NA Untranched Index (Rule 26A–102), Eligible SNAC Reference Entities (Rule 26B–102), Eligible SNAC Reference Obligations (Rule 26B–102), Eligible CDX.EM Untranched Index (Rule 26C–102), Eligible SES Reference Entities (Rule 26D–102) and Eligible SES Reference Obligations (Rule 26D–102) to include the requirement that the products must be determined by ICC to be eligible.

ICC proposes to amend Chapter 26 of its rules to update the definitions of List of Eligible CDX.NA Untranched Indexes (Rule 26A–102), List of Eligible SNAC Reference Entities (Rule 26B–102), List of Eligible CDX.EM Untranched Indexes (Rule 26C–102) and List of Eligible SES Reference Entities (Rule 26D–102) to include the reference that the Approved Products List will be maintained, updated and published on the ICC Web site.

ICC proposes to amend Chapter 26 of its rules to add the definition of Eligible SNAC Sector in Rule 26B–102 of the ICC Rules. The listed Eligible SNAC Sectors are: Basic Materials, Consumer Goods, Consumer Services, Energy, Financials, Healthcare, Industrials, Technology, Telecommunications Services, and Utilities. The requirement to list the Eligible SNAC Sector on the List of Eligible SNAC Reference Entities is also added to the definition of List of Eligible SNAC Reference Entities in Rule 26B–102.

ICC proposes to amend Chapter 26 of its rules to include within the definition of List of Eligible SES Reference Entities in Rule 26D–102 the requirement to list the Sector, Government, in the List of Eligible SES Reference Entities.

ICC proposes to remove Schedule 502 from the ICC Rules as Schedule 502 provides information available in the Approved Products List on the ICC Web site. The Approved Products List provides the information currently available in Schedule 502 as well as all additional product information listed in the definitions of List of Eligible CDX.NA Untranched Indexes (Rule 26A–102), List of Eligible SNAC Reference Entities (Rule 26B–102), List of Eligible CDX.EM Untranched Indexes (Rule 26C–102) and List of Eligible SES Reference Entities (Rule 26D–102).

ICC proposes to make one conforming amendment to Chapter 5 of its rules, specifically Rule 502(a), to change a reference to Schedule 502 of the ICC Rules to reference the Approved Products List on the ICC Web site.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed changes to the ICC Rules will provide direct reference within the ICC Rules to the cleared products list available on the ICC Web site and add additional standards for certain ICC cleared products. The proposed rule changes do not require any changes to the ICC risk management framework including the ICC margin methodology, guaranty fund methodology, pricing parameters and pricing model.

Section 17A(b)(3)(F) of the Act [3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, Section 17(A)(b)(3)(F),[4] because ICC believes that providing direct reference within the ICC Rules to the Approved Products List available on the ICC Web site and adding additional standards for certain ICC cleared products will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody or control of ICC or for which it is responsible. ICC is updating Chapters 5 and 26 and Schedule 502 of the ICC Rules to provide direct reference to the Approved Products List available on the ICC Web site and to add additional standards for certain ICC cleared products in order to assure Clearing Participants are informed of the ICC approved products.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2013–01 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–ICC–2013–01. 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 filings also will be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_20130131.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2013–01 and should be submitted on or before March 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03971 Filed 2–20–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68929; File No. SR–CME–2012–34]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Related to the Liquidity Factor of CME's CDS Margin Methodology

February 14, 2013.

On December 10, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make adjustments to the liquidity risk factor component of its credit default swap (''CDS'') margin model. CME proposes to use an index portfolio's market risk rather than its gross notional as the basis for determining the margins associated with the liquidity risk factor component. The proposed rule change was published for comment in the **Federal Register** on December 31, 2012.[3] The Commission did not receive comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is February 14, 2013. The Commission is extending this 45-day time period.

The Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, which would implement a significant change to CME's CDS margin methodology.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 31, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CME–2012–34).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03967 Filed 2–20–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68529 (December 21, 2012), 77 FR 77160 (December 31, 2012).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Vitaminspice Inc.; Order of Suspension of Trading

February 19, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VitaminSpice Inc. (''VitaminSpice'') because of questions regarding the adequacy of current financial information available about VitaminSpice; and the accuracy of assertions by VitaminSpice, and by others, in press releases to investors, in periodic financial filings and in internet promotions concerning, among other things, the company's revenues and operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on February 19, 2013 through 11:59 p.m. EST, on March 4, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–04083 Filed 2–19–13; 11:15 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2013–0007]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of the Treasury, Internal Revenue Service (IRS))—Match Number 1310

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire March 31, 2013.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with IRS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the

Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Kirsten J. Moncada,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of the Treasury, the Internal Revenue Service (IRS)

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, terms, and safeguards under which IRS will disclose to SSA certain return information for the purpose of establishing the correct amount of Medicare Part B premium subsidy adjustments and Medicare prescription drug coverage premium increases under sections 1839(i) and 1860D–13(a)(7) of the Social Security Act (Act) (42 U.S.C. 1395r(i) and 1395w–113(a)(7)), as enacted by section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA; Pub. L. 108–173) and section 3308 of the Affordable Care Act of 2010 (Pub. L. 111–148).

C. Authority for Conducting the Matching Program

The legal authority for this matching operation is section 1860D–14 of the Act, which requires the Commissioner to determine the eligibility of applicants for the prescription drug subsidy who self-certify their income, resources, and family size. Pursuant to section 1860D–14(a)(3) of the Act (42 U.S.C. 1395w–114(a)(3)), we must determine whether a Social Security Part D eligible individual is a subsidy-eligible individual, and whether the individual is an individual as described in section 1860D–14(a).

In addition, section 6103(1)(20) of the Internal Revenue Code (IRC 6103(l)(20)) authorizes IRS to disclose specified return information to us with respect to taxpayers whose Part B insurance premium may (according to IRS records) be subject to adjustment pursuant to section 1839(i) of the Act, for the purpose of establishing the amount of any such adjustment.

D. Categories of Records and Persons Covered by the Matching Program

We will provide IRS with identifying information with respect to enrollees from the Master Beneficiary Record system of records, SSA/ORSIS 60–0090, published at 71 **Federal Register** (FR) 1826 (January 11, 2006). We will maintain the modified adjusted gross income (MAGI) data provided by IRS in the Medicare Database system of records, SSA/ORSIS 60–0321, originally published at 69 FR 77816 (December 28, 2004), and revised at 71 FR 42159 (July 25, 2006).

IRS will extract MAGI data from the Return Transaction File, which is part of the Customer Account Data Engine (CADE) Individual Master File, Treasury/IRS 24.030, published at 77 FR 47948 (August 10, 2012).

E. Inclusive Dates of the Matching Program

The effective date of this matching program is April 1, 2013; provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2013–03984 Filed 2–20–13; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012–0067]

Privacy Act of 1974; Computer Matching Program (SSA/Department of the Treasury, Internal Revenue Service (IRS))—Match Number 1305

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, (5 U.S.C. 552a), this notice announces a renewal of an existing computer matching program that we are currently conducting with IRS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either

telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish a notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Kirsten J. Moncada,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of the Treasury, the Internal Revenue Service (IRS)

A. Participating Agencies

SSA and IRS.

B. Purpose of the Matching Program

The purpose of this matching program is to set forth the terms under which IRS will disclose to us certain return information for the purpose of verifying eligibility or the correct subsidy percentage of benefits provided under section 1860D–14 of the Social Security Act (Act). (42 U.S.C. 1395w–114).

C. Authority for Conducting the Matching Program

Section 1860D–14 of the Act requires the Commissioner to determine the eligibility of applicants for the prescription drug subsidy who self-certify their income, resources, and family size. In addition, section 6103(1)(7) of the Internal Revenue Code (26 U.S.C. 6103(1)(7)) authorizes IRS to disclose return information with respect to unearned income to Federal, state, and local agencies administering certain benefit programs under the Act.

D. Categories of Records and Persons Covered by the Matching Program

Medicare beneficiaries who apply for the prescription drug subsidy under section 1860D–14 of the Act must self-certify on the application form the applicant's income, resources, and family size. We verify this information before making a subsidy determination.

When Medicare beneficiaries apply for the subsidy, and we cannot otherwise verify the income information provided on an application, we disclose to IRS the applicant's name and Social Security number.

We provide IRS with identifying information with respect to applicants for, and recipients of, the prescription drug subsidy from the existing Medicare Database system of records, SSA/ORSIS 60–0321, originally published at 69 FR 77816 (December 28, 2004), and as revised at 71 FR 42159 (July 25, 2006). IRS extracts return information with respect to unearned income from the Information Returns Master File, Treasury/IRS 22.061, as published at 77 FR 47946 (August 10, 2012).

E. Inclusive Dates of the Matching Program

The effective date of this matching program is November 11, 2012, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2013–03983 Filed 2–20–13; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2011–0106]

Rescission of Social Security Acquiescence Rulings 92–2(6)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling (AR) 92–2(6)—*Difford* v. *Sullivan,* 910 F.2d 1316 (6th Cir. 1990).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security AR 92–2(6).

DATES: *Effective Date:* February 21, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Dunigan, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410)–966–5671 or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind an AR as obsolete and apply our interpretation of the Act or regulations if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Act or regulations.

On March 17, 1992, we issued AR 92–2(6) to reflect the decision of the United States Court of Appeals for the Sixth Circuit in *Difford* v. *Sullivan,* 910 F.2d

1316 (6th Cir. 1990), in which the court interpreted section 223 of the Act to require that when we review a medical disability cessation determination or decision, we must consider whether the beneficiary was disabled at any time through the date of the adjudicator's final determination or decision.

Concurrent with the rescission of this AR, we are publishing Social Security Ruling (SSR) 12–3p to change the period an adjudicator must consider when deciding an appeal of a title II medical cessation determination or decision. This Ruling also clarifies how this policy applies at the Appeals Council (AC) level when the AC denies a request for review or issues a remand or dismissal order. The adjudicator will consider a beneficiary's disability through the date on which we make the appeal determination or decision.

Because the SSR addresses the *Difford* court's concerns and explains that an appeal must have a determination or decision through the adjudication date, we are rescinding AR 92–2(6). The SSR and this rescission restore uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through uniform national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

Dated: February 12, 2013.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2013–03913 Filed 2–20–13; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0106]

Social Security Ruling, SSR 13–3p; Appeal of an Initial Medical Disability Cessation Determination or Decision

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are giving notice of SSR 13–3p. This SSR changes the period an adjudicator must consider when deciding an appeal of a medical cessation determination. This Ruling also clarifies how this policy applies at the Appeals Council (AC) level when the AC denies a request for review or issues a remand or dismissal order. The adjudicator will consider a beneficiary's disability through the date on which we make the appeal determination or decision.

DATES: *Effective Date:* February 21, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Dunigan, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410)–966–5671 or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so under 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We base SSRs on determinations and decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1)

This SSR will be in effect until we publish a notice in the **Federal Register** that rescinds it, or publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income; 96.020 Special Benefits for Certain World War II Veterans.)

Dated: February 12, 2013.

Michael J. Astrue,

Commissioner of Social Security.

Policy Interpretation Ruling

Title II: Appeal of an Initial Medical Disability Cessation Determination or Decision.

Purpose: This SSR explains how we will review an initial medical cessation determination or decision when we receive a timely request for administrative review of the cessation determination or decision. In this SSR, we are adopting as our nationwide policy the holding in *Difford* v. *Secretary of Health and Human Services,* 910 F.2d 1316 (6th Cir. 1990). We have applied the holding in that decision under Acquiescence Ruling (AR) 92–2(6) to cases involving beneficiaries residing in States within the Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee). Because this SSR addresses the issue decided by the *Difford* court, in this issue of the **Federal Register**, we are also publishing a notice rescinding AR 92–2(6) as obsolete in accordance with our acquiescence regulations, 20 CFR 404.985(e)(4).[1]

Citations: Sections 223(f) of the Social Security Act, as amended; Regulations No. 4, Subpart D, section 404.316; Subpart J, sections 404.902, 404.905; and Subpart P, sections 404.1579, 404.1589, 404.1590, 404.1593, and 404.1594.

Pertinent History: Section 223(f) of the Social Security Act (Act) sets forth the standard of review for determining whether an individual's disability has medically ceased. This provision provides, in relevant part, as follows:

''(f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B) the individual is now able to engage in substantial gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination

[1] This SSR applies only to determinations or decisions finding that a beneficiary is no longer entitled to benefits because the physical or mental impairment on the basis of which the benefits have been paid has ceased, does not exist, or is no longer disabling. We call this type of finding a medical cessation determination or decision. This SSR does not apply to disability cessations based on substantial gainful activity.

of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

* * * * *

Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition, which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.''

Introduction

Since Congress enacted section 223(f) of the Act in 1984, we have interpreted the words ''now'' and ''current'' in that section of the Act to mean that, generally, when deciding the appeal of a medical cessation, an adjudicator would consider what the beneficiary's condition was at the time of the initial cessation determination. The adjudicator would not consider the beneficiary's condition at the time of the reconsideration or disability hearing officer's determination, the administrative law judge's (ALJ) decision, or the Appeals Council's (AC) decision. If the adjudicator determined that the medical cessation date was appropriate, but evidence also showed that the beneficiary had again become disabled at any time through the date of his or her determination or decision, as a result of a worsening of an existing impairment or by the onset of a new impairment, the adjudicator would solicit a new application for title II disability benefits. In title XVI cases, a new application is not required if a recipient of supplemental security income payments again becomes disabled while an appeal is pending (20 CFR 416.305(b)).

In *Difford,* the United States Court of Appeals for the Sixth Circuit interpreted the references to ''now'' and ''current'' in section 223(f) of the Act to require that when we review a medical disability cessation determination or decision, we must consider whether the beneficiary was disabled at any time through the date of the adjudicator(s)'s final determination or decision. Under *Difford,* as applied in AR 92–2(6), when we review a determination or decision that disability has medically ceased, the adjudicator must consider the individual's disability through the date of his or her determination or decision, rather than determining only whether the individual's disability had ceased at the time of the initial cessation determination. We are now revising our interpretation of section 223(f) of the Act to adopt the policy contained in Difford AR as our nationwide policy.

In this SSR, we use the term ''final decision'' to differentiate between the initial cessation determination and the subsequent determination or decision on appeal that becomes administratively final. As used in this Ruling, ''final decision'' refers to the administrative determination or decision that becomes final because the beneficiary does not request further administrative review, or when the AC issues a decision. ''Final decision'' does not refer to cases where the AC denies a request for review or issues remand or dismissal order. At the time an adjudicator makes a determination or decision at the reconsideration or hearing level, the adjudicator does not know if the beneficiary will request an appeal. Therefore, the adjudicator cannot know whether the determination or decision will become the final determination or decision. In implementing this Ruling, we refer to a determination or decision made at any administrative review level as though it will become a final determination or decision.

Policy Interpretation: This SSR revises our policy to provide that we will use the same timeframe for determinations or decision we make in both title II and title XVI medical disability cessation cases reviewed at the reconsideration and hearings level(s) of our administrative review process. Under the policy we are adopting in this Ruling, the adjudicator reviewing the medical cessation determination or decision will decide whether the beneficiary is under a disability through the date of the adjudicator's determination or decision.

When the AC receives a request for review of a hearing decision, the AC generally considers evidence that relates to the period on or before the date of the ALJ's decision. When deciding whether to grant a request for review of an ALJ's decision in a medical cessation case, the AC will not consider evidence that does not relate to the period on or before the date of the ALJ's decision. If the ALJ correctly applied this Ruling and there is no basis for review on any other issue, the AC will deny the request for review. If the AC grants the request for review, vacates the ALJ's decision and remands the medical cessation case to the ALJ for further proceedings, on remand, the ALJ will apply the provisions of this Ruling. However, in a medical cessation case when the AC grants review and exercises its authority to issue a decision, then it will determine the beneficiary's disability through the date of the AC decision, which will be our final decision.

In addition, a timely request for administrative review of a disability cessation determination or decision, including cases where we find good cause for late filing, constitutes a protective filing of an application permitting a determination of disability through the date of the final determination or decision on appeal.

Adjudicators use the date of the initial request for review of the disability cessation determination as the filing date for a new period of disability. We establish a new period of disability if the beneficiary again became disabled as a result of a worsening of an existing impairment or by the onset of a new impairment before the date of the determination or decision on appeal, and if all other requirements for establishing a period of disability, including the duration and insured status requirements in title II cases, have been met. If cessation of a prior period of disability is confirmed, a beneficiary will not be found eligible for a subsequent period of disability if he or she did not become disabled again until after the date last insured (as determined after taking account of all prior periods of disability and updates to a claimant's earnings record).

Since this Ruling revises how we consider the title II appeal (or in concurrent cases, the title II portion) of a medical disability cessation case, it eliminates the need for a new claim for reentitlement in title II cases. The adjudicator will evaluate disability through the date of the appeal determination or decision regarding the beneficiary's medical cessation and possible reentitlement, thereby eliminating the need for filing a new application for reentitlement in title II cases.

Adjudicators will consider the following in administrative review of determinations or decisions that a beneficiary's disability has medically ceased:

• If the adjudicator determines the initial medical cessation determination was correct, he or she will then determine whether the beneficiary has again become disabled at any time through the date of his or her determination or decision because of a worsening of an existing impairment or the onset of a new impairment, if all other requirements for establishing a period of disability, including the duration and insured status requirements are met.

• If the adjudicator determines that the initial disability cessation determination was not correct, he or she will determine if the evidence establishes medical improvement as a basis for cessation of disability at any time through the date of final determination or decision.

• In every case where we find that that the beneficiary was not continuously disabled through the date of the appeal determination or decision, the adjudicator must fully explain the basis for the conclusion reached in the determination or decision. The adjudicator will state the month the beneficiary's disability ended, and, if applicable, the month in which a new period of disability began and any intervening months during which there was no disability.

• If the beneficiary's disability has medically ceased, the determination or decision must specifically address the initial cessation determination and the beneficiary's eligibility (or ineligibility) for a new a period of disability through the date on which the appeal determination or decision is being made, or, if earlier, through the date last insured.

Effective Date: This Ruling is effective upon publication in the **Federal Register**.

[FR Doc. 2013–03914 Filed 2–20–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8189]

60-Day Notice of Proposed Information Collection: Electronic Diversity Visa Entry Form

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to April 22, 2013.

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

• *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.

• *Email: PRA_BurdenComments@state.gov.*

• *Mail:* Chief, Legislation and Regulations Division, Visa Services—DSP–0122, 2401 E Street NW., Washington DC 20520–30106.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor, Visa Services, U.S. Department of State, 2401 E Street NW., L–603, Washington, DC 20522, who may be reached at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Electronic Diversity Visa Entry Form.

• *OMB Control Number:* 1405–0153.

• *Type of Request:* Extension of Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).

• *Form Number:* DS–5501.

• *Respondents:* Aliens entering the Diversity Visa Lottery.

• *Estimated Number of Respondents:* 6 million per year.

• *Estimated Number of Responses:* 6 million per year.

• *Average Time per Response:* 30 minutes.

• *Total Estimated Burden Time:* 3 million hours per year.

• *Frequency:* Once per entry.

• *Obligation to Respond:* Required to Obtain Benefits.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public records. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Department of State utilizes the Electronic Diversity Visa Lottery (EDV) Entry Form to elicit information necessary to ascertain the applicability of the legal provisions of the diversity program. Primary requirements are that the applicant is from a low admission country, is a high school graduate, or has two years of experience in a job that requires two years of training. The foreign nationals complete the electronic entry forms and then applications are randomly selected for participation in the program. Department of State regulations pertaining to diversity immigrant visas under the INA are published in 22 CFR 42.33.

Methodology

The EDV Entry Form is available online at *www.dvlottery.state.gov* and can only be submitted electronically during the annual registration period.

Dated: February 7, 2013.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–04029 Filed 2–20–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8191]

30-Day Notice of Proposed Information Collection: Reporting Requirements on Responsible Investment in Burma

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for

approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to March 25, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov*. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Stacey May, U.S. Department of State, DRL/EAP Suite 7817, 2201 C St. NW., Washington, DC 20520, who may be reached on 202–647–8260 or at *maysa2@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Reporting Requirements on Responsible Investment in Burma.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* U.S. Department of State, DRL/EAP.
- *Form Number:* None.
- *Respondents:* U.S. persons and entities engaged in new investment in Burma in an amount over $500,000 in aggregate, per OFAC General License 17, which authorizes new investment in Burma.
- *Estimated Number of Respondents:* 150.
- *Estimated Number of Responses:* 150.
- *Average Hours Per Response:* 21 hours.
- *Total Estimated Burden:* 3,150 hours.
- *Frequency:* Within 180 days of new investment in Burma over $500,000, annually thereafter.
- *I* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Section 203(a)(1)(B) of the International Emergency Economic Powers Act (IEEPA) grants the President authority to, inter alia, prevent or prohibit any acquisition or transaction involving any property, in which a foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States, if the President declares a national emergency with respect to any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States. See 50 U.S.C. 1701 et seq.

In Executive Order 13047 of May 20, 1997, the President determined that the actions and policies of the Government of Burma, including its large-scale repression of the democratic opposition in Burma, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States, declared a national emergency to deal with that threat, and prohibited new investment in Burma. In subsequent Executive Orders, the President modified the scope of the national emergency to address additional concerns with the actions and policies of the Government of Burma. In Executive Order 13448 of October 18, 2007, the President modified the emergency to address the continued repression of the democratic opposition in Burma, manifested in part through the commission of human rights abuses and pervasive public corruption. In Executive Order 13619 of July 11, 2012, the President further modified the emergency to address, inter alia, human rights abuses particularly in ethnic areas.

In response to several political reforms by the Government of Burma and pursuant to authority granted by IEEPA, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a general license (GL 17) on July 11, 2012 authorizing new investment in Burma, subject to certain restrictions and conditions.

In order to support the Department of State's efforts to assess the extent to which new U.S. investment authorized by GL 17 furthers U.S. foreign policy goals of improving human rights protections and facilitating political reform in Burma, GL 17 requires U.S. persons engaging in new investment in Burma to report to the Department of State information related to such investment, as laid out in the ''Reporting Requirements on Responsible Investment in Burma,'' (hereafter referred to as the ''collection''). This collection is authorized by section 203(a)(2) of IEEPA, which grants the President authority to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in section 203(a)(1) of IEEPA.

Methodology

The Department of State will collect the information requested via electronic submission.

Additional Information

It is the overarching policy goal of the U.S. Government to support political reform in Burma towards the establishment of a peaceful, prosperous, and democratic state that respects human rights and the rule of law. In the past, some foreign investment in Burma has been linked to human rights abuses, particularly in the area of natural resource development in ethnic minority regions. For example, some foreign investments have entailed acquisition and control of land in disputed ethnic minority territories exacerbating or contributing to both social unrest and armed conflict and leading to adverse community and/or environmental impacts. Increased military/security presence, particularly in disputed ethnic minority areas, to provide security for foreign investment projects is reported to have led to seizures of farm land, involuntary relocations, forced labor, torture, summary execution, and sexual violence.

The collection will help the Department of State, in consultation with other relevant government agencies, to evaluate whether easing the ban on investment by U.S. persons advances U.S. foreign policy goals to address the national emergency with

respect to Burma. In addition, the Department of State will use the collection as a basis to conduct informed consultations with U.S. businesses to encourage and assist such businesses to develop robust policies and procedures to address any potential adverse human rights, worker rights, anti-corruption, environmental, or other impacts resulting from their investments and operations in Burma. The Department of State will use the collection of information about new investment with the Myanmar Oil and Gas Enterprise (MOGE) to track investment that involves MOGE and to identify investors with whom it may be beneficial to have targeted consultation on anti-corruption and human rights policies. The public, including civil society actors in Burma, may use publicly available information resulting from the collection to engage U.S. businesses on their responsible investment policies and procedures and to monitor the Burmese government's management of revenues from investment.

U.S. persons to whom this requirement applies will be required to submit a version of the report to the U.S. Government for public release, from which information considered in good faith to be exempt from disclosure under FOIA Exemption 4—i.e. trade secrets or commercial or financial information that is privileged or confidential—may be withheld. The Department of State will make this version of the report publically available in order to promote transparency with respect to new U.S. investments in Burma. In the past, the absence of transparency or publicly available information with respect to foreign investment activities in Burma has contributed to corruption and misuse of public funds, the erosion of public trust, and social unrest in ethnic minority areas and has led to further human rights abuses and repression by the government and military. Public disclosure of certain aspects of the collection therefore will promote the policy of transparency through new U.S. investment, a key U.S. foreign policy objective in Burma.

Burmese civil society groups, particularly those representing ethnic minority communities, have requested that the Department of State make public certain information obtained through the collection on investments purportedly made for the benefit of the Burmese people, as a means of holding their own government accountable. Nobel Peace Prize laureate Aung San Suu Kyi, leader of Burma's democratic opposition party and recently elected to a seat in Burma's parliament, also underscored the importance of transparency in her recent remarks in Bangkok, noting that she did not want ''more investment to mean more possibilities for corruption.'' This was among the most specific of the recommendations she made to the international community, stressing that ''Transparency is very important if we are going to avoid problems in the future* * * So whatever investments, governmental agreements, whatever aid might be proposed, please make sure that it is transparent, that the people of Burma are in a position to understand what has been done, and how and for whom the benefits are intended.''

Therefore public release of portions of this collection is aimed at providing civil society this type of information to both ensure the transparency of U.S. investment in Burma and to encourage civil society to partner with their government and U.S. companies towards building responsible investment, which ultimately promotes U.S. foreign policy goals.

Dated: February 11, 2013.

Daniel Baer,

Deputy Assistant Secretary, Department of State.

[FR Doc. 2013–04032 Filed 2–20–13; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 8192]

Advisory Committee on Historical Diplomatic Documentation; Notice of Charter Renewal

The Advisory Committee on Historical Diplomatic Documentation is renewing its charter for a period of two years. This Advisory Committee will continue to make recommendations to the Historian and the Department of State on all aspects of the Department's program to publish the *Foreign Relations of the United States* series as well as on the Department's responsibility under statute (22 U.S.C. 4351, *et seq.*) to open its 30-year old and older records for public review at the National Archives and Records Administration. The Committee consists of nine members drawn from among historians, political scientists, archivists, international lawyers, and other social scientists who are distinguished in the field of U.S. foreign relations.

Questions concerning the Committee and the renewal of its Charter should be directed to Stephen P. Randolph, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123 (email *history@state.gov*).

Dated: February 14, 2013.

Colby Prevost,

Designated Federal Officer, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 2013–04009 Filed 2–20–13; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 8194]

Culturally Significant Objects Imported for Exhibition Determinations: ''Temple and Tomb: Prehistoric Malta''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Temple and Tomb: Prehistoric Malta,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Institute for the Study of the Ancient World, New York University, New York, NY, from on or about March 20, 2013, until on or about July 7, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 13, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–04005 Filed 2–20–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8190]

List of Participating Countries and Entities (Hereinafter Known as ''Participants'') Under the Clean Diamond Trade Act (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with Sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of December 31, 2008 (73 FR 80506) to add Cambodia, Cameroon, Kazakhstan, and Panama.

FOR FURTHER INFORMATION CONTACT: Brad Brooks-Rubin, Special Advisor for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State (202) 647–2856.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under Section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 (''Rough Diamonds Control Regulations''). Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 delegates this function to the Secretary of State.

Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to Section 3 of the Act, Section 2 of Executive Order 13312, Delegation of Authority No. 245–1 (February 13, 2009), and the Delegation of Authority from the Deputy Secretary to the Under Secretary dated October 31, 2011, I hereby identify the following entities as of November 30, 2012, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by Section 6(b) of the Act. This list revises the previously published list of October 31, 2011, to add Cambodia, Cameroon, Kazakhstan, and Panama to the list of Participants in the Kimberley Process Certification Scheme.

Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Bangladesh—Ministry of Commerce.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Energy.
Canada—Natural Resources Canada.
Cambodia—Ministry of Commerce.
Cameroon—National Permanent Secretariat for the Kimberley Process in Cameroon.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines.
Republic of Congo—Ministry of Mines.
Croatia—Ministry of Economy.
European Union—DG/External Relations/A.2.
Ghana—Precious Minerals and Marketing Company Ltd.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
India—The Gem and Jewelry Export Promotion Council.
Indonesia—Directorate General of Foreign Trade of the Ministry of Trade.
Israel—The Diamond Controller.
Japan—Ministry of Economy, Trade and Industry.
Kazakhstan—Ministry of Finance.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lebanon—Ministry of Economy and Trade.
Lesotho—Commissioner of Mines and Geology.
Liberia—Ministry of Lands, Mines and Energy.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
Mexico—Economic Secretariat.
New Zealand—Ministry of Foreign Affairs and Trade.
Norway—The Norwegian Goldsmiths' Association.
Panama—National Customs Authority.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Singapore—Singapore Customs.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Swaziland—Office of the Commissioner of Mines.
Switzerland—State Secretariat for Economic Affairs.
Chinese Taipei—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Turkey—Istanbul Gold Exchange.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

Robert D. Hormats,

Under Secretary of State, Department of State.

[FR Doc. 2013–04007 Filed 2–20–13; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 8193]

Preparations for the International Telecommunication Union World Telecommunication Development Conference (ITU WTDC 2014)

SUMMARY: This notice announces meetings of an *ad hoc* group of the Department of State's International Telecommunication Advisory Committee (ITAC) to begin preparations for the ITU World Telecommunication Development Conference (WTDC 2014). The meetings are announced to the ITAC committee and referred to the ITAC–D *ad hoc* for action. The process for joining the ITAC–D *ad hoc* is described.

The Department of State announces the beginning of the preparatory process for the ITU WTDC to be held in 2014. The preparatory meetings will be held by the ITAC–D *ad hoc* of the ITAC on Tuesdays March 12 and 19, April 2, 16, and 30, 2013 at 1300 Eye Street NW., Washington, DC fourth floor West Tower, all at 2–4 p.m. Eastern Time.

Attendance at these meetings is open to the public as seating capacity allows. The public will have an opportunity to provide comments at these meetings. A conference bridge will be provided to those people outside the Washington Metro area who request it from the secretariat.

Initial details on these meetings will be announced on the Department of State's email list, *ITAC@lmlist.state.gov.* Subsequent emails will be posted on the Department of State's email list, *ITAC–D@lmlist.state.gov.*

People desiring further information on these preparatory meetings, including those wishing to request reasonable accommodation to attend the meeting and those who wish to participate in the ITAC or ITAC–D lists, should contact the Secretariat at *both minardje@state.gov* and *jminard@artelinc.com,* by March 1, 2013.

Dated: February 14, 2013.

Doreen McGirr,

Foreign Affairs Officer, International Communications & Information Policy, U.S. Department of State.

[FR Doc. 2013–04027 Filed 2–20–13; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty Eighth Meeting: RTCA Special Committee 186, Automatic Dependent Surveillance-Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 186, Automatic Dependent Surveillance-Broadcast (ADS–B).

SUMMARY: The FAA is issuing this notice to advise the public of the fifty eighth meeting of the RTCA Special Committee 222, Inmarsat AMS(R)S.

DATES: The meeting will be held March 8, 2013, from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at the RTCA Headquarters, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0662/(202) 833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org.* In addition, Jennifer Iversen may be contacted directly at email: *jiversen@rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 186. The agenda will include the following:

March 08, 2013

- Chairman's Introductory Remarks.
- Review of Meeting Agenda.
- Review/Approval of the Fifty-Seventh Meeting Summary, RTCA Paper No. 184–12/SC 186–323.
- Status and Activities of EUROCAE WG51.
- Status and Activities of FAA Surveillance and Broadcast Services (SBS) Program.
- Working Group Reports.
- Status of WG–4, Application Technical Requirements.
  - Traffic Situation Awareness with Alerts (TSAA)
  - Flight-deck Interval Management (FIM)
  - CAVS and CDTI Assisted Pilot Procedures (CAPP)
  - Overall ASA System MOPS Schedules
- Date, Place and Time of Next Meeting.
- New Business.
  - Pair-wise Trajectory Management
  - Other?
- Other Business.
  - None Identified
- Review Action Items/Work Programs.
- Adjourn Plenary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 19, 2013.

Paige Williams,

Management Analyst, Business Operations Group, NextGen, Management Services, Federal Aviation Administration.

[FR Doc. 2013–03948 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0004]

Agency Information Collection Activities: Request for the Renewal of an Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 23, 2012. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 25, 2013.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of

electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2013–0004.

FOR FURTHER INFORMATION CONTACT: Rosemary Jones, 202–366–2042, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: State Right-of-Way Operations Manuals.

Background: It is the responsibility of each State Department of Transportation (State) to acquire, manage and dispose of real property in compliance with the legal requirements of State and Federal laws and regulations. Part of providing assurance of compliance is to describe in a right-of-way procedural (operations) manual the organization, policies and procedures of the State to such an extent that these guide State employees, local acquiring agencies, and contractors who acquire and manage real property that is used for a federally funded transportation project. Procedural manuals assure the FHWA that the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) will be met. The State responsibility to prepare and maintain an up-to-date right-of-way procedural manual is set out in 23 CFR 710.201(c). The regulation allows States flexibility in determining how to meet the manual requirement. This flexibility allows States to prepare manuals in the format of their choosing, to the level of detail necessitated by State complexities. Each State decides how it will provide service to individuals and businesses affected by Federal or federally-assisted projects, while at the same time reducing the burden of government regulation. States are required to update manuals to reflect changes in Federal requirements for programs administered under Title 23 U.S.C. The State manuals may be submitted to FHWA electronically or made available by posting on the State Web site.

Respondents: 52 State DOTs, including the District of Columbia and Puerto Rico.

Frequency: Annually.

Estimated Average Burden per Response: 75 hours per respondent.

Estimated Total Annual Burden Hours: 75 hours for each of the 52 State Departments of Transportation. The total is 3,900 burden hours annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: February 14, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–03934 Filed 2–20–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0005]

Agency Information Collection Activities: Request for the Renewal of an Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 23, 2012. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 25, 2013.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2013–0005.

FOR FURTHER INFORMATION CONTACT: Karen Scurry, 609–637–4207, Office of Safety, Federal Highway Administration, Department of Transportation, 840 Bear Tavern Road, Suite 202, West Trenton, NJ, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Safety Improvement Program.

Background: The Moving Ahead for Progress in the 21st Century Act (MAP–21) continues the Highway Safety Improvement Program (HSIP) as a core federal-aid program with the purpose to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal lands. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads that focuses on performance.

The existing provisions of Title 23 U.S.C. 130, Railway-Highway Crossings Program, as well as implementing regulations in 23 CFR part 924, remain in effect. Included in these combined provisions are requirements for State DOTs to annually produce and submit to FHWA by August 31 reports related to the implementation and effectiveness of their HSIPs, that are to include information on: (a) Progress being made to implement HSIP projects and the effectiveness of these projects in reducing traffic fatalities and serious injuries [Sections 148(h)]; and (b) progress being made to implement the Railway-Highway Crossings Program and the effectiveness of the projects in that program [Sections 130(g) and 148(h)], which will be used by FHWA to produce and submit biennial reports to Congress. To be able to produce these reports, State DOTs must have safety data and analysis systems capable of identifying and determining the relative severity of hazardous highway locations on all public roads, based on both crash experience and crash potential, as well as determining the effectiveness of highway safety improvement projects. FHWA provides an online reporting tool to support the annual HSIP reporting process. Additional information is available on the Office of Safety Web site at *http://safety.fhwa.dot.gov/hsip/resources/onrpttool/*. Reporting into the online reporting tool meets all report requirements and USDOT Web site compatibility requirements. The information contained in the annual HSIP reports provides FHWA with a means for monitoring the effectiveness of these programs and may be used by Congress for determining the future HSIP program structure and funding levels.

Respondents: 51 State Transportation Departments, including the District of Columbia.

Frequency: Annually.

Estimated Average Burden per Response: 250 hours Estimated Total Annual Burden Hours: 12,750 hours (51 states at an average of 250 hours each).

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: February 14, 2013.

Michael Howell,

Information Collections Officer.

[FR Doc. 2013–03935 Filed 2–20–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0006]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 23, 2012. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 25, 2013.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2013–0006.

FOR FURTHER INFORMATION CONTACT: Joyce Gottlieb, 202–366–3664, Office of Civil Rights, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal-Aid Highway Construction Equal Employment Opportunity.

Background: Title 23, Part 140(a), requires the FHWA to ensure equal opportunity regarding contractors' employment practices on Federal-aid highway projects. To carry out this requirement, the contractors must submit to the State Transportation Agencies (STAs) on all work being performed on Federal-aid contracts during the month of July, a report on its employment workforce data. This report provides the employment workforce data on these contracts and includes the number of minorities, women, and non-minorities in specific highway construction job categories. This information is reported on Form PR–1391, Federal-Aid Highway Construction Contractors Summary of Employment Data. The statute also requires the STAs to submit a report to the FHWA summarizing the data entered on the PR–1391 forms. This summary data is provided on Form PR–1392, Federal-Aid Highway Construction Contractors Summary of Employment Data. The STAs and FHWA use this data to identify patterns and trends of employment in the highway construction industry, and to determine the adequacy and impact of the STA's and FHWA's contract compliance and on-the-job (OJT) training programs. The STAs use this information to monitor the contractors-employment and training of minorities and women in the traditional highway construction crafts. Additionally, the data is used by FHWA to provide summarization, trend analyses to Congress, DOT, and FHWA officials as well as others who request information relating to the Federal-aid highway construction EEO program. The information is also used in making decisions regarding resource allocation; program emphasis; marketing and promotion activities; training; and compliance efforts.

Respondents: 11,077 annual respondents for form PR–1391, and 52 STAs annual respondents for Form PR–1392, total of 11,129.

Frequency: Annually.

Estimated Average Burden per Response: FHWA estimates it takes 30 minutes for Federal-aid contractors to complete and submit Form PR–1391 and 8 hours for STAs to complete and submit Form PR–1392.

Estimated Total Amount Burden Hours: Form PR–1391–5,539 hours per year; Form PR–1392–416 hours per year, total of 5,955 hours annually.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: February 14, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–03938 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0019]

Greenkraft Inc.; Receipt of Application for Temporary Exemption From FMVSS No. 108

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petition for a temporary exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.*

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Greenkraft, Inc. has applied for a temporary exemption for its 1061 and 1082 model trucks from the requirements of paragraph S7 of FMVSS No. 108 applicable to headlamps. The basis of the application is that the exemption would make development or field evaluation of a low-emission vehicle easier without unreasonably lowering the safety performance of the vehicle.

NHTSA is publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and has made no judgment on the merits of the application.

DATES: You should submit your comments not later than March 25, 2013.

FOR FURTHER INFORMATION CONTACT: Thomas Healy, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41–212, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

Comments: We invite you to submit comments on the application described above. You may submit comments identified by the docket number at the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking

on ''Help and Information'' or ''Help/Info.''

• *Fax:* 1–202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 366–9826.

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) or you may visit *http://www.dot.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Statutory Basis for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, authorizes the Secretary of Transportation to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority in this section to NHTSA.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) Compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

For an exemption petition to be granted on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle, the petition must include specified information set forth at 49 CFR 555.6(c). The main requirements of that section include: (1) Substantiation that the vehicle is a low-emission vehicle; (2) documentation establishing that a temporary exemption would not unreasonably degrade the safety of a vehicle; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; (4) a statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and (5) a statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted.

II. Greenkraft's Petition

Greenkraft is petitioning the agency for a temporary exemption from the provisions in FMVSS No. 108 applicable to headlamp photometry on the basis that ''the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle.'' 49 U.S.C. 30113(b)(3)(B)(iii). The agency received Greenkraft's petition October 24, 2012. Greenkraft has requested that, if granted, the exemption period begin immediately.

Greenkraft plans to produce trucks that run on compressed natural gas engines with a gross vehicle weight rating (GVWR) of over 14,000 pounds under the requested exemption. Greenkraft is requesting a three-year exemption and plans to produce 2,300 vehicles during the exemption period. Greenkraft states in the petition that it plans to comply with FMVSS No. 108 at the end of the exemption period.

A. Low Emission Vehicle

In order to be eligible for a temporary exemption on the grounds that the exemption would make development or field evaluation of a low-emission vehicle easier without unreasonably lowering the safety performance of the vehicle, the applicant must substantiate that the vehicle is a low-emission vehicle. In order to qualify as a low-emission vehicle, the vehicle must meet the applicable standards for new motor vehicles under the Clean Air Act, 42 U.S.C. 7521, et seq. and emit an air pollutant in an amount significantly below one of those standards. The Environmental Protection Agency's (EPA) regulations issued pursuant to the Clean Air Act establish exhaust emissions thresholds for heavy-duty low-emission vehicles. These exhaust emission thresholds require that a heavy duty low emission vehicle emit combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) of 3.8 grams or less per brake horsepower-hour or combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) of 3.5 grams or less per brake horsepower-hour when tested (certified) on fuel

meeting the specifications of California certification fuel. 40 CFR 88.105–94.

Greenkraft submitted a certification from the California Environmental Protection Agency's Air Resources Board to substantiate that the vehicle that is the subject of the application is a low emissions vehicle. The Air Resources Board certification states that the vehicle's combined emissions of oxides of nitrogen and nonmethane hydrocarbons are 0.13 grams per brake horsepower-hour.

B. Statement That a Temporary Exemption Would Not Unreasonably Degrade Safety

The requirements from which Greenkraft seeks a temporary exemption are the Upper Beam #3 requirements in Table XVIII and Lower Beam #3V requirements in Table XIX-b. Greenkraft states in its application for a temporary exemption that the only difference between Greenkraft's low-emission vehicle if exempted and a compliant vehicle is that the headlamps on Greenkraft's low-emission vehicle fail to meet the minimum candela requirements for two upper beam test points and six lower beam test points and exceeds the maximum candela requirement for one upper beam test point for visually/optically aimed headlamps. Greenkraft attached to its application for an exemption a test report from a test laboratory showing that the headlamps on the vehicles that would be the subject of the exemption fail to meet the upper and lower beam requirements for optically and visually aimed headlamps. Greenkraft states in the application that granting the exemption would not unreasonably degrade the safety of the vehicle because the lamps provide ''excellent illumination'' even though they do not comply with the photometric requirements of FMVSS No. 108.

C. Substantiation That a Temporary Exemption Would Facilitate the Development of a Low Emissions Vehicle

Greenkraft states that a temporary exemption would facilitate the development of low-emission vehicles by allowing Greenkraft to redesign the headlamp without interrupting the development of the vehicle while the headlamp is being redesigned. Greenkraft further claims that, by beginning development promptly, it can receive critical data and test results to further the development of natural gas powered vehicles.

D. Public Interest

Greenkraft states that granting the temporary exemption would be in the public interest because the exemption would help increase the availability of low-emission natural gas power vehicles to businesses in the United States. Greenkraft states that this would reduce the United States' dependence on foreign oil.

III. Issuance of Notice of Final Action

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition is complete and that the petitioner is eligible to apply for the requested exemption. The agency has not made any judgment on the merits of the application and is placing a non-confidential copy of the petition in the docket.

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued in Washington, DC, on February 12, 2013 under authority delegated in 49 CFR 1.95.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–03950 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Part 249 Preservation of Records

AGENCY: Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring certificated air carriers to preserve accounting records, consumer complaint letters, reservation reports and records, system reports of aircraft movements, etc. Also, public charter operators and overseas military personnel charter operators are required to retain certain contracts, invoices, receipts, bank records and reservation records.

DATES: Written comments should be submitted by April 22, 2013.

FOR FURTHER INFORMATION CONTACT: Jeff Gorham, Office of Airline Information, RTS–42, Room E34, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or EMAIL *jeff.gorham@dot.gov*.

Comments: Comments should identify the associated OMB approval # 2138–0006 and Docket—RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0006, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0006.

Title: Preservation of Air Carrier Records—14 CFR Part 249.

Form No.: None.

Type of Review: Extension of a currently approved recordkeeping requirement.

Respondents: Certificated air carriers and charter operators.

Number of Respondents: 90 certificated air carriers 300 charter operators.

Estimated Time per Response: 3 hours per certificated air carrier; 1 hour per charter operator.

Total Annual Burden: 570 hours.

Needs and Uses: Part 249 requires the retention of records such as: general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and legers, subsidy records documenting underlying financial and statistical reports to DOT, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, the carrier may be required to retain the document for a period of 30 days to three years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are

retained for six months after completion of the charter program.

Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of the carrier submissions would be impaired, since the source of the data could not be verified on a test basis.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis, and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on February 13, 2013.

William Chadwick, Jr.,

Director, Office of Airline Information.

[FR Doc. 2013–03949 Filed 2–20–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

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

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. The addition of proposed new data items and the proposed revisions of some existing data items would take effect as of the June 30, 2013, report date, except for one proposed new data item that would be added to the Call Report effective December 31, 2013. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before April 22, 2013.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 6W–11, Attention: 1557–0081, 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, 400 7th Street SW., Washington, DC 20219. 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 to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income (FFIEC 031 and 041),'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include reporting form number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* comments@FDIC.gov. Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, Attn: Comments, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA

22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb and Johnny Vilela, OCC Clearance Officers, (202) 649–6301 and (202) 649–7265, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Washington, DC 20219.

Board: Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, which is currently an approved collection of information for each agency.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks and savings associations with domestic and foreign offices) and FFIEC 041 (for banks and savings associations with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,902 national banks and federal savings associations.

Estimated Time per Response: 54.87 burden hours per quarter to file.

Estimated Total Annual Burden: 417,416 burden hours to file.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 843 state member banks.

Estimated Time per Response: 56.76 burden hours per quarter to file.

Estimated Total Annual Burden: 191,395 burden hours to file.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,464 insured state nonmember banks and state savings associations.

Estimated Time per Response: 41.53 burden hours per quarter to file.

Estimated Total Annual Burden: 741,560 burden hours to file.

The estimated time per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the filing of the Call Report as it is proposed to be revised is estimated to range from 17 to 730 hours per quarter, depending on an individual institution's circumstances.

Type of Review: Revision and extension of currently approved collections.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for federal and state savings associations). At present, except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for on-site and off-site examinations, and monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' and federal savings associations' semiannual assessment fees.

Current Actions

I. Overview

The agencies are proposing to implement a number of revisions to the Call Report requirements in 2013. These changes, which are discussed in detail in Sections II.A through II.F of this notice, are intended to provide data needed for reasons of safety and soundness or other public purposes by the members of the FFIEC that use Call Report data to carry out their missions and responsibilities, including the agencies, the Bureau of Consumer Financial Protection (Bureau), and state supervisors of banks and savings associations. Several proposed new data items would be added to the Call Report as of the June 30, 2013, report date, and certain existing data items would be revised as of the same date. One proposed new data item, which would be collected annually, would be added to the Call Report effective December 31, 2013.

The proposed changes include:

- A screening question that would be added to Schedule RC–E, Deposit Liabilities, asking whether the reporting institution offers separate deposit products (other than time deposits) to consumer customers compared to business customers, and
  - For those institutions with $1 billion or more in total assets that offer separate products, new data items on the quarter-end amount of certain types of consumer transaction accounts and nontransaction savings deposit accounts that would be reported in Schedule RC–E, and
  - For all institutions that offer separate products, a new breakdown on the year-to-date amounts of certain types of service charges on consumer deposit accounts reported as noninterest income in Schedule RI, Income Statement;
- Information on international remittance transfers in Schedule RC–M, Memoranda, including:
  - Questions about types of international remittance transfers offered, the settlement systems used to process the transfers, and whether the number of remittance transfers provided exceeds or is expected to exceed the Bureau's safe harbor threshold (more than 100 transfers); and
  - New data items to be reported by

institutions not qualifying for the safe harbor on the number and dollar amount of international remittance transfers;

- Reporting in Schedule RC–M of all trade names that an institution uses to identify physical branches and Internet Web sites that differ from the institution's legal title;
- Additional data to be reported in Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments, by large institutions and highly complex institutions (generally, institutions with $10 billion or more in total assets) to support the FDIC's large bank pricing method for insurance assessments, including a new table of consumer loans by loan type and probability of default band, new data items providing information on loans secured by real estate in foreign offices, revisions of certain existing data items on real estate loan commitments and U.S. government-guaranteed real estate loans to include those in foreign offices, and revisions to the information collected on government-guaranteed assets to include the portion of non-agency residential mortgage-backed securities and loans covered under FDIC loss-sharing agreements.
- A new data item in Schedule RC–M applicable only to institutions whose parent depository institution holding company is not a bank or savings and loan holding company in which the institution would report the total consolidated liabilities of its parent depository institution holding company annually as of December 31 to support the Board's administration of the financial sector concentration limit established by Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (Dodd-Frank Act); and
- A revision of the scope of the existing item in Schedule RI–A, Changes in Bank Equity Capital, for ''Other transactions with parent holding company'' to include such transactions with all stockholders.

For the June 30, 2013, and December 31, 2013, report dates, as applicable, institutions may provide reasonable estimates for any new or revised Call Report data item initially required to be reported as of that date for which the requested information is not readily available. The specific wording of the captions for the new or revised Call Report data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

II. Discussion of Proposed Call Report Revisions

A. Consumer Deposit Account Balances and Service Charges

The agencies propose to modify Schedule RC–E, Deposit Liabilities, to collect and distinguish certain deposit data by type of depositor for institutions with $1 billion or more in total assets. The agencies also propose to modify Schedule RI, Income Statement, to collect data on certain service charges on consumer deposit accounts (in domestic offices) from all institutions that offer such accounts.

To identify the institutions that would be subject to these proposed new reporting requirements, the proposed modifications would include a screening question in Schedule RC–E concerning whether an institution offers consumer deposit accounts, i.e., accounts intended for use solely by individuals for personal, household, or family purposes. The question would be added to Schedule RC–E as of the June 30, 2013, report date. If the institution has $1 billion or more in total assets and responds affirmatively to the screening question, the institution would be subject to the proposed Schedule RC–E consumer deposit account reporting requirements discussed below in Section II.A.1.; otherwise, it would not be subject to these new Schedule RC–E reporting requirements.[1] Regardless of how an institution with less than $1 billion in total assets responds to the screening question, it would be exempt from the proposed Schedule RC–E reporting requirements. The agencies plan to review the aggregate responses to the screening question after one full year of implementation to determine whether to expand the new Schedule RC–E reporting requirements to some or all smaller institutions.

In addition, each institution, regardless of size, that responds affirmatively to the screening question to be added to Schedule RC–E would be subject to the proposed Schedule RI reporting requirements discussed below in Section II.A.2 effective June 30, 2013.

1. Consumer Deposit Account Balances

Schedule RC–E currently requires institutions to report separately transaction account and nontransaction account balances held in domestic offices according to broad categories of depositors. Over 90 percent of the reported balances are attributed to the category of depositors that includes ''individuals, partnerships, and corporations.''[2] Deposits that are held by individual consumers are not distinguished from deposits held by partnerships or corporations.

Surveys indicate that over 90 percent of U.S. households maintain at least one deposit account.[3] However, there is currently no reliable source from which to calculate the amount of funds held in consumer accounts.

The agencies propose that institutions that respond affirmatively to the screening question and have $1 billion or more in total assets distinguish consumer deposits from those held by partnerships and corporations. More detailed Call Report data would significantly enhance the ability of the agencies and the Bureau to monitor consumers' behavior—specifically, consumer use of deposit accounts as transactional, savings, and investment vehicles. Understanding deposit accounts by depositor type would also permit improved assessments of institutional liquidity risk. Thus, more detailed data could significantly enhance the ability of the agencies to assess institutional funding stability.

In 2010, the agencies proposed the disaggregation of consumer- or individually-owned deposits from those of businesses and organizations, i.e., partnerships and corporations. That proposal, however, would have required banks to distinguish consumer deposit balances by the account owner taxpayer identification number (TIN). The TIN methodology was ultimately deemed to be too burdensome, and the agencies withdrew the proposal from consideration.[4]

This current proposal is based on an alternative approach that the agencies believe to be less burdensome for

[1] In general, the determination as to whether an institution has $1 billion or more in total assets would be measured as of June 30 of the previous calendar year, i.e., as of June 30, 2012, for the proposed new Schedule RC–E reporting requirements.

[2] Percentage is based on analysis of third quarter 2012 Call Report data.

[3] *See* FDIC, *2011 FDIC National Survey of Unbanked and Underbanked Households* 4 (September 2012); Brian K. Bucks, Arthur B. Kennickell, Traci L. Mach, and Kevin B. Moore, *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances,* 95 Federal Reserve Bulletin A1, A20 (February 2009), available at: *http://www.federalreserve.gov/pubs/bulletin/2009/pdf/scf09.pdf; see also* Kevin Foster, Erik Meijer, Scott Schuh, and Michael Zabek, *The 2009 Survey of Consumer Payment Choice,* Federal Reserve Bank of Boston: Public Policy Discussion Papers, No. 11–1, at 47 (2011), available at: *http://www.bos.frb.org/economic/ppdp/2011/ppdp1101.pdf.*

[4] Agency Information Collection Activities, 76 FR 5253, 5261 (Jan. 28, 2011).

depository institutions. Specifically, the agencies propose to require institutions to report in Schedule RC–E balances held in domestic transaction account products and nontransaction savings products that the institutions themselves *intended for consumer use* (rather than to report balances held in accounts actually used exclusively by individuals). Depository institutions recognize that consumers exhibit different needs and behaviors than do organizations and businesses. Consequently, the FFIEC and the agencies believe that most institutions maintain transaction and nontransaction savings deposit products specifically intended for consumer use, typically assigning different funding credit rates and tenure assumptions to consumer deposits than to business and other types of deposits. The FFIEC and the agencies believe this distinction will enable institutions to utilize the same totals maintained on their deposit systems of record and in their internal general ledger accounts to provide the proposed new consumer deposit account balance data.[5] The agencies propose to introduce the modifications to Schedule RC–E for the reporting of consumer deposit account data in the Call Report for the second quarter of 2013.

At the same time, the FFIEC and the agencies anticipate that certain institutions cater almost exclusively to non-consumer depositors and, as such, may not maintain segment-specific products. The proposal aims to identify these institutions by requiring all institutions to respond to the screening question (which would be designated as Memorandum item 5 of Schedule RC–E): ''Does your institution offer consumer deposit accounts, i.e., transaction account or nontransaction savings account deposit products intended for individuals for personal, household, or family use?'' Institutions with total assets of $1 billion or more and answering ''yes'' to this screening question would be subject to the proposed new Schedule RC–E consumer deposit account reporting requirements. Institutions with total assets less than $1 billion or answering ''no'' to the question would be exempt from these new reporting requirements and would continue to report deposit totals in Schedule RC–E as they currently do.

The $1 billion threshold is proposed to ensure no undue burden on smaller institutions. However, the agencies intend to review small institution responses to the screening question after one year of implementation to determine whether to maintain or adjust the asset size exemption.

The FFIEC and the agencies understand that most institutions define time deposit products by tenure and rate and do not typically maintain time deposit accounts exclusively targeted to consumers. Thus, this proposal pertains only to non-time deposits in domestic offices.

More specifically, the agencies propose to revise Schedule RC–E, (part I), by building on new Memorandum item 5, the screening question described above, and adding new Memorandum item 6, ''Components of total transaction account deposits of individuals, partnerships, and corporations,'' which would be completed by institutions with total assets of $1 billion or more that responded ''yes'' to the screening question posed in new Memorandum item 5. Proposed new Memorandum item 6 would include the following three-way breakdown of these transaction accounts, the sum of which must equal Schedule RC–E, item 1, column A.

- In Memorandum item 6.a, ''Deposits in noninterest-bearing transaction accounts intended for individuals for personal, household, or family use,'' institutions would report the amount of deposits reported in Schedule RC–E, (part I), item 1, column A, held in noninterest-bearing *transaction* accounts (in domestic offices) intended for individuals for personal, household, or family use. The item would exclude certified and official checks as well as pooled funds and commercial products with sub-account structures, such as escrow accounts, that are held for individuals but not eligible for consumer transacting, saving, or investing.
- In Memorandum item 6.b, ''Deposits in interest-bearing transaction accounts intended for individuals for personal, household, or family use,'' institutions would report the amount of deposits reported in Schedule RC–E, (part I), item 1, column A, held in interest-bearing *transaction* accounts (in domestic offices) intended for individuals for personal, household, or family use. The item would exclude pooled funds and commercial products with sub-account structures, such as escrow accounts, that are held for individuals but not eligible for consumer transacting, saving, or investing.
- In Memorandum item 6.c, ''Deposits in all other transaction accounts of individuals, partnerships, and corporations,'' institutions would report the amount of all other transaction account deposits included in Schedule RC–E, (part I), item 1, column A, that were not reported in Memorandum items 6.a and 6.b. If an institution offers one or more transaction account deposit products intended for individuals for personal, household, or family use, but has other transaction account deposit products intended for a broad range of depositors (which may include individuals who would use the product for personal, household, or family use), the institution would report the entire amount of these latter transaction account deposit products in Memorandum item 6.c. For example, if an institution has a single negotiable order of withdrawal (NOW) account deposit product that it offers to all depositors eligible to hold such accounts, including individuals, sole proprietorships, certain nonprofit organizations, and certain government units, the institution would report the entire amount of its NOW accounts in Memorandum item 6.c. The institution would not need to identify the NOW accounts held by individuals for personal, household, or family use and report the amount of these accounts in Memorandum item 6.a.

The agencies also propose to revise Schedule RC–E, (part I), by adding new Memorandum item 7, ''Components of total nontransaction account deposits of individuals, partnerships, and corporations,'' which would be completed by institutions with total assets of $1 billion or more that responded ''yes'' to the screening question posed in new Memorandum item 5. Proposed new Memorandum item 7 would include breakdowns of the nontransaction savings deposit accounts of individuals, partnerships, and corporations (in domestic offices) included in Schedule RC–E, item 1, column C, described below. Nontransaction savings deposit accounts consist of money market deposit accounts (MMDAs) and other savings deposits. Specifically, proposed Memorandum item 7.a would include

[5] The FFIEC and the agencies believe that most depository institutions with distinct product offerings have instances in which proprietorships and microbusinesses utilize consumer deposit products; however, the amount of these balances is believed to be only a fraction of total consumer product balances and thus would not diminish the value of the substantial insight gained into the structure of institutions' deposits.

breakouts of ''Money market deposit accounts (MMDAs) of individuals, partnerships, and corporations.'' Proposed Memorandum item 7.b would include breakouts of ''Other savings deposit accounts of individuals, partnerships, and corporations.'' Proposed Memorandum item 7 would exclude all time deposits of individuals, partnerships, and corporations reported in Schedule RC–E, item 1, column C. As with proposed new Memorandum item 6 on the components of total transaction accounts of individuals, partnerships, and corporations, if an institution offers one or more nontransaction savings account deposit products intended for individuals for personal, household, or family use, but has other nontransaction savings account deposit products intended for a broad range of depositors (which may include individuals who would use the product for personal, household, or family use), the institution would report the entire amount of these latter nontransaction savings account deposit products in Memorandum item 7.a.(2) or 7.b.(2), as appropriate.

- In Memorandum item 7.a.(1), ''Deposits in MMDAs intended for individuals for personal, household, or family use,'' institutions would report the amount of deposits reported in Schedule RC–E, (part I), item 1, column C, held in MMDAs intended for individuals for personal, household, or family use. The item would exclude MMDAs in the form of pooled funds and commercial products with sub-account structures, such as escrow accounts, that are held for individuals but not eligible for consumer transacting, saving, or investing.
- In Memorandum item 7.a.(2), ''Deposits in all other MMDAs of individuals, partnerships, and corporations,'' institutions would report the amount of all other MMDA deposits included in Schedule RC–E, (part I), item 1, column C, that were not reported in Memorandum item 7.a.(1).
- In Memorandum item 7.b.(1), ''Deposits in other savings deposit accounts intended for individuals for personal, household, or family use,'' institutions would report the amount of deposits reported in Schedule RC–E, (part I), item 1, column C, held in other savings deposit accounts intended for individuals for personal, household, or family use. The item would exclude other savings deposit accounts in the form of pooled funds and commercial products with sub-account structures, such as escrow accounts, that are held for individuals but not eligible for consumer transacting, saving, or investing.
- In Memorandum item 7.b.(2), ''Deposits in all other savings deposit accounts of individuals, partnerships, and corporations,'' institutions would report the amount of all other savings deposits included in Schedule RC–E, (part I), item 1, column C, that were not reported in Memorandum item 7.b.(1).

The sum of Memorandum items 7.a.(1), 7.a.(2), 7.b.(1), and 7.b.(2) plus the amount of all time deposits of individuals, partnerships, and corporations must equal Schedule RC–E, item 1, column C.

The agencies seek specific comment on the clarity of the screening question that would be posed to all institutions in new Memorandum item 5 of Schedule RC–E, (part I,) and of the descriptions of the components of total transaction and total nontransaction account deposits of individuals, partnerships, and corporations that would be reported in new Memorandum items 6 and 7 of Schedule RC–E, (part I,) by institutions with total assets of $1 billion or more that responded ''yes'' to the screening question posed in new Memorandum item 5.

2. Consumer Deposit Service Charges

The agencies propose to modify Call Report Schedule RI, Income Statement, by adding new Memorandum item 15 in which institutions that responded ''yes'' to the new screening question posed in Memorandum item 5 of Schedule RC–E, (part I,) would report a breakdown of the amount reported in Schedule RI, item 5.b, ''Service charges on deposit accounts (in domestic offices).''[6] The proposed breakdown would include separate items for three categories of consumer deposit fees: (1) Overdraft-related service charges, (2) monthly maintenance charges, and (3) automated teller machine (ATM) fees. A fourth item would include all other service charges and fees on deposit accounts (in domestic offices) not reported in one of the first three categories. Although these new items would be reported on a calendar year-to-date basis, the agencies propose to introduce new Memorandum item 15 of Schedule RI in the Call Report for the second quarter of 2013.

The aggregate amount of deposit account fees reported today in Schedule RI, item 5.b, represents a substantial portion of industry operating income. Service charges on deposits totaled more than $33 billion in 2011[7] and can include dozens of types of fees that institutions levy against consumers, small businesses, large corporations, and other types of deposit customers. Dependence upon service charges on deposit accounts is higher for smaller institutions and may account for 30 percent or more of such an institution's noninterest revenues.[8]

However, there is currently no comprehensive data source from which supervisors and policymakers can estimate or evaluate the composition of these fees and how they impact consumers and a depository institution's earnings stability. The agencies thus propose that institutions that offer consumer deposit accounts itemize three key categories of service charges on such deposit accounts: Overdraft-related service charges on consumer accounts, monthly maintenance charges on consumer accounts, and consumer ATM fees.

More detailed data will support the agencies and the Bureau in monitoring the types of transactional costs borne by consumers. Data specific to overdraft-related fees is particularly pertinent for supervisors and policymakers in part because of recent trends in such fees and because of concerns about the harm such fees may impose on some depositors. The FFIEC and the agencies believe that, since the early 1990s, overdraft-related fees have grown in absolute magnitude and may also have grown as a share of deposit account service charges. Several factors contributed to this trend, including the introduction of bank-discretionary overdraft coverage programs, consumers' acclimation to debit cards and other emerging forms of payment, and the industry's embracing of ''free'' checking products that sacrificed monthly maintenance fees and increased reliance on penalty and other transactional fees to generate service charge revenues. Bankrate.com's 2012 Checking Account Survey suggests that the average fee charged for a single overdraft transaction has increased steadily and dramatically over the last 15 years.[9]

[6] The breakdown of service charges on deposit accounts would be reported by all institutions that answered the screening question in the affirmative, not just institutions with $1 billion or more in total assets.

[7] Figure is based on analysis of Call Report data.

[8] The ratio for all banks was 13.8 percent in 2011 per analysis of Call Report data.

[9] Bankrate.com, ''Checking Fees Rise to Record Highs in 2012,'' Claes Bell, available at: *http://*

Continued

More recently, however, overdraft-related fee revenue as a percentage of deposit account service charges may have begun to decline. Regulation and guidance proposed or issued by various agencies in recent years and a 2008 study issued by the FDIC raised concerns about potential consumer harm resulting from bank-discretionary overdraft coverage programs.[10] Additionally, starting in 2010, depository institutions have been prohibited from imposing a charge for paying an ATM or one-time debit card transaction unless they have obtained the consumer's affirmative consent to the overdraft service, among other requirements.[11] Consumer advocacy groups have further raised public awareness of industry practices, as have class action lawsuits and settlements related to such practices. The FFIEC and the agencies believe that, in response, many depository institutions have revised fee schedules, account agreements, and internal policies and procedures pertaining to overdraft transactions. Some industry representatives contend that these and other economic factors may have helped account for a reduction in service charges on deposit accounts by 22 percent from levels prevailing just two years ago.[12]

An institution reliant on declining deposit fee revenue that makes no other changes to its business model could be challenged to maintain a viable retail banking business. To replace lost overdraft income, as well as interchange revenue impacted by the Dodd-Frank Act's amendment to Section 920 of the Electronic Fund Transfer Act, many institutions have altered their pricing of checking products to require consumers to maintain higher average balances or pay monthly account maintenance fees.[13] Additionally, institutions that have deployed large ATM networks may continue to look to recoup their investment and maintenance costs through surcharges and foreign ATM transaction fees. New sources of deposit service charges could emerge to contribute to revenue stability but raise further questions about the amount of fees consumers must pay to utilize the banking system.

As a result, greater understanding of trends in overdraft fees and other deposit service charges is necessary to assess institutional health and enhance understanding of the costs and potential risks financial services pose to consumers.[14]

The FFIEC and the agencies believe that the vast majority of institutions track individual categories of deposit account service charges as distinct revenue line items within their general ledger or other management information systems, which would facilitate the reporting of service charge information in the Call Report. However, the FFIEC and the agencies recognize that internal accounting and recordkeeping practices may vary across institutions and that disaggregating all types of fees could be burdensome on smaller institutions. Because the FFIEC and the agencies believe that overdraft-related, monthly maintenance, and ATM fees are of most immediate concern to supervisors and policymakers, this proposal calls for the separation of these consumer deposit service charges only.

As noted in the consumer deposit balance proposal discussed above, the FFIEC and the agencies anticipate that certain institutions cater almost exclusively to non-consumer markets, and as such, may not maintain segment-specific products. The FFIEC and the agencies do not expect these institutions to differentiate within their accounting and operational systems between fees levied against consumer versus non-consumer depositors. Thus, the agencies propose to utilize responses to the proposed Schedule RC–E consumer deposit account screening question to govern deposit service charge reporting requirements. Specifically, institutions that report ''yes'' to the question posed in proposed Schedule RC–E, Memorandum item 5, ''Does your institution offer consumer deposit accounts, i.e., transaction account or nontransaction savings account deposit products intended for individuals for personal, household, or family use?,'' would be subject to the proposed new reporting requirements of Schedule RI, Memorandum item 15, while those that respond ''no'' would not. There is no proposed exemption from these Schedule RI reporting requirements for institutions with total assets less than $1 billion that answer ''yes'' to the Schedule RC–E screening question.

As mentioned above, the agencies propose to add a new Memorandum item 15, ''Components of service charges on deposit accounts (in domestic offices)'' to Schedule RI, which would include the following specific items:

- Memorandum item 15.a, ''Consumer overdraft-related service charges on deposit accounts.'' For deposit accounts intended for individuals for personal, household, and family use, this item would include service charges and fees related to the processing of payments and debits against insufficient funds, including ''nonsufficient funds (NSF) check charges,'' that the institution assesses with respect to items that it either pays or returns unpaid, and all subsequent charges levied against overdrawn accounts, such as extended or sustained overdraft fees charged when accounts maintain a negative balance for a specified period of time, but not including those equivalent to interest and reported elsewhere in Schedule RI (''Interest and fee income on loans (in domestic offices)'').
- Memorandum item 15.b, ''Consumer account monthly maintenance charges.'' For deposit accounts intended for individuals for personal, household, and family use, this item would include service charges for account holders' maintenance of their deposit accounts with the institution (often labeled ''monthly maintenance charges''), including charges resulting from the account owners' failure to maintain specified minimum deposit balances or meet other requirements (e.g., requirements related to transacting and to purchasing of other services), as well as fees for transactional activity in excess of specified limits for an account and recurring fees not subject to waiver.
- Memorandum item 15.c, ''Consumer customer ATM fees.'' For deposit accounts maintained at the institution and intended for individuals for personal,

www.bankrate.com/finance/checking/checking-fees-record-highs-in-2012.aspx#slide=5.

[10] OCC, *Guidance on Deposit-Related Consumer Credit Products,* 76 FR 33409 (June 8, 2011) (proposed guidance); FDIC, *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance,* FIL–81–2010 (Nov. 24, 2010), available at: *www.fdic.gov/news/news/financial/2010/fil10081.html;* 74 FR 59033 (Nov. 17, 2009) (amendment of Regulation E); *see also* 74 FR 5584 (July 29, 2009) (amendment of Regulation DD); *FDIC Study of Bank Overdraft Programs* (Nov. 2008), available at: *http://www.fdic.gov/bank/anlytical/overdraft/.*

[11] 12 CFR 1005.17.

[12] Figures based on analysis of Call Report data for depository institutions with $10 billion or more in total assets.

[13] Bankrate.com's 2012 Checking Account Survey found 39 percent of institutions offering consumer checking accounts with no minimum balance requirement or monthly maintenance fee in 2012, down from 76 percent in 2009. Bankrate.com, ''Checking Fees Rise to Record Highs in 2012,'' Claes Bell, available at: *http://www.bankrate.com/finance/checking/checking-fees-record-highs-in-2012.aspx#slide=2.*

[14] The FDIC's 2008 *Study of Bank Overdraft Programs* provided insight into these fees, but the data underlying that study is now six years old and only a small subset of the industry participated in the study.

household, and family use, this item would include service charges for transactions, including deposits to or withdrawals from deposit accounts, conducted through the use of ATMs or remote service units (RSUs) owned, operated, or branded by the institution or other institutions. The item would not include service charges levied against deposit accounts maintained at other institutions for transactions conducted through the use of ATMs or RSUs owned, operated, or branded by the reporting institution.[15]

- Memorandum item 15.d, ''All other service charges on deposit accounts.'' This item would include all other service charges on deposit accounts (in domestic offices) not reported in Schedule RI, Memorandum items 15.a, 15.b, and 15.c. Memorandum item 15.d would include service charges and fees on an institution's deposit products intended for use by a broad range of depositors (which may include individuals), rather than being intended for individuals for personal, household, and family use. Thus, for such deposit products, an institution would not need to identify the fees charged to accounts held by individuals for personal, household, or family use and report these fees in one of the three categories of consumer deposit fees.

For institutions that report ''yes'' to the Schedule RC–E screening question, the sum of Memorandum items 15.a through 15.d must equal Schedule RI, item 5.b, ''Service charges on deposit accounts (in domestic offices).''

The agencies seek specific comment on the clarity of the definitions proposed for the three categories of consumer deposit account service charges and on whether institutions' general ledger systems or deposit account processing systems currently support the separate identification of these three categories of service charges. If these systems do not enable institutions to identify all three service charge categories for consumer deposits, comment is requested on the categories of consumer deposit account service charges for which data are available.

B. Remittance Transfers

The agencies propose to add a new item 16 to Schedule RC–M, Memoranda, to collect data regarding certain international transfers of funds. The new item would facilitate supervision and monitoring related to remittance transfers, which are a subset of international transfers of funds that are newly regulated, but about which there is no comprehensive information available. Subitems within new item 16 would include multiple choice questions directed to all institutions regarding their participation in the remittance market and seek additional information from those institutions that provided more than 100 remittance transfers in the prior calendar year and expect to provide more than 100 remittance transfers in the current calendar year. The agencies propose to introduce new Schedule RC–M, item 16, in the second quarter of 2013.

Section 1073 of the Dodd-Frank Act amended the Electronic Fund Transfer Act (EFTA) to create a consumer protection regime for remittance transfers, i.e., certain electronic transfers of funds requested by a consumer sender to a designated recipient abroad that are sent by a remittance transfer provider. To implement the Dodd-Frank Act's remittance transfer requirements, the Bureau issued rules that were set to take effect on February 7, 2013. 77 FR 6194 (Feb. 7, 2012); 77 FR 40459 (July 10, 2012); 77 FR 50244 (Aug. 20, 2012) (collectively, ''remittance transfer rule'').

For covered transactions sent by ''remittance transfer providers,'' the Dodd-Frank Act generally requires the provision of disclosures, establishes cancellation and refund rights, and requires the investigation and resolution of errors. However, the remittance transfer rule includes a safe harbor under which a person, including an insured depository institution, that provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year is deemed not to provide remittance transfers in the normal course of its business, and thus is not subject to the Dodd-Frank Act requirements. 12 CFR § 1005.30(f)(2)(i). Furthermore, the statute provides insured banks, savings associations, and credit unions a temporary exception under which they may provide estimates for certain disclosures in some instances. The exception expires five years after the enactment of the Dodd-Frank Act, i.e., on July 21, 2015. If the Bureau determines that expiration of this ''temporary exception'' would negatively affect the ability of insured institutions to send remittances to foreign countries, the Bureau may extend the exception to not longer than ten years after enactment.

In December 2012, the Bureau issued a notice of proposed rulemaking regarding three elements of the remittance transfer rule, and to propose that the effective date of the entire rule be extended until 90 days after the Bureau issues a final rule. *See* 77 FR 77187, December 31, 2012. The FFIEC and the agencies do not expect that the proposed changes would affect the need for or the timing of the new item. However, when the effective date of the rule is finalized, the agencies will consider whether it may be appropriate to introduce some or all of new item 16 in the third quarter of 2013 or later, rather than in the second quarter of 2013.[16]

The available data regarding the transactions and institutions covered by the Dodd-Frank Act remittance transfer requirements are very limited. For example, the FFIEC and the agencies believe that many insured institutions offer consumers methods to send money abroad. At the same time, as explained in the preamble to the Bureau's rule published on August 20, 2012, data collected by the Bureau suggests that a meaningful number of institutions may qualify for the 100-transfer safe harbor in the remittance transfer rule. *See* 77 FR 50244, 50252. However, the FFIEC and the agencies are unaware of any comprehensive data available to identify reliably the number of institutions that offer consumers mechanisms for sending money abroad, or the subset of such institutions that qualify for the 100-transfer safe harbor.

Similarly, the FFIEC and the agencies are unaware of any comprehensive industry data regarding trends in the remittance transfer market. For example, some industry participants and industry associations have suggested that the Dodd-Frank Act remittance transfer requirements, as implemented, may cause some institutions to change or stop providing remittance transfer services. Such changes would affect individual institutions' compliance requirements, and also could have an impact on the nature and scope of services available to consumers who want to send money abroad. But the FFIEC and agencies do not know of any comprehensive data source that will provide information on whether or not these changes take place. Existing research on market trends has tended to focus on services provided by state-

[15] Such service charges are reported in Schedule RI, item 5.l, ''Other noninterest income,'' not in Schedule RI, item 5.b, ''Service charges on deposit accounts (in domestic offices).''

[16] In January 2013, the Bureau delayed the February 7, 2013, effective date of the remittance transfer rule pending the finalization of the Bureau's December 2012 proposal. *See* 78 FR 6025, January 29, 2013.

licensed money transmitters, not those provided by insured institutions.

The lack of comprehensive, reliable data regarding remittance transfers by institutions could restrict the agencies' and the Bureau's ability to provide supervisory oversight and to monitor important industry trends. In the absence of accurate and comprehensive market-wide or institution-level data, the agencies, the Bureau, and other regulators would likely have to rely on individual examination findings, ad-hoc surveys, estimates, or limited public data to characterize the market as a whole and to understand institution-specific activities and risks.

The proposed new Schedule RC–M item would substantially aid supervisory oversight and market monitoring. Institution-specific data would help examiners to prioritize, focus, and refine their examinations. Industry-wide data would also enable monitoring of industry trends that could affect both providers and consumers of remittance transfers. For example, proposed new item 16 would facilitate monitoring of market entry and exit. Such monitoring would improve understanding of the consumer payments landscape generally, and facilitate evaluation of the remittance transfer rule's impact. Also, data regarding the number of remittance transfers that institutions provide can contribute to monitoring of the Bureau's 100-transfer safe harbor, which was the source of a number of comments and a range of opinions during the Bureau's rulemaking.[17] Data regarding the services offered and systems used by individual institutions could additionally enable the FFIEC and the agencies to more finely tune supervisory procedures and policies.

The proposed new item would also help inform any later policy decisions regarding remittance transfers. For example, the FFIEC and the agencies expect that the proposed data collection would contribute to any later analysis of whether expiration of a temporary exception for insured institutions would negatively affect the ability of insured institutions to send remittances to foreign countries. As discussed below, the proposed new item includes a question regarding the frequency with which the temporary exception is used; institutions' responses could provide information on the importance of the exception to individual institutions, or the market as a whole. Additionally, the proposed new item could assist the Board in reporting to Congress on expansion of the use of the ACH system and other payment mechanisms for remittance transfers to foreign countries, as required by section 1073(b) of the Dodd-Frank Act, and inform other statutorily required initiatives related to remittance transfers, such as assistance to the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Empowerment as it relates to remittance transfers, as required by section 1073(c)(2) of the Dodd-Frank Act.

To identify market participation, and changes that occur after the remittance transfer rule takes effect, the proposed schedule would include a one-time question regarding 2012 and an ongoing quarterly question that asks all institutions whether, during the relevant period, they offered to consumers in any state certain mechanisms for sending money to recipients abroad. The categories of mechanisms listed in the one-time and ongoing question include international wire transfers, international ACH transactions, other proprietary services operated by the reporting institution, other proprietary services operated by another party (such as a state-licensed money transmitter) for which the reporting institution is an agent or similar type of business partner, and ''other.'' The agencies seek comment on whether different categories of mechanisms should be listed, and whether including the ''other'' mechanism category is necessary.

To facilitate monitoring of the 100-transfer safe harbor and the identification of institutions that may be required to comply with the Dodd-Frank Act remittance transfer requirements, an additional annual screening question would seek information from all institutions as to whether they expect to qualify for the 100-transfer safe harbor.[18] The item would ask whether the reporting institution provided more than 100 remittance transfers in the previous calendar year or whether it estimates that it will provide more than 100 remittance transfers in the current calendar year. An answer of ''yes'' would indicate that the institution likely does not qualify for the safe harbor.

In addition, the subset of institutions whose answers to the annual screening question suggests that they likely do not qualify for the 100-transfer safe harbor[19] would complete three quarterly items providing additional information about the reporting institution's remittance transfers. Two items would seek information about institutions' use of certain payment, messaging, or settlement systems for international wire and international ACH transactions, which the FFIEC and the agencies believe currently account for the great majority of remittance transfers sent by institutions. The questions would focus on the systems that an institution uses in initiating transactions on its customers' behalf (rather than systems used by other institutions involved in the same transaction). This information can aid the agencies' evaluation of institutions' international wire and ACH practices. Among other things, the FFIEC and the agencies believe that an institution's choice of payment, messaging, and settlement systems may affect the processes it uses to comply with the Dodd-Frank Act remittance transfer requirements. For example, the systems used may affect the ways in which institutions investigate and resolve errors.

Specifically, the first of the two items would seek information on the payment, messaging, or settlement systems that an institution uses to process outbound international wire transfers for consumers. An institution would be asked to report whether it uses each of the listed systems for some, none, or all of its outbound international wire transfers for consumers. The systems listed in this item would include FedWire, CHIPS, SWIFT, a correspondent bank of which the reporting institution is a client, and other (with an instruction that the institution identify the ''other'' system). The agencies seek comment on whether these categories of systems are appropriate, and whether additional systems should be added to the list for this item and why.

Similarly, the second item would seek information on the payment, messaging, or settlement systems that institutions use to send outbound international ACH transactions for consumers. An institution would be asked to report whether it uses each of the listed systems for some, none, or all of its outbound international ACH transactions for consumers. The systems listed in this item would include

[17] In response to industry commenters' suggestion that the Bureau commit to reevaluating the safe harbor threshold, the Bureau stated that it intended to monitor it over time. 77 FR 50244, 50252.

[18] This annual screening question would initially be completed in the Call Report for June 30, 2013, and in the Call Report for March 31 in subsequent years.

[19] In some cases, even an institution that does not qualify for the safe harbor related to the term ''normal course of business'' will not be a ''remittance transfer provider'' and will not be required to comply with the Dodd-Frank Act remittance transfer requirements. *See* 12 CFR 1005.30(f), comment 30(f)–2.

FedACH, EPN, SWIFT, a correspondent bank of which the reporting institution is a client, and other (with an instruction that the institution identify the ''other'' system). The agencies seek comment on whether these categories of systems are appropriate, and whether additional systems should be added to the list for this item and why.

Finally, for the subset of institutions whose answers to the annual screening question suggest that they likely do not qualify for the 100-transfer safe harbor, the proposed new Schedule RC–M items would seek information on the volume and dollar value of remittance transfers provided, and the frequency with which the reporting institution uses the temporary exception for insured institutions. Specifically, the agencies propose to seek volume and dollar value information with regard to certain categories of mechanisms offered to consumers for international transfers. The agencies propose that these categories correspond to the categories in the one-time and ongoing quarterly question regarding the reporting institution's market participation (e.g., international wire transfers, international ACH transactions, other proprietary services operated by the reporting institution, other proprietary services operated by another party, and ''other''). For each category of mechanism, a reporting institution would provide the total number of qualifying transactions provided in the prior quarter, the total dollar value of the principal of such transactions, and the number of transactions to which the temporary exception applied. The subitems would apply to services offered to consumers, rather than services provided to another institution on a correspondent basis.

The agencies propose that the number of transactions and the related dollar values should include all transfers (a) that are ''remittance transfers'' as defined in 12 CFR § 1005.30(e), regardless of whether the institution or another party is the remittance transfer provider, and (b) that the institution does not know for certain are remittance transfers, but for which the disclosures described in Subpart B of Regulation E were provided. The agencies propose that if the reporting institution did not provide any remittance transfers to consumers in the normal course of its business, it should not be required to provide the requested number and dollar value of transactions.

The agencies recognize that questions regarding the volume and dollar value of transactions would seek information that banks may not have recorded or compiled previously. However, the FFIEC and the agencies expect that in order to comply with the Dodd-Frank Act remittance transfer requirements, institutions or their business partners, such as correspondent banks or payment networks, may build systems to enable institutions to identify remittance transfers as such.

The agencies propose that if institutions are not reasonably able to provide actual amounts for the volume and dollar value of transfers and number of uses of the temporary exception, that they provide estimates that are accurate at least to two significant digits.[20] The agencies seek comment on the feasibility of such estimates, as well as comment on the feasibility of providing actual figures; the date by which banks may be able to provide actual figures, if not by June 2013; and the relative benefits or costs of using a different estimation approach or a different methodology to report the requested data, such as the reporting of transaction volume within certain ranges (e.g., between 1,000 and 10,000 transfers). With regard to the proposed Schedule RC–M subitem on the volume and dollar value of transactions, the agencies additionally seek comment on whether the scope of the transactions included in the calculations is appropriate, as well as whether the scope and categories of mechanisms offered to consumers for international transfers to be included are appropriate, or whether other alternatives should be used and why.

C. Depository Institution Trade Names

Some insured depository institutions use names other than their legal title as reflected in their charter to identify certain of their physical branch offices or Internet Web sites. The reasons for using these ''trade names'' vary: (1) In the case of physical branch offices, this is often due to a merger and an interest in maintaining the presence of the acquired institution's well recognized name in the community or communities it served; (2) in the case of multiple Web sites, this is often due not only to merger activity, but also may be part of an institution's specific marketing efforts and an interest in targeting particular groups of potential depositors or borrowers. Even though there may be valid business reasons for using trade names, this practice can confuse customers as to the insured status of the institution as well as the legal name of the insured institution that holds their deposits. Customers, for example, could inadvertently exceed the deposit insurance limits if they do business with two different branches or Web sites that are, in fact, not separately insured, but rather are simply affiliated with the same insured depository institution. Furthermore, customers risk monetary losses if they deal with fraudulent Web sites using trade names that purport to be insured depository institutions because customers cannot confirm whether the Web sites are, in fact, affiliated with an insured institution via the FDIC's Institution Directory or BankFind systems.

To address these concerns in relation to physical branch offices, the agencies issued an Interagency Statement on Branch Names in 1998.[21] The Statement describes measures an insured institution should take to guard against customer confusion about the identity of the institution or the extent of FDIC insurance coverage if the institution ''intends to use a different name for a branch or other facility'' or ''over a computer network such as the Internet.'' This guidance, however, did not require institutions to inform customers of their legal identity nor did it establish a formal notification requirement for the trade names an institution uses.

The FDIC regularly receives inquiries from the public about whether a particular institution, as identified by the name on its physical facilities, in print or other traditional media advertisements, or on Internet Web sites, represents an insured depository institution. Since June 1999, institutions have reported the Uniform Resource Locator (URL) of their primary Internet Web site address in the Call Report. Nevertheless, the agencies have found that many institutions commonly have multiple Web sites and that Web sites operated by insured institutions often do not clearly state the institution's legal (chartered) name. Moreover, because insured institutions are not required to report the multiple trade names that they use, including Internet Web sites other than their primary Web site, the FDIC's publicly available databases that identify insured institutions do not include trade name data that links the trade names to a specific insured institution and its deposit insurance certificate number. As a consequence, the FDIC is unable to effectively serve as an information

[20] ''Two significant digits'' means that the first digit in the number is not rounded, and the second digit is rounded to reflect all the remaining digits. In other words, for a figure between 100 and 999, the provider would round to the nearest 10, e.g., for a figure of 812, the provider would report 810; for a figure of 816, the provider would report 820. For figures between 10,000 and 99,999, the provider would round to the nearest 1,000.

[21] *http://www.fdic.gov/news/news/financial/1998/fil9846b.html.*

resource for depositors and the public concerning the insured status of a physical branch office or Internet Web site that uses a trade name rather than the legal name of the insured institution. Although the FDIC researches trade names and collects trade name information in response to inquiries from the public, this information is incomplete, lags behind the creation of new trade names, and depends on inquiries from the public to identify previously unknown trade names.

To address the lack of complete and current information on depository institutions' use of trade names that differ from their legal title to identify physical branches and Internet Web sites, the agencies are proposing to supplement the reporting of each institution's primary Internet Web site address, which is currently reported in item 8 of Call Report Schedule RC–M, Memoranda. The agencies propose to add text fields to Schedule RC–M, item 8, in which an institution that uses one or more trade names other than its legal title to identify branch office names and Internet Web sites would report all trade names used by these physical locations and the URLs for all public-facing Web site addresses affiliated with the institution. For example, if an institution's legal title is ABC National Bank, but it operates one or more office locations under the trade name of ''Community Bank of XYZ'' (as identified by the signage displayed on the facility), the institution would report this trade name (and any other trade names the institution uses at other office locations) in revised item 8 of Schedule RC–M. Similarly, if an institution's legal title is DEF State Bank, but it operates an Internet Web site to solicit deposits or other business under the trade name of ''Your Safe and Sound Bank'' (where this trade name is more clearly and prominently displayed on the Web site than the institution's legal title, if the legal title is disclosed at all), the institution would report the URL for this Web site (and the URLs for any other Web sites used to solicit business under a trade name) in revised item 8 of Schedule RC–M. The agencies seek comment on the clarity of the circumstances in which institutions would report trade names in Schedule RC–M.

D. Additional Data From Large and Highly Complex Institutions for Deposit Insurance Assessment Purposes

On October 9, 2012, the FDIC Board of Directors approved a final rule amending certain aspects of the methodology set forth in the FDIC's assessment regulations (12 CFR Part 327) for determining the deposit insurance assessment rates for large and highly complex institutions.[22] This ''large bank pricing rule,'' originally adopted by the FDIC Board in February 2011,[23] uses a scorecard method to determine a large or highly complex institution's assessment rate. One of the financial ratios used in the scorecard is the ratio of higher-risk assets to Tier 1 capital and reserves. The FDIC's October 2012 assessments final rule, which takes effect April 1, 2013, (1) revises the definitions of certain higher-risk assets in the February 2011 rule, specifically leveraged loans, which are renamed ''higher-risk commercial and industrial (C&I) loans and securities,'' and subprime consumer loans, which are renamed ''higher-risk consumer loans''; (2) clarifies when an asset must be classified as higher risk; (3) clarifies the way securitizations are identified as higher risk; and (4) further defines terms that are used in the large bank pricing rule.

At present, large and highly complex institutions currently report the amount of their '''Subprime consumer loans' as defined for assessment purposes only in FDIC regulations'' and their '''Leveraged loans and securities' as defined for assessment purposes only in FDIC regulations'' in Memorandum items 8 and 9, respectively, of Call Report Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments. The amounts to be reported in Memorandum items 8 and 9 also generally include securitizations where more than 50 percent of assets backing the securitization meet the criteria for subprime consumer loans or leveraged loans and securities, but exclude securitizations reported as trading assets on the Call Report balance sheet (Schedule RC). These two Memorandum items were added to Schedule RC–O as of the June 30, 2011, report date. However, in recognition of concerns expressed by large and highly complex institutions about their ability to identify loans meeting the subprime and leveraged loan definitions in the FDIC's February 2011 assessments final rule, the agencies provided transition guidance for reporting subprime consumer and leveraged loans and securities in the Schedule RC–O instructions issued in June 2011. That transition guidance permitted large and highly complex institutions to use either their existing internal methodologies or definitions found in existing supervisory guidance to identify and report ''subprime consumer loans'' and ''leveraged loans'' originated or purchased prior to October 1, 2011, in lieu of using the definitions of these two higher-risk asset categories in the FDIC's February 2011 final assessments rule. The original transition date for identifying and reporting subprime and leveraged loans has since been extended, most recently to April 1, 2013.

As stated in the agencies' final Paperwork Reduction Act **Federal Register** notice pertaining to the introduction of the Schedule RC–O reporting requirements for large and highly complex institutions:

> the instructions for reporting subprime and leveraged loans and securities in the Call Report * * * specifically reference the definitions of these high-risk asset categories that are contained in the FDIC's assessment regulations (12 CFR Part 327) as amended by the FDIC's February 2011 final rule and then incorporate the text of these definitions from the final rule (as well as the previously mentioned transition guidance). Accordingly, if and when one or both of these two definitions—as used for assessment purposes—are revised through FDIC rulemaking, the definitions of these asset categories in the agencies' regulatory reporting instructions will be revised in the same manner to maintain conformity with the assessment regulations.[24]

Now that the FDIC has amended the definitions of subprime and leveraged loans and securities in its October 2012 assessments final rule, and has renamed these higher-risk asset categories, the agencies will, consistent with the text quoted above, make corresponding changes to Memorandum items 8 and 9 of Schedule RC–O. Thus, Memorandum item 8 will be recaptioned '''Higher-risk consumer loans' as defined for assessment purposes only in FDIC regulations'' and Memorandum item 9 will be recaptioned '''Higher-risk commercial and industrial loans and securities' as defined for assessment purposes only in FDIC regulations.'' The revised instructions for these two Schedule RC–O Memorandum items will incorporate the revised definitions of these higher-risk asset categories contained in the FDIC's October 2012 assessments final rule, including the clarified definitions of higher-risk securitizations.[25] These revisions will

[22] *See* 77 FR 66000, October 31, 2012. In general, large and highly complex institutions are insured depository institutions with $10 billion or more in total assets.

[23] *See* 76 FR 10672, February 25, 2011.

[24] 76 FR 77321, December 12, 2011.

[25] The FDIC's October 2012 assessments final rule defines ''higher-risk consumer loans,'' ''higher-risk commercial and industrial loans,'' and ''higher-risk securitizations'' in Sections I.A.3, I.A.2, and I.A.5, respectively, of Appendix C to Subpart A of Part 327 of the FDIC's regulations.

take effect June 30, 2013, which is the first report date after the April 1, 2013, effective date of the FDIC's October 2012 assessments final rule.

As defined in the October 2012 assessments final rule, a ''higher-risk consumer loan'' is a consumer loan where, as of origination (or, if the loan has been refinanced, as of refinance), the probability of default (PD) within two years (the two-year PD) is greater than 20 percent,[26] excluding, however, those consumer loans that meet the definition of a nontraditional 1–4 family residential mortgage loan.[27] Integral to its decision to adopt this definition in the October 2012 assessments final rule was the FDIC's stated intent to collect the outstanding balance of consumer loans, by two-year PD and product type, in the Call Report as a means to determine whether the 20 percent threshold for identifying ''higher-risk consumer loans'' should be changed. More specifically, the agencies are proposing that large and highly complex institutions would report in a tabular format the outstanding amount of all consumer loans, including those with a PD below the high-risk threshold, stratified by the 10 consumer loan product types and 12 two-year PD bands. In addition, for each product type, institutions would report the amount of unscorable loans, as defined in the October 2012 assessments final rule, and indicate whether the PDs were derived using scores and default rate mappings provided by a third-party vendor or an internal approach. The 10 proposed consumer loan product types are:

(1) ''Nontraditional 1–4 family residential mortgage loans'' included in Schedule RC–C, part I, item 1.c.(2)(a) and (b);

(2) ''Closed-end loans secured by first liens on 1–4 family residential properties'' as defined for Call Report Schedule RC–C, part I, item 1.c.(2)(a), excluding first liens reported as nontraditional 1–4 family residential mortgage loans;

(3) ''Closed-end loans secured by junior liens on 1–4 family residential properties'' as defined for Schedule RC–C, part I, item 1.c.(2)(b), excluding junior liens reported as nontraditional 1–4 family residential mortgage loans;

(4) ''Revolving, open-end loans secured by first liens on 1–4 family residential properties and extended under lines of credit'' included in Schedule RC–C, part I, item 1.c.(1);

(5) ''Revolving, open-end loans secured by junior liens on 1–4 family residential properties and extended under lines of credit'' included in Schedule RC–C, part I, item 1.c.(1);

(6) ''Credit cards'' as defined for Schedule RC–C, part I, item 6.a;

(7) ''Automobile loans'' as defined for Schedule RC–C, part I, item 6.c;

(8) ''Student loans'' included in Schedule RC–C, part I, item 6.d;

(9) ''Other consumer loans (including single payment and installment) and revolving credit plans other than credit cards'' included in Schedule RC–C, part I, items 6.b and 6.d, but excluding student loans; and

(10) ''Consumer leases,'' as defined for Schedule RC–C, part I, item 10.a.

The 12 proposed two-year PD bands for consumer loans are: (1) less than or equal to 1 percent; (2) 1.01 to 4 percent; (3) 4.01 to 7 percent; (4) 7.01 to 10 percent; (5) 10.01 to 14 percent; (6) 14.01 to 16 percent; (7) 16.01 to 18 percent; (8) 18.01 to 20 percent; (9) 20.01 to 22 percent; (10) 22.01 to 26 percent; (11) 26.01 to 30 percent; and (12) greater than 30 percent.

At present, the amounts that large and highly complex institutions report for ''nontraditional 1–4 family residential mortgage loans,'' ''subprime consumer loans,'' and ''leveraged loans and securities'' in Memorandum items 7, 8, and 9 of Schedule RC–O are accorded confidential treatment and not made available to the public on an individual institution basis because they are regarded as examination information. In this regard, until data on these higher-risk assets began to be collected directly in the Call Report, the FDIC looked to the examination processes at large and highly complex institutions as the means for gathering these data and, as a consequence, they have been treated as confidential examination information. Similarly, the proposed addition to Schedule RC–O of tabular data on consumer loans, by two-year PD and product type, represents a further extension of the collection of confidential examination information, which also will not be made available to the public on an individual institution basis.

In addition, over the past six quarters as the FDIC has worked with the data collected in Schedule RC–O and elsewhere in the Call Report that serve as inputs to the growth adjusted portfolio concentration measure, the higher-risk asset concentration measure, and the loss severity measure used in the scorecard calculations under the large bank pricing rule, certain data gaps have been identified in the data needed to perform these calculations in the manner intended under this rule. Therefore, the agencies are proposing to add a number of new Memorandum items to Schedule RC–O and revise several existing Memorandum items to eliminate these data gaps. These proposed changes to Schedule RC–O would apply only to large and highly complex institutions.

On the FFIEC 031 report form, which is applicable to institutions with foreign offices, Schedule RC–C, part I, item 1, ''Loans secured by real estate,'' does not capture a breakdown of these loans for the consolidated institution by the type of loan and collateral. Such a breakdown is collected for ''Loans secured by real estate'' in domestic offices. As a consequence, because ''Loans secured by real estate'' in foreign offices are not reported by type of loan and collateral in Schedule RC–C, part I, the loss severity measure in the large bank pricing rule treats all foreign office real estate loans as ''Other loans'' and assigning a higher loss rate to these ''Other loans'' than would otherwise be assigned to them based on their actual type of loan and collateral. The absence of these details on foreign office real estate loans also affects the growth adjusted portfolio concentration measure and the higher-risk asset concentration ratio. Similarly, within Schedule RC–O on the FFIEC 031 report, existing Memorandum items 10.a and 10.b capture data relating to ''Commitments to fund construction, land development, and other land loans secured by real estate in domestic offices'' while Memorandum items 13.a through 13.d collect data on the portion of certain categories of funded loans secured by real estate in domestic offices that are guaranteed or insured by the U.S. government. Because these Memorandum items also overlook the corresponding unfunded loan commitments and funded loans in foreign offices, the scorecard measures that use these inputs lack the information necessary to accurately calculate the affected ratios. The absence of detailed data on real estate loans in foreign offices affects a minority of the approximately 110 large and highly complex institutions.

To remedy this deficiency in the real estate loan data reported by large and highly complex institutions with foreign offices, the agencies are proposing to add new Memorandum items to the

[26] The FDIC's October 2012 assessments final rules sets forth the ''General Requirements for PD Estimation'' in Section I.A.3 of Appendix C to Subpart A of Part 327 of the FDIC's regulations.

[27] The FDIC's October 2012 assessments final rule defines ''nontraditional 1–4 family residential mortgage loans'' in Section I.A.4 of Appendix C to Subpart A of Part 327 of the FDIC's regulations. '''Nontraditional 1–4 family residential mortgage loans' as defined for assessment purposes only in FDIC regulations'' are reported in Schedule RC–O, Memorandum item 7, and includes higher-risk securitizations of such loans.

FFIEC 031 version of the Call Report effective June 30, 2013, that would provide for the reporting of a breakdown of the consolidated institution's ''Loans secured by real estate'' into the same nine types of loans and collateral as those reported for domestic offices only in Schedule RC–C, part I, items 1.a.(1) through 1.e.(2). Additionally, the scope of Memorandum items 10.a, 10.b, and 13.a through 13.d in Schedule RC–O would be revised to cover the specified unfunded commitments and funded loans in both domestic and foreign offices (i.e., for the consolidated bank).

The definitions of the individual asset classes that make up the growth adjusted portfolio concentration measure and the higher-risk asset concentration measure for large and highly complex institutions exclude the maximum amounts recoverable from the U.S. government under guarantee or insurance provisions, including FDIC loss-sharing agreements. In Memorandum items 13.a through 13.g of Schedule RC–O, institutions report for several categories of funded loans the portion of these loans guaranteed or insured by the U.S. government, but they do not include the amount protected by FDIC loss-sharing agreements and, thus, do not precisely mirror the definitions of the individual measures that make up the higher-risk asset concentration measure for large and highly complex institutions. The balance sheet amounts of loans covered by loss-sharing agreements are currently reported in items 13.a.(1) through 13.a.(5) of Schedule RC–M, Memoranda. However, these items disclose only the total amount of these loans and not the portion of the loans that is protected by loss-sharing agreements. Consequently, for scorecard calculation purposes, the FDIC has been assuming that 80 percent of the loan amounts reported in Schedule RC–M are covered by loss-sharing agreements since most loss-sharing agreements cover 80 percent of the loan amounts. However, the actual percentage of loss-share coverage for some loss-share agreements differs. Accordingly, the agencies are proposing to revise existing Memorandum items 13.a through 13.g of Schedule RC–O so that institutions include, rather than exclude, the portion of specified loan categories covered by FDIC loss-sharing agreements.[28]

In addition, the growth adjusted portfolio concentration measure, as defined in the large bank pricing rule, includes non-agency residential mortgage-backed securities (reported in items 4.a.(3) and 4.b.(3), columns A and D, of Schedule RC–B, Securities), excluding the portion guaranteed or insured by the U.S. government (e.g., under FDIC loss-sharing agreements). However, the amount of the U.S. government-guaranteed or -insured portion of such securities is not currently collected in the Call Report. To eliminate this data deficiency, the agencies propose to add a new Memorandum item 13.h to Schedule RC–O to collect this missing information on non-agency residential mortgage-backed securities from large institutions only. These proposed revisions to Memorandum item 13 would take effect June 30, 2013.

E. Total Liabilities of an Institution's Parent Depository Institution Holding Company That Is Not a Bank or Savings and Loan Holding Company

Section 622 of the Dodd-Frank Act establishes a financial sector concentration limit (''Concentration Limit'') that generally prohibits a financial company from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of, another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies. The Concentration Limit was adopted as a new section 14 to the Bank Holding Company Act of 1956, as amended, to be codified at 12 U.S.C. 1852.

The Concentration Limit applies to a ''financial company,'' which is defined to include any company that controls an insured depository institution—including a commercial firm that controls an industrial loan company or a limited-purpose credit card bank—as well as an insured depository institution and a nonbank financial company supervised by the Board.[29] These firms are subject to the Concentration Limit, and their liabilities are included in the denominator of the Concentration Limit for purposes of determining whether other financial companies are in compliance with the limit.

''Liabilities'' for purposes of the Concentration Limit are defined differently for financial companies domiciled in the United States than for financial companies domiciled abroad. For U.S.-domiciled financial companies, ''liabilities'' include a firm's total consolidated liabilities on a worldwide basis. For financial companies domiciled abroad, ''liabilities'' include the liabilities of the firm's U.S. operations.

The Financial Stability Oversight Council (''Council'') is required to make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement Section 622. The Council recommended that, in measuring the Concentration Limit, the liabilities of a financial company (that is not subject to consolidated risk-based capital rules substantially similar to those applicable to bank holding companies) should be calculated pursuant to U.S. generally accepted accounting principles (GAAP) or other appropriate accounting standards applicable to such company. The Council also recommended that the Board calculate aggregate financial sector liabilities using a two-year rolling average and publicly report a final calculation of the aggregate consolidated liabilities of all financial companies as of the end of the preceding calendar year.[30]

At present, depository institution holding companies that are not bank holding companies or savings and loan holding companies do not report consolidated financial information to the agencies. Because this information is necessary to implement the Concentration Limit, the agencies propose to add a new item 17 to Call Report Schedule RC–M, Memoranda, in which a subsidiary depository institution of a depository institution holding company that is not a bank holding company or savings and loan holding company would be required to report information on the liabilities of the parent depository institution holding company, as communicated by the holding company to the institution. This new item would not be applicable to any other depository institutions. Because the Board is required to report a final calculation as of the end of each calendar year, this proposed new Schedule RC–M item would be

[28] Memorandum item 13.a would continue to be completed by large and highly complex institutions, while Memorandum items 13.b through 13.g would continue to be completed by large institutions only.

[29] A parent holding company has control over a depository institution if the company (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the depository institution; (B) the company controls in any manner the election of a majority of the directors or trustees of the depository institution; or (C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the depository institution.

[30] See *http://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/Study%20on%20Concentration%20Limits%20on%20Large%20Firms%2001–17–11.pdf*.

completed for only the December report beginning December 31, 2013.

Specifically, with respect to a subsidiary depository institution of a depository institution holding company domiciled in the United States, the institution would be required to report total consolidated liabilities of the parent depository institution holding company under U.S. GAAP as of the December 31 Call Report date, as communicated to the institution by the depository institution holding company. With respect to a subsidiary institution of a depository institution holding company domiciled in a country other than the United States, the institution would be required to report the total consolidated liabilities of the combined U.S. operations of the depository institution holding company as of the December 31 Call Report date, as communicated to the institution by the parent. ''Total consolidated liabilities of the combined U.S. operations of the depository institution holding company'' would mean the sum of the total consolidated liabilities of each top-tier U.S. subsidiary of the depository institution holding company, as determined under U.S. GAAP. A subsidiary depository institution would be permitted, but not required, to reduce ''total consolidated liabilities of the combined U.S. operations of the depository institution holding company'' by amounts corresponding to balances and transactions between U.S. subsidiaries of the depository institution holding company to the extent such items would not already be eliminated in consolidation.

The agencies recognize that it is not customary to use the Call Report as the vehicle for collecting data pertaining to a company other than the reporting depository institution, including entities the institution consolidates. Nevertheless, the agencies view the Call Report as a more efficient conduit for collecting a single annual data item for the total consolidated liabilities of a reporting institution's parent depository institution holding company that is not a bank or savings and loan holding company than the alternative of having the Board initiate a new information collection applicable to the limited number of depository institution holding companies that are not bank or savings and loan holding companies for the sole purpose of annually collecting this single data item.

The agencies also acknowledge that, when filing a Call Report, the reporting institution's chief financial officer (or equivalent) must attest that the report has been prepared in conformance with the Call Report instructions and is true and correct to the best of his or her knowledge and belief. A specified number of the reporting institution's directors must make a similar attestation. Because a depository institution controlled by a depository institution holding company that is not a bank or savings and loan holding company would have to obtain the amount of its parent depository institution holding company's total consolidated liabilities from the parent in order to report this amount in the Call Report, the agencies would expect an institution to use its best efforts to obtain this information from its parent depository institution holding company and would accept a reasonable estimate of the parent's total consolidated liabilities. In light of the Call Report attestation requirement described above, the agencies propose to exclude from the scope of the attestations for the institution's chief financial officer (or equivalent) and directors the amount of the parent holding company's total consolidated liabilities reported in Schedule RC–M, item 17. However, for the limited number of depository institutions to which item 17 will be applicable, this item would be accompanied by an attestation to be signed by the depository institution's chief financial officer (or equivalent) stating that item 17 has been prepared in conformance with the Call Report instructions. The instructions for proposed Memorandum item 17 would provide that a depository institution could rely on a reasonable estimate of the total consolidated liabilities of its parent depository institution holding company obtained on a best efforts basis. The agencies request comment on whether this approach addresses potential attestation concerns that may arise when an insured depository institution must report the total consolidated liabilities of its parent depository institution holding company that is not a bank or savings and loan holding company in the institution's Call Report.

F. Revising the Scope of Schedule RI–A, Item 11

The instructions for item 11, ''Other transactions with parent holding company,'' in Schedule RI–A, Changes in Bank Equity Capital, currently advise institutions to report the net aggregate amount of transactions with the institution's parent holding company that affect equity capital directly, other than those transactions required to be reported in other items of Schedule RI–A (e.g., cash dividends, sales and retirements of capital stock, and treasury stock transactions). The instructions for item 11 identify two transactions to be reported in this item: capital contributions other than those for which stock has been issued to the parent holding company and dividends to the holding company in the form of property rather than cash.

Although the scope of Schedule RI–A, item 11, is limited to transactions with an institution's parent holding company, the two types of transactions identified in the instructions for this item can be conducted with an institution's stockholders other than a parent holding company. In this situation, neither the instructions for item 11 nor the instructions for any of the other items in Schedule RI–A explains where these capital transactions with stockholders other than a parent holding company should be reported within the schedule.

In addition, an institution may from time to time reduce its contributed capital (i.e., surplus) without retiring any of its stock through a return-of-capital transaction in which cash is distributed to the institution's owners, typically its parent holding company. Such a return-of-capital transaction is separate and distinct from a dividend payment, which reduces retained earnings and is reported in either item 8 or 9 of Schedule RI–A. At present, the instructions for Schedule RI–A do not explicitly identify the item within the schedule in which return-of-capital transactions should be reported. In this regard, Schedule RI–A, item 5, ''Sale, conversion, acquisition, or retirement of capital stock, net (excluding treasury stock transactions),'' includes the redemption or retirement of perpetual preferred stock or common stock (including stock owned by a parent holding company), but the instructions for this item are silent regarding return-of-capital transactions.

Accordingly, the agencies are proposing to revise the scope of Schedule RI–A, item 11, to include capital contributions received from stockholders other than an institution's parent holding company when stock is not issued, property dividends involving stockholders other than a parent holding company, and return-of-capital transactions with all stockholders, including a parent holding company. In addition to revising the instructions for item 11, the caption for this item also would be revised to read ''Other transactions with stockholders (including a parent holding company).'' These proposed changes would take effect June 30, 2013.

III. Other Matters

On February 17, 2012, the agencies announced that they were continuing to evaluate a new proposed Call Report Schedule RC–U, Loan Origination Activity (in Domestic Offices), in light of the comments received.[31] The FFIEC and the agencies have completed their evaluation of Schedule RC–U and have determined not to pursue implementation of this proposed Call Report schedule.[32]

Memorandum items 5.a and 5.b of Call Report Schedule RC–O collect data on the amount and number of noninterest-bearing transaction accounts of more than $250,000. In the 2010 initial and final PRA notices describing this collection, the agencies stated that this collection would cease after December 31, 2012, unless Congress extended a law allowing for unlimited deposit insurance on these accounts beyond that date. Congress did not extend that law, and the temporary unlimited deposit insurance for such accounts ended on December 31, 2012. However, there is considerable interest across the agencies in monitoring the behavior of these deposit accounts following the change in insurance coverage. Specifically, the agencies are interested in tracking the movement of these funds and accounts among individual insured institutions and within the depository institution system as a whole. Accordingly, the agencies will continue to collect these Memorandum items in the March 31, 2013, Call Report and in future reports.[33] The agencies will review this information and reconsider the collection at such time as the number of accounts and amount of deposits stabilizes. The agencies request comment on whether to continue collecting this information, absent the extension of the law providing deposit insurance for these accounts.

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: February 4, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 14, 2013.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 4th day of February 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–04035 Filed 2–20–13; 8:45 am]

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

[31] 77 FR 9727.

[32] Similarly, the FFIEC and the agencies have completed their evaluation of proposed Schedule U, Loan Origination Activity, on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032) and have determined not to pursue implementation of this proposed schedule on the FFIEC 002 report. *See* 77 FR 14367, March 9, 2012.

[33] The agencies also will continue to collect the corresponding Memorandum items on the FFIEC 002 report.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–S, S Corporation Declaration and Signature for Electronic Filing.

DATES: Written comments should be received on or before April 22, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: S Corporation Declaration and Signature for Electronic Filing.

OMB Number: 1545–1867.

Form Number: 8453–S.

Abstract: Form 8453–S is necessary to enable the electronic filing of Form 1120S U.S. Income Tax Return for an S Corporation. The form is created to meet the stated Congressional policy that paperless filing is the preferred and most convenient means of filing Federal tax and information returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 5 hours, 6 minute.

Estimated Total Annual Burden Hours: 7,590.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–03924 Filed 2–20–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Regulations Governing Practice Before the Internal Revenue Service.

DATES: Written comments should be received on or before April 22, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Practice Before the Internal Revenue Service.

OMB Number: 1545–1871.

Regulation Project Number: REG–122379–02 (TD 9165).

Abstract: These regulations will ensure that taxpayers are provided adequate information regarding the limits of tax shelter advice that they receive, and also ensure that practitioners properly advise taxpayers of relevant information with respect to tax shelter options.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 13,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 8, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–03923 Filed 2–20–13; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 80

RFS Renewable Identification Number (RIN) Quality Assurance Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2012–0621; FRL–9758–7]

RIN 2060–AR72

RFS Renewable Identification Number (RIN) Quality Assurance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Renewable Fuel Standard (RFS) program, producers and importers of renewable fuel generate Renewable Identification Numbers (RINs) that are used by petroleum refiners and importers to demonstrate compliance with their renewable fuel volume obligations. Several cases of fraudulently generated RINs, however, have led to inefficiencies and a significant reduction in the overall liquidity in the RIN market. The result has been greater difficulty for smaller renewable fuel producers to sell their RINs. Today's action proposes additional regulatory provisions that would promote greater liquidity in the RIN market in a way that assures reasonable oversight of RIN generation and assures use of the required renewable fuel volumes. The proposal includes a voluntary quality assurance program and related provisions intended to meet these goals. The proposed program also includes elements designed to make it possible to verify the validity of RINs for all of 2013. Additionally, we are proposing a number of new regulatory provisions to ensure that RINs are retired for all renewable fuel that is exported and to address RINs that become invalid downstream of a renewable fuel producer.

DATES: Comments must be received on or before April 18, 2013.

Hearing: We will hold a hearing on March 19, 2013, Room 1153 EPA East, Washington, DC 20004, beginning at 10:00 a.m. local time.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0621, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0621. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mary Manners, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; Telephone number: 734–214–4873; Fax number: 734–214–4051; Email address: *manners.mary@epa.gov*, or the information line for the Office of Transportation and Air Quality Compliance Division; telephone number (734) 214–4343; Email address *complianceinfo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS)
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this proposed action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding section.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit confidential business information (CBI) to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) which were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the publication of major revisions to the regulatory requirements on March 26, 2010.[1]

The RFS program requires that specified volumes of renewable fuel be used as transportation fuel, home heating oil, and/or jet fuel each year. To accomplish this, EPA publishes applicable percentage standards annually that apply to the sum of all gasoline and diesel produced or imported. The percentage standards are set so that if every obligated party (refiners and importers of gasoline or diesel transportation fuel) meets the percentages, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel used are projected to meet the volumes required on a nationwide basis.

Obligated parties demonstrate compliance with the renewable fuel volume standards in one of two ways. Obligated parties can demonstrate compliance either by acquiring the required volumes of renewable fuels together with the associated Renewable Identification Numbers (RINs), which are assigned by the renewable fuel producer or importer to every batch of renewable fuel produced or imported, or by acquiring just the RINs without the associated fuel. Validly generated RINs show that a certain volume of qualifying renewable fuel was produced or imported. The RFS program also includes provisions stipulating the conditions under which RINs are invalid, the liability carried by a party that transfers or uses an invalid RIN, and how invalid RINs must be treated. The fundamental basis of the Agency's treatment of invalid RINs is the concept of buyer beware, in which all regulated parties must take steps to verify that the RINs they acquire are valid, and all parties are liable for transferring or using invalid RINs.

A. Purpose of This Action

Several cases of fraudulently generated RINs have led some obligated parties to limit their RIN-related business relationships to those parties that they are confident are generating valid RINs. In order to ensure that RINs are validly generated, individual obligated parties are now conducting their own audits of renewable fuel production facilities. Given the time and effort to conduct such activities, as well as the large overall number of renewable fuel producers and importers, the result has been greater difficulty for some of the smallest renewable fuel producers to sell their RINs. Recently, the overall liquidity of the RIN market has been significantly reduced. These circumstances have also created inefficiencies in the RIN market, as some RINs have been treated as having more value and less risk than others. The purpose of today's action is to address these issues by proposing changes to the regulations that would promote greater liquidity in the RIN market in a way that assures reasonable oversight of the validity of RIN generation and assures use of the required renewable fuel volumes.

In today's action we are proposing a voluntary quality assurance program intended to provide regulated parties a structured way to assure that RINs entering commerce are valid. The proposed program would also provide an affirmative defense against liability for civil violations under certain conditions for the transfer or use of invalidly generated RINs, and would specify both the conditions under which invalid RINs must be replaced with valid RINs, and by whom. The voluntary program would enable smaller renewable fuel producers to demonstrate that their RINs are valid, reducing the risk that obligated parties believe is associated with such RINs. The proposed program includes elements to allow verification of RINs to occur at the beginning of 2013.

In today's action we are also addressing export issues and circumstances in which RINs may become invalid subsequent to the renewable fuel producer's introduction of the RINs into commerce. For instance, exporters of renewable fuel may not be retiring an appropriate number and type of RINs as required under the current regulations. In some cases parties may have exported diesel fuel containing amounts of biodiesel below levels that are currently required to be reported in other contexts, and are merely labeled as diesel fuel. Such exports would not be reported as containing renewable fuel, and thus no RINs would be retired. In other cases, exporters may report that renewable fuel has been exported, but might sell any RINs received and then go out of business before RINs are retired. The result of these circumstances could be a disparity between the RINs generated and the renewable fuel volume consumed in the U.S. We are proposing modifications to the regulations pertaining to exporters of renewable fuel to address these issues. We are also proposing a number of other modifications intended to address cases in which parties transfer or use RINs

[1] 75 FR 14670.

that have become invalid after the producer has introduced them into commerce.

B. Summary of Major Provisions

Today's action proposes two voluntary third party quality assurance program options for RINs that regulated parties may exercise as an alternative to the ''buyer beware'' liability as prescribed under existing regulations. The proposed program would provide a means for assuring that RINs are properly generated through audits of renewable fuel production conducted by independent third parties using quality assurance plans (QAPs), would provide an affirmative defense for the transfer or use of invalid RINs that had been verified under an approved QAP, and would provide for the replacement of such RINs. To this end, we are proposing the following:

- Minimum requirements for QAPs, including such things as verification of type of feedstocks, verification that volumes produced are consistent with amount of feedstocks processed, and verification that RINs generated are appropriately categorized and match the volumes produced.
- Qualifications for independent third-party auditors.
- Replacement instruments or other mechanisms that would provide assurance that invalid RINs are replaced with valid RINs.
- Requirements for audits of renewable fuel production facilities, including minimum frequency, site visits, review of records, and reporting.
- Conditions under which a regulated party could assert an affirmative defense to civil liability for transferring or using an invalid RIN.
- Identification of the party or parties who are responsible for replacing invalid RINs with valid RINs and the timing of such replacement.
- Changes to the EPA-Moderated Transaction System (EMTS) that would accommodate the quality assurance program.

The two options we are proposing to verify RINs through a QAP would provide flexibility in how parties choose to manage the risk of transferring or using invalid RINs and costs. We are proposing that the quality assurance program would be applicable at the beginning of 2013.

We are also proposing modifications to the exporter provisions of the RFS program. These modifications would ensure that an appropriate number and type of RINs are retired whenever renewable fuel is exported. Finally, we are proposing a number of changes to other aspects of the RFS regulations governing the transfer and use of RINs that become invalid downstream of the producer. We are interested in comments on all aspects of today's proposal.

C. Impacts

The quality assurance program would help to reduce the number of invalidly generated RINs in distribution, and thus ensure that valid RINs are traded and used for compliance. As a result, it would help to ensure that the renewable fuel volumes mandated by Congress are actually used. In this respect, then, there would be no change to the expected impacts of the RFS program as projected in the RFS2 final rulemaking [2] in terms of volumes of renewable fuel consumed or the associated GHG or energy security benefits. The primary impacts of the quality assurance program would be improved liquidity and efficiency in today's RIN market and improved opportunities for smaller renewable fuel producers to sell their RINs.

Likewise, the proposed changes to the regulations governing export of renewable fuel would ensure that the appropriate number and type of RINs are retired for every gallon of renewable fuel exported, consistent with the intent of the program.

The quality assurance program that we are proposing in today's action would be voluntary. As a result, there would be no required costs. There would likely be costs associated with an individual party's participation in the quality assurance program, and in Section IX we have provided estimates of some elements of the costs of participation. We have also provided cost estimates as provided by several potential third-party auditors. However, the fact that the quality assurance program would be voluntary means that a decision to participate will be made independently by each regulated party, and thus we cannot accurately project the costs that might be incurred for the nation as a whole. Furthermore, any costs incurred would only be borne if the industry believed that those costs were less than current costs in the marketplace resulting from efforts to verify, acquire, and trade, and use RINs and the risks associated with such activities.

II. Background and Purpose

The structure of the RFS program, and in particular the regulatory provisions governing the generation and use of RINs, originated during the development of the initial RFS program required by the Energy Policy Act of 2005. Under the statute, refiners, blenders, and importers of non-renewable fuels were responsible for ensuring that specified volumes of renewable fuel were used in the transportation sector. During the process of developing the regulatory program, stakeholders made it clear that requiring each separate obligated party to physically blend renewable fuels into its own gasoline and diesel fuel would require significant and costly changes to the distribution system, fuels markets, and the activities of all involved in the fuel supply chain. At the request of stakeholders, EPA developed the RIN system as an alternative to a direct blending requirement. Finalized on May 1, 2007, the RIN system provides obligated parties with flexibility in satisfying their responsibility to ensure that a specified volume of renewable fuels is used as transportation fuel in the U.S. each year. It also permits renewable fuel producers to sell their fuels in a manner that best meets market demands without forcing sales of volumes directly to obligated parties.

Under the RFS program, each RIN is generated by the producer or importer of renewable fuel, and represents a volume of renewable fuel measured in terms of ethanol-equivalent gallons. RINs are used by obligated parties to demonstrate compliance with their Renewable Volume Obligations (RVO). This reflects EPA's judgment that production and sale of renewable fuel generally leads to its consumption as transportation fuel.[3] When a specified number of RINs are acquired and retired by an obligated party, EPA is confident that a certain volume of renewable fuel has been produced and blended for use as transportation fuel. This RIN-based approach to the development and implementation of the RFS program was developed in cooperation with stakeholders in the fuel production and distribution industries as part of a notice-and-comment rulemaking process.

The intended result of the RIN system is that every RIN used for compliance by an obligated party represents physical renewable fuel that meets the regulatory criteria and which is used in the United States for transportation fuel, heating oil or jet fuel. To ensure that this result is achieved, EPA specified the conditions under which RINs are invalid, how invalid RINs must be treated, and which parties are liable for transferring or using invalid RINs. These provisions were included in the RFS1 program and were carried into the revised RFS

[2] 75 FR 14670, March 26, 2010.

[3] See 72 FR 23929.

program required by the Energy Independence and Security Act of 2007.

The provisions concerning invalid RINs and the associated liability have recently come under scrutiny due to several cases of fraudulently generated RINs. The RFS regulations prohibit any person from transferring invalid RINs or using invalid RINs to demonstrate compliance with his/her RVOs. Thus, parties holding invalid RINs are prohibited from transferring or using these RINs to demonstrate compliance with their RVOs. Moreover, all parties holding invalid RINs are required to retire them. These circumstances prompted the market response described above that has led to the current reductions in the liquidity of the market for RINs, and the increased difficulty of small producers of renewable fuel, particularly smaller producers, to sell the RINs they generate. Concerns regarding the impact of fraudulently generated RINs also prompted requests from a broad spectrum of stakeholders for an additional, alternative regulatory mechanism that could more efficiently verify the validity of RINs. Some obligated parties also requested that the EPA place the burden for replacing invalid RINs solely on the parties that generate invalid RINs, and allow RINs that have been evaluated by independent third parties to be used for compliance, even if they are invalid. We address these requests more fully in Section III.

A. Treatment of Invalid RINs Under the Current Regulations

The RFS regulations identify the conditions under which RINs are invalid at § 80.1431(a). These include:

- A duplicate of a valid RIN.
- A RIN that was based on incorrect volumes or volumes that have not been standardized to 60 °F.
- A RIN that has expired (has not been used for compliance in the year it was generated or the following year).
- A RIN that was based on an incorrect equivalence value.
- A RIN that is deemed invalid under the regulations applicable to foreign renewable fuel producers.
- A RIN that does not meet the definition of renewable fuel.
- A RIN that was assigned an incorrect ''D'' code value.
- A RIN that was improperly separated.
- A RIN that was otherwise improperly generated.

While the underlying actions that cause RINs to be invalid vary, in all cases of invalid RINs the outcome is the same: Invalid RINs cannot be transferred to any person, and cannot be used to achieve compliance with the RVO of an obligated party or exporter. These restrictions on invalid RINs apply regardless of the party's good faith belief that the RINs were valid at the time they were acquired, transferred, or used for compliance. Parties that take ownership of RINs are responsible for the validity of the RINs they transfer and use, and are expected to take whatever measures they deem appropriate to reduce the risk that they have acquired invalid RINs.

The statute requires that EPA promulgate regulations so that the national volume mandates required by the statute are met through consumption of renewable fuel as transportation fuel, heating oil, or jet fuel, and specifies several provisions aimed at achieving this result. Based on this, the current regulations prohibit invalid RINs from being used for compliance with the applicable standards. This prohibition forces obligated parties to replace invalid RINs that they had intended to use for compliance with valid RINs.

The ''buyer beware'' approach to RINs in the RFS program is consistent with the approach EPA has taken in all previous mobile source fuel programs. Indeed, the regulatory language used to implement the buyer beware approach in the RFS program is essentially identical to that used in these other programs:

- Benzene credits generated under the reformulated gasoline (RFG) program—§ 80.67(h)(3).
- Gasoline sulfur allotment trading program—§ 80.275(d)(5)(i).
- Gasoline sulfur credits—§ 80.315.
- Sulfur credits generated under the MVNRLM diesel fuel program—§ 80.531–§ 80.536.

In these other fuels programs, the buyer beware approach to credits has proven to be an effective mechanism for ensuring that program goals are met. It encourages the industry to self-police the validity of the credits they use for compliance and allows the credit market to properly allocate any risk associated with the generation and transfer of invalid credits. Most importantly, the buyer beware approach maintains the environmental benefits of a program if the party that generates the invalid credits is not financially viable and able to replace the invalid credits, since other regulated parties would then be responsible for replacing invalid credits. In the recent cases of fraudulently generated RINs, it was this very process that ensured that society was getting the benefits promised by the RFS program, albeit at a cost to the regulated parties.[4]

We continue to believe that the buyer beware approach gives industry the greatest flexibility in determining how best to manage credit trading practices while providing society the assurance that the benefits of a program will materialize. However, we also recognize that there are some aspects of the RFS program that make it more difficult to implement a buyer beware approach. For instance, once RINs are generated and leave the producer, they can be fungibly assigned to any volume of renewable fuel, making it difficult to know what volume the RIN was intended to represent. As a result, it can be difficult to verify that the RIN was validly generated once it has left the producer. The use of RINs in the RFS program is also unique in ways that may make the buyer beware approach more challenging for regulated parties to implement in an efficient manner, while retaining market liquidity. Unlike other credit programs, RINs are not generated by the same group of parties that use them for compliance purposes. Instead, renewable fuel producers generate the RINs, and obligated parties acquire them. These circumstances make it more difficult for obligated parties to monitor RIN generation. The RFS program also allows an unlimited number of parties to own and trade RINs, whereas in other programs credit ownership and trading is limited to the parties that must demonstrate compliance with applicable standards. In recent months, obligated parties have taken actions to avoid the purchase of invalid RINs, including limiting their business relationships to those parties that they are able to confidently and efficiently project are generating valid RINs. This behavior has resulted in certain, often smaller, producers being excluded from opportunities to transact with obligated parties, creating inefficiencies in the RIN market, in particular the inclination of obligated parties to treat some RINs as having higher value and lower risk than others.

Our proposal for an additional, alternative mechanism for ensuring that RINs are appropriately generated is an attempt to address the inefficiencies that have arisen in the RIN market. We continue to believe that the integrity of the program depends on the scrutiny applied to it by regulated parties. However, in the specific case of the RFS program we also believe that it would be appropriate to provide additional

[4] California takes a similar approach for addressing invalid carbon offset credits under the state's Global Warming Solutions Act.

options for organizing and managing the private oversight of RIN generation in addition to the buyer beware approach.

B. Recent Issues Regarding Liability for Invalidly Generated RINs

While the RFS regulations governing liability for the transfer or use of invalid RINs were put in place on May 1, 2007, they have come under new scrutiny in 2011 and 2012 as the result of several cases of fraudulently generated RINs. To date, the EPA has alleged that three biodiesel production companies (Clean Green, Absolute Fuels, and Green Diesel) have generated a total of over 140 million biomass-based diesel RINs that did not represent qualifying renewable fuel.

On November 7, 2011, the EPA issued Notices of Violations (NOVs) alleging that Clean Green Fuels, LLC (Clean Green) generated invalid biomass-based diesel RINs. Clean Green's owner was found guilty of wire fraud, money laundering, and violating the Clean Air Act on June 25, 2012 in the United States District Court for the District of Maryland. The jury found that he ran a scheme in which he and his company generated and sold over 32 million RINs, but neither produced nor imported any renewable fuel.

The EPA issued Absolute Fuels, LLC an NOV on February 2, 2012. The NOV alleges the company generated over 48 million invalid biomass-based diesel RINs without producing any qualifying renewable fuel and transferred the majority of these invalid RINs to others. On December 14, 2012, the owner of Absolute Fuels, LLC, and other corporate entities associated with Absolute Fuels pleaded guilty to an Indictment charging the owner of wire fraud, money laundering, and Clean Air Act false statements. The indictment alleges that this individual and his companies were involved in defrauding non-renewable fuels companies, brokers, and the EPA by falsely representing to EPA, through the RFS program electronic data base, that he was producing biodiesel when in fact he was not producing any fuel.

The EPA issued *Green Diesel, LLC* an NOV on April 30, 2012. The NOV alleges the company generated more than 60 million invalid biomass-based diesel RINs without producing any qualifying renewable fuel and transferred the majority of these invalid RINs to others.

The 140 million invalid RINs from these three companies represented about 13% of the nationwide biodiesel volume in 2010 and 4% in 2011.[5] The EPA's Criminal Investigation Division and Office of Civil Enforcement have additional ongoing investigations concerning the potential generation of fraudulently or invalidly generated RINs.

Under the buyer beware approach, all regulated parties are responsible for determining the validity of RINs before they transfer those RINs to another party or use them for compliance. With respect to the RINs generated by the three companies listed above, many parties did in fact transfer and/or use these RINs. In subsequent discussions with these parties, most of them indicated that notwithstanding the buyer beware aspect of the regulations, they took little or no action to evaluate the validity of these RINs before they purchased or used them for compliance. In light of the widespread failure of obligated parties to conduct adequate oversight, the EPA implemented a streamlined approach for parties who used invalid RINs to correct civil violations and resolve their liability for those civil violations. The Interim Enforcement Response Policy[6] (IERP) for 2010 and 2011 biomass-based diesel RINs provided obligated parties who unknowingly used invalid RINs with the opportunity to resolve their civil violations by replacing invalid RINs with valid RINs and paying modest civil penalties. Almost all obligated parties that used RINs generated by Clean Green and Absolute Fuels have entered into settlement agreements consistent with the IERP to resolve their civil violations.

Obligated parties are required to replace invalid RINs that were used for compliance with valid RINs to ensure that they have sufficient valid RINs to comply with their Renewable Volume Obligations (RVOs). Many obligated parties who used invalid RINs for compliance purposes purchased replacement RINs for a substantial additional cost. Under the current buyer beware approach, many obligated parties have included indemnification clauses in their contracts with RIN suppliers to address situations in which invalid RINs must be replaced.

In light of the recent experience with invalid RINs, obligated parties have been taking steps to minimize their exposure to risk. In general, they have been treating RINs generated by smaller biodiesel producers as higher risk, and have been opting instead to purchase RINs primarily from the largest biodiesel producers who are better known, have been under production for a longer period of time, and/or have the resources to replace invalid RINs should their RINs be determined to be invalid. While the concerns directed at any particular biodiesel producer may or may not be legitimate, the net result of these actions is a general reduction in the liquidity of the biodiesel RIN market. While some biodiesel producers have been able to establish business relationships with obligated parties, many smaller biodiesel producers have not. These smaller producers have been forced to offer their RINs at a significant discount relative to RINs from larger producers, assuming they can find obligated parties or distributors willing to purchase them at all.

The buyer beware approach has succeeded in compelling regulated parties to conduct some oversight of RIN generation to ensure that the RINs they transfer and/or use are valid. However, in reaction to the fraudulent RIN cases, many regulated parties have reported that obligated parties have shifted their purchasing away from smaller producers. We believe it is appropriate to consider new regulatory provisions that could provide additional confidence in the validity of RINs without restricting access to the market by small producers.

C. Industry Systems That Conduct Oversight of RIN Generation

1. Existing Systems

While regulated parties are individually making efforts to ensure that the RINs they transfer and/or use are valid, a number of parties have developed more comprehensive systems that are intended to more efficiently meet the need for such oversight. Any party can opt to use one of these systems for a fee charged by the provider of the service. To varying degrees, these systems offer examples of the types of activities that EPA has evaluated in developing the proposed provisions for a quality assurance program. The systems of which we are currently aware include the following:

- Ecoengineers.
- GoldRIN, LLC.
- RIN Integrity Network by Genscape.
- RINPlus by EM Biofuels, LLC.
- RIN-tegrity Survey by Weaver.
- RINTrust, LLC.

[5] The statutory volume requirements for biomass-based diesel were 650 mill gal in 2010 and 800 mill gal in 2011.

[6] The Environmental Protection Agency's Interim Enforcement Response Policy to Resolve Violations Arising from the Use of Invalid 2010 and 2011 Biomass-Based Diesel Renewable Identification Numbers, March 2012, *http://www.epa.gov/compliance/resources/policies/civil/erp/erp-invalidrins.pdf.*

This is not meant to be a complete list, as the market response is still developing, nor is it intended to be an EPA endorsement of any particular auditing system or tool.

The systems currently being offered vary in the means, frequency, and degree of oversight of renewable fuel production and RIN generation. Most conduct some form of on-site audit including a review of production inputs such as feedstocks and process energy, and outputs including byproducts and renewable fuel production volumes. Some also provide services such as regulatory guidance, assessment of product quality, monitoring of sales transactions, and RIN tracking. In addition to validation of production processes and RIN generation, some also offer financial backing to the producer in the event that RINs are subsequently discovered to be invalid.

2. Sufficiency of Existing Systems

While each of these systems has elements designed to help ensure RIN validity, we believe it is important that all systems used to verify RINs contain a certain minimum number of elements. For instance, ideally each system would include an array of components to verify feedstocks, production processes and volumes, qualifying uses of renewable fuel, and generation of the appropriate number and type of RINs. However, not all systems address all these aspects of production and RIN generation, or address them in the same way. Because these systems are generally designed to benefit only the obligated party that contracts with it, the existence of multiple industry-run verification systems has also resulted in duplicative efforts wherein multiple auditors visit the same production facility and take the same actions to verify the same volume. Finally, the existence of these private systems has not completely resolved the reduction in liquidity in the market for RINs since they provide no assurances of an affirmative defense against a civil violation. Thus there is still a significant reluctance to purchase RINs from some smaller producers.

While these verification systems constitute a reasonable and encouraging response to the need to have effective and efficient oversight of RIN generation, we recognize that these initiatives on their own have not cultivated a market that facilitates reasonable oversight of RIN generation, adequate assurance that invalid RINs will be replaced, and a market for RINs where the opportunity to produce and sell RINs is spread broadly across producers, including small producers. Therefore, in today's Notice of Proposed Rulemaking (NPRM) we are proposing a set of voluntary regulatory provisions that leverage these private market products to achieve these goals. The new provisions would provide regulatory options for establishing quality assurance programs, provide an affirmative defense against civil violations for transferring or using invalidly generated RINs for compliance where the RINs were verified under an approved QAP, and would specify the conditions under which specific parties would be required to replace invalidly generated RINs with valid RINs. Moreover, we are proposing several options that would be available to regulated parties that would provide a range of approaches to replacement of invalidly generated RINs, and allow the market to select the level of oversight to match the perceived risk. We believe that the efficiency and certainty created by these proposed regulatory options would complement the private verification systems already offered in a way that would facilitate the broadening of the market for producers and increasing market liquidity that EPA and stakeholders are seeking.

D. EPA Goals in Proposing New Regulatory Provisions

As stated in Section II.B above, we continue to believe that the buyer beware approach is both appropriate and effective in ensuring the validity of RINs and the use of valid RINs representing real renewable fuel to meet compliance obligations. We are not proposing to change the buyer beware approach under the existing regulations. Nevertheless, the issues we highlighted in the previous section have led us to believe that it would be helpful to create an additional, voluntary set of regulatory provisions that could provide reasonable oversight to verify the validity of RINs. These provisions are intended to reduce the incidence of invalidly generated RINs entering the market, provide reasonable assurance of replacement of invalidly generated RINs, and increase liquidity in the RIN market. The proposed QAP provisions would serve as the major component for an affirmative defense against liability in the event that a party transferred or used invalidly generated RINs. With greater confidence in both the validity of RINs and the protection against civil liability that an affirmative defense affords, there may be less of a disparity in value between RINs generated by large and small renewable fuel producers. As a result, there may be renewed market liquidity and certainty.

To accomplish this, we believe that the new regulatory provisions should establish the minimum requirements for Quality Assurance Plans (QAPs) that would address all elements of the production of renewable fuel and the generation of RINs. These QAPs would in turn form the basis for audits of renewable fuel production at particular facilities to verify that RINs were being validly generated. Our intent in establishing a voluntary QAP audit process would be twofold:

(1) Any party taking ownership of RINs that had been verified as validly generated by an EPA-registered auditor using an EPA-approved QAP would have an affirmative defense against liability for a civil violation arising from the transfer or use of an invalid RIN as long as certain other criteria are also met.

(2) The burden for the replacement of invalidly generated RINs that had been verified by a registered auditor using an EPA-approved QAP and which were not replaced by the original RIN generator could be replaced by the auditor or obligated party depending on the type of RIN verification system and associated RIN replacement mechanism.

In short, the voluntary QAP audit process would help to ensure that the volume consumption goals of the statute are met while addressing the unique features of the RFS program that have resulted in inefficiencies and poor liquidity in the current RIN market.

III. Overview of the Proposed Program

EPA is proposing to add two compliance options to the RFS program to achieve the goals described above. Each option contains provisions for quality assurance plans (''QAP'') that would be created by independent third-parties and used to verify the validity of RIN generation; provisions for an affirmative defense to civil liability for transfer or use of a verified RIN that is invalidly generated; and provisions addressing replacement of verified RINs that were invalidly generated. One of these options would also ensure that RIN owners could avoid liability for a civil violation for transferring or using invalidly generated RINs. These new options would be in addition to the current regulatory provisions, and EPA is proposing to adopt both options and to allow regulated parties to choose either one of the new options or instead to use the buyer beware approach in the existing regulations. The combination of the two new options, the elements in each option, and the ability to choose between options, is intended to achieve the program goals described above.

The civil liability protections afforded by these provisions would only apply to RINs that are invalidly generated. RINs

that become invalid after generation, for example by use for a nonconforming purpose or improper separation, would not be covered by the affirmative defense mechanism we are proposing today. However, we realize that RINs that become invalid ''downstream'' of the RIN generator may be problematic for obligated parties and the RIN system as a whole. Therefore, we have proposed regulatory changes to account for the problem of RINs that become invalid after generation. These changes are discussed in Section VIII of this preamble.

This proposal sets minimum requirements for QAPs that could be used to verify the validity of RINs. Verification by an independent third-party auditor using an EPA-approved QAP would provide the basis for a RIN-holder's affirmative defense if those RINs were found to have been invalidly generated. The affirmative defense is a defense only to the civil liability for the prohibited acts of transferring or using an invalidly generated RIN for compliance purposes.

At the same time, the Agency is responsible for ensuring that the statutory annual minimum volume requirements are met, so invalid RINs that are retired to fulfill a RVO must be replaced by valid RINs in order to make the system whole, even when a party has an affirmative defense to liability for a prohibited act. With the exception of some limited provisions that would reduce RIN replacement responsibilities under certain circumstances, the proposed rules provide a mechanism for the replacement of invalidly generated RINs to help ensure that the annual RFS volume mandates are met. However, the party responsible for replacement of invalid RINs varies between the two new options (''Option A'' and ''Option B'') that market participants may choose for any given RIN transaction.

The primary difference between these two options is that under Option A, when verified RINs are found to be invalidly generated, the third-party auditor that verified the RINs would be responsible for retiring valid RINs to replace the invalid RINs if the RIN generator does not do so. Under Option B, an obligated party would remain liable for replacing any invalidly generated RINs that it owns if the RIN generator fails to do so, even if the obligated party successfully asserted an affirmative defense. The current system would also remain in place after the proposed quality assurance program goes into effect, providing a third option for RIN buyers to purchase unverified RINs. In other words, the proposed regulations do not require that RINs used for fulfillment of an RVO must be verified. In summary, we are proposing new regulatory provisions that would create a total of three types of RINs in the RFS program:

(1) RINs verified by a third-party auditor, who would be responsible for replacing the RINs in the event that they were invalidity generated (''Option A''),

(2) RINs verified by a third-party auditor, where the obligated party would remain liable for RIN replacement (''Option B''), and

(3) Unverified RINs, where the obligated party remains liable for replacement (i.e. the current regulatory approach).

For both of the two new options we are proposing today (Option A and Option B), there are three main regulatory elements:

(A) Minimum requirements for a QAP to evaluate renewable fuel production and verify RINs,

(B) The required elements for an affirmative defense, and

(C) Identification of the party responsible for replacing invalid RINs and limitations on RIN replacement.

In this section we also discuss how and why the program amendments are proposed as voluntary, how the provisions would apply to any RINs transferred and sold prior to the effective date of the final rule, and an alternative structure for protecting against invalidity by prohibiting RIN generators from separating RINs from renewable fuel that they produce.

A. Requirements for a Quality Assurance Plan and QAP Audits

The regulations would set minimum requirements for the audit process used to validate the production of renewable fuel and verify the RINs generated at the production facility, even, for imported fuel, if the production facility is not in the United States. The proposed requirements would potentially apply to producers of renewable fuel and parties downstream of the producer that handle renewable fuel or RINs. Other parties that work with and support renewable fuel producers, such as feedstock suppliers, would not be subject to new requirements through the proposed quality assurance program. The proposed requirements for Option A and Option B QAPs are fully discussed in Sections IV.A and V.A, respectively. The proposed requirements for QAP auditors and audit procedures are fully discussed in Sections VI and VII of this preamble.

We would expect that different third-party auditors would develop different audit procedures and business models based on market demand, the type of fuel being audited, and many other factors. Therefore, the new provisions would require the third-party auditor to submit its QAP to the Agency for review and approval before using that QAP to audit renewable fuel production facilities. The regulations would also set both minimum requirements for third-party auditors at the time of registration and ongoing requirements that must be met as the third-party auditor continues to operate.

The requirements for Option A QAPs would be more detailed and involved than those required for Option B QAPs. The differing sets of requirements would correspond with the differing RIN replacement responsibility under the two QAPs.

The quality assurance program that we are proposing would also apply to RINs generated for foreign-produced renewable fuel. Foreign producers of renewable fuel must be approved by EPA and must meet all requirements applicable to non-foreign producers, i.e., the provisions of Subpart M. Such producers could engage a registered third-party auditor to audit their facility in accordance with the proposed quality assurance program. However, RINs generated from imported fuel would only be considered verified under the proposed quality assurance program if the associated foreign renewable fuel production facility is audited under an EPA-approved QAP. We request comment on the likelihood of such producers participating in the quality assurance program, any difficulties to participating they might encounter, and any issues that could affect the integrity of the proposed program.

B. Requirements for an Affirmative Defense

The affirmative defense mechanism would allow any party, other than the generator of an invalid RIN, who holds invalidly generated RINs verified through a QAP to avoid civil liability for a prohibited act involving the transfer or use of invalid RINs for purposes of fulfilling an RVO. This mechanism applies only to civil liability, and has no effect on any party's potential criminal liability. It is similar but not identical to the defense mechanisms used in other fuels regulation programs, such as the Diesel Fuel Sulfur Control regulations, 40 CFR 80.613(a) and the Reformulated Gasoline regulations, 40 CFR 80.79(b)(1). It is fully discussed in Sections IV.C and V.C for Options A and B, respectively. Under Option A, in order to establish this affirmative defense, a party would be required to prove five elements by a preponderance of evidence. Under Option B, in order

to establish an affirmative defense, a party would be required to prove one additional element.

First, a party would be required to show that the invalidly generated RINs in question were verified by an independent third-party auditor with an EPA-approved QAP that meets the applicable regulatory requirements.

Second, a party taking ownership of an invalidly generated RIN would be required to demonstrate it did not know or have reason to know of the invalidity. For Option A RINs, the RIN owner must not have had knowledge of the invalidity prior to the RIN being verified. For Option B RINs, the RIN owner must not have had knowledge of the invalidity at any time up to and including the time the RIN was transferred or used for compliance with its RVO, unless the RIN generator had implemented a remedial action per the regulations. See 40 CFR 80.1474. The difference between the two options reflects the difference in the party responsible for replacing invalidly generated RINs in the two new options. When the obligated party has the replacement obligation under Option B, it would not be appropriate for it to knowingly commit a prohibited act and be required to replace the invalid RINs, but still have an affirmative defense to civil liability. On the other hand, when the auditor has the RIN replacement responsibility under Option A, the obligated party's RVO would be backstopped by the auditor's replacement of the invalid RINs and therefore the obligated party should be able to submit the invalid verified RINs with the understanding that the RINs will be replaced and the RVO made whole by the auditor. Providing an affirmative defense to obligated parties under Option A even if the obligated party in question knows of the invalidity could help to address some of the market liquidity concerns described above, by limiting the risk to refiners who purchase these RINs. At the same time, if the obligated party knew of the invalidity prior to the RINs in question being audited and verified, it would have no defense to civil liability because it would have knowingly allowed invalid RINs to enter the marketplace, potentially placing other obligated parties at risk and diminishing the value of other RIN generators' valid RINs.

Third, we are proposing that any party attempting to establish an affirmative defense would be required to inform the Agency within the next business day of identifying RINs that were invalidly generated. This requirement would assure that invalidity is promptly reported when discovered and would eliminate any incentives or financial advantages that might be gained from intentionally hiding invalidity or waiting to report. The Agency's primary goal to maintain and meet the annual RFS volume mandates would be frustrated by delayed reporting of invalidly generated RINs. The reporting requirement would therefore be both an element of good faith and a practical safeguard to meet the annual RFS volume mandates. We seek comment on whether this time frame for informing the Agency is appropriate.

Fourth, a party attempting to establish an affirmative defense would be required to demonstrate that it did not cause the invalidity of the RIN in question.

Fifth, a party attempting to establish an affirmative defense would be required to demonstrate that it did not have any financial interest in the company that generated the invalid RIN. Requiring that the RIN owner did not have any financial interest in the RIN generator's company ensures that the RIN owner did not receive and had no intention of receiving a financial benefit from the generation of invalid RINs.

For Option B, a sixth element for establishing an affirmative defense would be to demonstrate that if the invalid B–RIN was used for compliance purposes, the party adjusted its records, reports, and compliance calculations as required per the regulations, unless a remedial action by the RIN generator was implemented.

C. Replacement of Invalid RINs

In order to ensure that the annual national RFS volume mandates are met, the current RFS program requires that only valid RINs may be used by obligated parties to demonstrate fulfillment of their RVO. To use an invalid RIN toward fulfilling the RVO is a prohibited act. An obligated party that knowingly or unknowingly uses an invalid RIN to comply with its RVO is required to revise its compliance report to subtract out the invalid RINs and instead use only valid RINs. The obligated party must then either carry forward a deficit or replace the invalid RIN with valid RINs to meet its RVO.

Under the two new proposed options, the party responsible for replacing the invalid RIN would depend on the type of QAP that verified the RIN, Option A or Option B. As noted above, both Option A and Option B would be available for market participants under the proposed rule. RIN replacement is fully discussed in Sections IV.D and V.D of this preamble for Options A and B, respectively.

We propose in this rule to create a self-implementing administrative mechanism to replace invalid RINs. In all cases, and regardless of whether the RINs in question are unverified or verified through Option A or Option B, the proposed administrative process for replacement of invalid RINs places initial responsibility to replace invalidly generated RINs on the RIN generator responsible for causing the invalidity. See § 80.1474 of the proposed regulations for details of the administrative process for replacement of invalid RINs. In the event the generator of the invalid RINs does not replace the invalidly generated RINs within the time frame set forth in the administrative process, either the third-party auditor or the obligated party that owns the invalid RINs would also be required to replace the invalid RINs, depending on whether the RINs were verified through an Option A or Option B audit, or whether the RINs were unverified. The RIN generator would always remain liable for replacing all invalid RINs that they generated. The third-party auditor or the obligated party would be required to replace the RINs in a specified time period after notification from EPA that the RIN generator failed to replace the invalid RINs. For invalidly generated RINs verified by an Option A QAP, the auditor would have the responsibility to replace the RINs, and the obligated party would have no responsibility for RIN replacement if it successfully established an affirmative defense. For invalidly generated RINs verified by an Option B QAP and for unverified RINs, the obligated party who owns the RINs would bear the replacement responsibility. In the event that regulated parties fail to implement the administrative process for replacement of any RINs, the EPA could bring an enforcement action against any or all of the parties that were required to replace the invalid RINs.

Additionally, the auditor's RIN replacement responsibility under Option A would be capped at a level equal to 2% of up to the last five years' of A–RINs verified by the auditor. This cap on RIN replacement is proposed for RINs generated in 2013–2015, and the cap may change from 2016 onward. Under Option B we are proposing that the obligated party would be given a temporary limited exemption for their replacement obligation, under which they would not be required to replace up to 2% of their RVOs for 2013 and 2014. These measures are intended to limit the auditors' and obligated parties' financial exposure, as further discussed

in Section IV of this preamble. We request comment on both the RIN replacement cap of 2% and the limited exemption of 2%. The generators of invalid RINs, on the other hand, would have neither a cap nor a limited exemption for their RIN replacement responsibility under the proposed program.

Furthermore, because third-party auditors are unlikely to have the same resources as renewable fuel producers, importers, or obligated parties to enable them to replace invalid RINs, we are proposing a requirement that auditors using Option A to verify RINs must maintain a RIN replacement mechanism capable of replacing a minimum percentage of the A–RINs they verify. There are a variety of replacement mechanisms possible as discussed in more detail in Section IV.B.

D. Voluntary Participation

We are proposing that the two new compliance options under the proposed quality assurance program would be voluntary. If an auditor chooses to participate in the proposed program, it would be required to register with EPA and apply to EPA for approval of its QAP, which would provide the framework for the auditor's verification process. Since the auditor would be responsible to implement the QAP as approved, verifying RINs without meeting the requirements of the EPA-approved QAP would be a prohibited act. At the same time, an auditor's failure to properly implement the QAP would not, by itself, render the RINs invalid or constitute a civil violation by the owner of the RIN. While auditors could voluntarily decide to obtain EPA approval to verify RINs, once they do so they would be responsible to implement the plan as approved, and under Option A to replace RINs as required.

Likewise, RIN generators would be under no obligation to have their RINs verified under an EPA approved QAP. RIN generators that do choose to have their RINs verified through the proposed quality assurance program would need to ensure that other parties with which they work closely, such as feedstock suppliers and fuel distributors, are providing the information needed by the auditor. Likewise, obligated parties would be under no obligation to purchase verified RINs. However, if verified RINs are purchased, the regulations would provide what requirements must be met to demonstrate an affirmative defense, and would specify who would be responsible for replacement of invalid RINs.

It has been suggested that if these provisions were mandatory for all obligated parties and only verified RINs could be used for compliance purposes, the overall stability of the RIN market might be improved because all RINs available in the market would be pre-approved by a QAP. This approach would benefit obligated parties by reducing their risk of purchasing an invalid RIN and decrease the likelihood of violations and need for enforcement actions. However, we believe that it is up to the obligated parties to determine how they wish to verify the RINs they purchase, balancing their risk tolerance against their ability and desire to pay for verified RINs. Also, we expect that most RINs purchased and used for compliance purposes will be QAP-verified even though the program is voluntary because most obligated parties in most situations will prefer not to take on the risk of using an unverified RIN. Therefore, making the program mandatory would provide only marginal gains in market stability when compared to a voluntary program. A mandatory program would also potentially drive up the overall cost of RINs by forcing all RIN generators to go through the QAP process, even in situations where there is little risk in the product being invalidly produced. Overall, we believe the proposed program would be adequate to achieve the goals described above, and additional requirements would bring increased costs that are not appropriate or necessary. However, we seek comment on whether the proposed compliance options should be voluntary or mandatory for RIN generators and obligated parties.

These proposed QAP options offer alternative ways for regulated entities to operate within and comply with the existing obligations of the RFS program. If regulated parties wish to conduct ''business as usual'' and not utilize the additional mechanisms proposed in these regulations, they would be free to do so and would be subject to the same obligations and penalty structure as currently exists. Whether or not to purchase and retire RINs verified by an EPA-approved QAP is a choice each obligated party would make on its own, depending on the level of risk it perceives in the market and in a given producer, and its own risk tolerance.

E. Treatment of RINs Prior to Final Rule Promulgation

The regulatory provisions proposed today would become effective only after we review comments submitted in response to this proposal, determine what if any changes may be appropriate, and subsequently publish a final rule. Following the effective date of the final rule, auditors could apply to EPA for registration and for approval of their QAPs under one or both of the two Options (A and B). Once EPA registered the auditor and approved the QAP plan, then the auditor would implement the plan. RIN verification would start once the elements of the plan were in place, including the execution of an initial site inspection and record review, and under Option A, the initiation of ongoing monitoring. At that point, RINs could be verified by the auditor. RIN auditors could, of course, operate without EPA approval, though the RINs they verified would not be eligible for the special treatment afforded to RINs verified by an EPA-approved QAP under the proposed rules.

However, in order to encourage the development and use of RIN verification processes, and to promote greater liquidity in the RIN market as soon as possible, the proposed provisions relating to the affirmative defense apply not only to RINs generated after promulgation of the final rule, but also to RINs generated from January 1, 2013 onward. This raises two separate issues on how the final regulatory provisions would apply to RINs generated prior to the effective date of the final rule. First, what would be the effect of an audit being performed in the interim period? Second, what QAP requirements would need to be met for a RIN audited prior to the final rule's effective date to be considered verified after the final rule's effective date?

Regarding the first question, for RINs generated prior to the final rule's effective date, EPA's approval process regarding verifications would be different than the process effective after the final rule, first because EPA cannot formally register an auditor or approve a QAP until the rule is in effect and second because there may be insufficient lead-time to implement the QAP requirements set out in the proposed rule and begin verifying RINs immediately upon publication of this NPRM. We recognize that RIN generators and buyers likely will want to know whether 2013 RINs generated and audited prior to the effective date of the final rule would receive the proposed benefits and treatment given to RINs verified after the rule is in effect.

EPA is ready to facilitate the verification of RINs generated in 2013 prior to the final rule's effective date through an informal ''pre-registration'' process. EPA will review auditors' registration information and proposed QAPs, and provide guidance on whether

the plans appear to satisfy the proposed requirements. The names of those auditors and QAPs whose submissions are consistent with the applicable requirements in the proposed regulations will be published on EPA's Web site. This will not signify a final agency decision or approval of any auditor or QAP and EPA will not be legally bound by this initial evaluation. It would instead be guidance to an auditor as to whether EPA has any concerns about its registration and QAP plan and whether they appear to be consistent with the requirements in the proposed regulations. Publication of the auditors' names and available QAPs would provide useful information for outside parties who are evaluating the risk associated with RINs audited prior to the effective date of the final rule. Auditors would not be required to submit their QAPs to EPA for such guidance, and EPA's guidance or feedback to the auditors would confer no legal rights or privileges to the auditors, or to the production facilities and RINs they review.

RINs audited through a QAP on which EPA had offered guidance prior to the effective date of the final rule would not necessarily be deemed ''verified'' under the terms of the final rule. RINs could only be deemed ''verified'' after the final rule goes into effect, and after EPA approved the QAP that was used in the audit process. It is important to note that the final rule's provisions for interim RINs may not be the same as those in the proposed regulations. Therefore, any EPA decisions made after the rule is in effect regarding the sufficiency of QAPs and auditors operating prior to that time will be based on the content of the final rule, not the proposed rule. EPA's intention, however, is that the provisions and requirements proposed in this NPRM would apply to RINs verified prior to the final rule, and any changes to the proposed provisions would apply only to RINs verified after the final rule is effective. EPA invites comment on this approach, and will resolve this issue in the final rule after reviewing the comments. Similarly, it is important to note that the current regulatory provisions, including those regarding RIN replacement and civil liability, will remain in full effect until the final rule goes into effect.

Regarding the second question of what QAP requirements would need to be met for a RIN audited prior to the final rule's effective date to be considered verified after the final rule's effective date, the substantive requirements for the QAPs used prior to the final rule may be slightly different from QAPs used after the final rule. As discussed above, after the final rule is effective, a RIN could be verified only after the auditor conducted a site inspection and document review of RINs already generated, and (for QAP A) initiated ongoing monitoring of feedstock qualifications and production processes. All RIN verification after the effective date of the final rule would thus be ''prospective,'' covering RINs that are not yet generated at the time the audit is conducted. For RIN verification prior to the final rule's effective date, however, the requisite audit activities, including the site visit and setup of ongoing monitoring, might not occur until some point well after January 1, 2013. Given the short time period of RIN generation at issue before the normal oversight actions could be implemented, in many cases a matter of a few months, and the desire to have QAP plans start up as quickly as possible, EPA is proposing that prior to the final rule's effective date, auditors could verify RINs generated before the date the audit is completed. This ''retrospective'' RIN verification would only be available prior to the effective date of the final rule. Auditors would only be able to perform a retrospective audit if all the elements of the QAP were already in place and could only perform one retrospective audit of a given producer. This would ensure that auditors are not inappropriately taking advantage of this flexibility by doing retrospective audits only (which require less monitoring and work, especially for Option A QAPs) until the final rule is effective. Instead, they would be encouraged to get QAP-based audits up and running in their intended prospective form as soon as possible, while allowing reasonable flexibility to account for a start-up lag.

We recognize that the retrospective audit process for RINs generated prior to the actual audit being conducted may offer less certainty than the process that applies to RINs generated after the audit is conducted. This is because the verification is based on document review and a post-hoc site visit, leaving open the possibility that RINs generated prior to the site visit may not be representative of actual fuel production and the documents on which the audit is based were fraudulent. However, as there is a relatively low number of RINs at issue, we believe the risk of invalidity in this short term transition period is reasonable in light of the benefits of giving a reasonable expectation of validity to RINs generated as of January 1, 2013.

While these measures may give regulated parties and RIN purchasers flexibility and security in developing and using QAPs prior to issuance of the final rule, the EMTS system will not be available to display information such as whether a given RIN has been reviewed by an auditor and who conducted the audit, until after the effective date of the final rule. It will therefore be the responsibility of the market participants to keep records of verification of RINs until EMTS begins tracking and displaying RIN verification status. However, as noted above, EPA intends to post the names of those auditors whose QAPs and registration materials appear consistent with the proposed regulations on EPA's Web site. This public posting will confer no legal rights, privileges, or license, but will indicate that, at the time of EPA's review, the QAP of the auditor in question appears to meet the proposed requirements for a QAP.

Once the final rule is in effect, EPA will proceed to register auditors and approve QAPs that meet the requirements of the final rule. Upon receiving such registration and approval, auditors will be able to issue verifications for RINs generated prior to issuance of the final rule that were reviewed according to the QAP approved under the terms of the final rule. Once these RINs generated prior to the effective date of the final rule have been verified, they will be treated like all other verified RINs for purposes of the affirmative defenses and replacement obligation provisions for verified RINs that are determined to be invalidly generated.

F. Request for Comment on Prohibiting Producers From Separating RINs

We request comment on a regulatory change in which renewable fuel producers would be prohibited from separating RINs. Under the current regulations, RINs generally cannot be separated from the wet gallons they represent until the point of blending or purchase by an obligated party. However, a renewable fuel producer can separate RINs from their associated volumes of renewable fuel under the conditions specified in § 80.1429(b)(4), including the situation where the fuel in question has been designated for a conforming use (i.e., for transportation fuel, heating oil or jet fuel) and is in fact used for such a conforming use, without further blending. In this circumstance, any owner of the RIN and associated gallon (including the producer) may separate the RIN from the fuel, including the producer of the fuel. The intent of this provision was to avoid situations in which RINs were never separated from renewable fuel due to its use in neat form or some atypical blend.

In the fraud cases that disturbed the RIN market in 2011–2012, some registered biodiesel producers exploited this provision and generated and sold invalid RINs without volume. Some have argued that removing this option and prohibiting producers in all cases from separating RINs from the volumes they produce would greatly reduce the ability of producers to generate fraudulent RINs without the knowledge of other parties in the RIN market.

While this mechanism might reduce the problem of producer fraud (of the type already seen), it would not eliminate the number of other ways invalid RINs could be generated at the point of production. Moreover, it could potentially create new concerns, as legitimate cases of producers separating RINs from volume would be prohibited. This would only be a partial solution to the problem of fraud and invalid RIN production. However, we solicit comment on the benefits of producers' ability to separate RINs from wet gallons in the limited circumstances that are currently permitted, and whether these benefits outweigh the potential added risk of fraudulent RINs in the market.

G. Summary of the Two QAP Options

A summary table of the two QAP options is provided below as a broad background for the outcomes associated with each option. The QAP options and associated consequences are discussed in each of the subsequent sections of this preamble.

TABLE III.G–1—SUMMARY OF PROPOSED QAP OPTIONS

Key element	QAP Option A	QAP Option B
Parties responsible for replacement of invalidly generated RINs[7].	Third-party auditor	Obligated party.
Requirement for a RIN replacement mechanism as condition of registration.	Yes	No.
Affirmative Defense to civil liability for transfer or use of invalidly generated RINs.	Yes	Yes.
Treatment of a knowing transfer or use of invalidly generated RINs.	Affirmative defense requires the party did not know or have reason to know the RIN had been invalidly generated before the RIN was verified.	Affirmative defense requires the party did not know or have reason to know the RIN had been invalidly generated at the time it was transferred or used for compliance.
Limited exemption for invalidly generated RIN replacement.	None	For 2013–14, up to 2% of the obligated party's RVOs.
Cap on RIN replacement	For 2013–15, 2% of the most recent five year's worth of verified RINs.	None.
Requirements for QAPs	Detailed requirements including ongoing monitoring.	Less detailed requirements.

IV. Provisions for RIN Verification Under Option A

The quality assurance program that we are proposing today would include two different options that would be available to regulated parties. Both options are intended to provide an efficient mechanism for ensuring that RINs are validly generated, and both options would provide the basis for an affirmative defense to liability for transferring or using invalid RINs. However, the two options would differ in whether invalidly generated RINs could be used for compliance, and in which party would be responsible for replacing invalidly generated RINs.

In this section we describe our proposed requirements for Option A. Under this option, obligated parties would not be responsible for replacing RINs that were invalidly generated if they successfully established an affirmative defense, and could use invalidly generated RINs for compliance under certain conditions. The third-party auditors responsible for verifying RINs under this Option would also be responsible for replacing those RINs if they are invalidly generated. In order to implement this approach, we are proposing detailed requirements for QAPs used to verify RINs that would include ongoing monitoring of operations at a renewable fuel production facility. We are also proposing that third-party auditors who verify RINs under Option A would be required to demonstrate the existence of a mechanism capable of replacing RINs that are invalidly generated and verified by the auditor. For clarity, we refer to RINs that have been verified through Option A as A–RINs.

In this section we first cover the proposed elements of QAPs for Option A and the proposed requirements for the replacement mechanism. We then describe how regulated parties could assert an affirmative defense for transferring invalidly generated A–RINs or using them for compliance. Finally, we discuss the treatment of invalidly generated A–RINs, from the responsibilities of owners of such RINs to the parties that would be required to replace them.

Since we are proposing two options for verifying RINs under a quality assurance program, both of which would be available to renewable fuel producers, we are also proposing two different sets of QAP requirements. Under Option A, the QAP requirements would be more comprehensive since obligated parties would be expected to exercise little or no oversight over the auditor process under this Option. Thus, for instance, we are proposing that any QAP used under Option A would have requirements for ongoing monitoring, i.e., for those production aspects that have sufficient variability such that less frequent monitoring could more easily result in the generation of invalid RINs. We would consider these aspects to require ''batch'' level monitoring, or as frequent as information becomes available or can be collected. We propose that all other components of QAPs under Option A would be evaluated on a more limited basis but on a specified schedule. We consider these aspects to require ''facility'' level monitoring, and are proposing that components subject to this periodic or limited schedule be monitored on a quarterly basis. Note that the components proposed for monitoring, whether on an ongoing or periodic basis, are components that are already regulated under the RFS program.

We request comment on the components we propose for ongoing or

[7] The generator of the invalid RIN is always responsible for replacement.

periodic monitoring, as well as any components not mentioned here. We also request comment on whether we have or whether we could better strike the necessary balance between the costs of implementing the quality assurance program versus the benefits for the RFS program. We also request comment on whether quarterly monitoring is appropriate for those components proposed to be subject to the less frequent schedule, or whether different components could or should be subject to different schedules (e.g., annual, once), and what those schedules should be, and why.

A. Requirements for Option A Quality Assurance Plans

As described in Section III above, QAPs would be used to verify that renewable fuel produced at a given facility qualifies under the RFS program and that corresponding RINs are validly generated. A QAP would form the basis for a facility audit, and would be created by an independent third-party based on criteria specified by EPA. This proposed rule would not impose any requirement on producers to engage a third-party auditor for the purpose of RIN verification, but instead would provide a voluntary means by which a production facility that engages an approved auditor, and upon a satisfactory facility audit using an EPA-approved QAP, would be verified by the auditor as validly generating RINs. RINs that had been verified through this process would provide the basis for an affirmative defense against civil violations for transferring or using invalid RINs for compliance, as discussed more fully in Section IV.C. As a result, verified RINs would be more valuable than RINs from a facility that had not been verified through a third-party auditor. We also expect that RIN replacement costs should significantly decrease as a result of this program.

This section discusses the minimum requirements of Option A QAPs under the RFS program, the elements of review that an Option A QAP must contain, and timing considerations affecting the use of a QAP.

1. Elements of an Option A QAP

QAPs would be used by registered third-party auditors to audit renewable fuel production at and RIN generation by a particular facility. The QAP must include a list of elements that the auditor will check in order to verify that the RINs generated by a renewable fuel producer or importer are appropriate given the feedstock, production process, and fuel for which RINs were generated. Therefore, each QAP must identify the specific RIN-generating pathway from Table 1 to § 80.1426 or a petition granted pursuant to § 80.1416 that it is designed to audit. Effectively, the auditor will be presenting a plan to EPA that the auditor believes is sufficient in scope and depth to ensure that RINs generated under such a plan are valid. The proposed required elements of an Option A QAP are discussed below. In the QAP, the auditor would specify how the inclusion of the required elements would be accomplished. We request comment on these proposed elements, including detailed descriptions of any elements not mentioned below.

a. Feedstock-Related Components

We propose 12 required elements in Option A QAPs designed to ensure that the feedstocks used in the production of renewable fuel qualify to generate RINs.[8] As shown in Table IV.A.1.a–1, some elements would be required to be monitored on an ongoing basis, and some on a quarterly basis. To begin with, for each batch of renewable fuel, we propose that the QAP should verify that feedstocks meet the definition of ''renewable biomass,'' and identify which renewable biomass from the listing in § 80.1401. As with all components proposed for monitoring and verification under a QAP, except for provisions related to the quality assurance program, there are no additional requirements added to the RFS program, e.g., that feedstocks are required to meet the definition of renewable biomass in § 80.1401 is a current RFS requirement.

We are also proposing specific elements depending on the type of feedstock. For instance, if the feedstock is separated yard waste, separated food waste, or separated Municipal Solid Waste (MSW), the QAP would be required to verify that a separation plan has been submitted and accepted or approved, as applicable, as part of the registration requirements under § 80.1450, and meets the requirements of § 80.1426(f)(5) and that all feedstocks being processed meet the requirements of the separation plan. If the feedstocks are planted crops or crop residue, the QAP would be required to include review of records maintained pursuant to § 80.1454 to verify that the land use restrictions of § 80.1401 are met and properly reported pursuant to § 80.1451(d). If the renewable fuel producer claims that the feedstocks qualify under the aggregate compliance approach, the QAP would be required to verify that the feedstocks are planted crops or crop residue that meet the requirements of § 80.1454(g). The auditor would also be required to ensure that other feedstocks with additional recordkeeping requirements in § 80.1454 are adequately covered (i.e. planted trees and tree residue and slash from non federal forest land).

The QAP would be required to verify that contracts exist for ongoing delivery of the type and amount of feedstocks used to produce renewable fuel, and that information in the contracts is consistent with production numbers. The QAP would also be required to verify that feedstock processing and storage equipment is appropriate, sufficient, and in working order to handle and process the feedstocks being used.

The QAP would be required to verify the accuracy of all feedstock-related factors used in calculation of the feedstock energy (FE) used under § 80.1426(f)(3)(vi) or (f)(4), as applicable, including the average moisture content of the feedstock, in mass percent, and the energy content of the components of the feedstock that are converted to renewable fuel, in Btu/lb. Note that requirements for these factors and calculations are specified in the RFS regulations. Under the QAP, the auditor reviews and verifies that the requirements of the regulations were followed.

The QAP would be required to verify that feedstocks that can be processed at a facility match information in the RFS registration and engineering review. (Note that we are proposing that a separate engineering review would no longer be required if a facility is covered by an Option A QAP). In addition, the feedstocks used to produce renewable fuel must be valid for the D code being claimed under § 80.1426 (or have an approved petition under § 80.1416) and must be consistent with the information reported in EMTS. Finally, the QAP would be required to verify that the feedstock used to produce renewable fuel is not a renewable fuel from which RINs were already generated in accordance with the requirements at § 80.1426(c)(6).

The feedstock-related elements that we are proposing to require for QAPs under Option A are shown in the table below, along with whether each item

[8] The treatment of biomass that is or is derived from invasive species will be addressed in a separate rule-making.

would be required to be monitored on an ongoing basis.

TABLE IV.A.1.a–1—OPTION A: QAP MONITORING FREQUENCY—FEEDSTOCK-RELATED

	Component	Ongoing monitoring	Quarterly monitoring
1–1	Feedstocks are renewable biomass	X	
1–2	Separation plan for food or yard waste submitted and accepted.		X
1–3	Separation plan for municipal solid waste submitted and approved.		X
1–4	Feedstocks meet separation plan	X	
1–5	Crop, crop residue feedstocks meet land use restrictions.	X	
1–6	Feedstocks with additional recordkeeping	X	
1–7	Contracts for feedstocks compare to production		X
1–8	Feedstock processing, storage equipment match engineering review.		X
1–9	Accuracy of feedstock energy calculation		X
1–10	Feedstock valid for D code, consistent with EMTS.	X	
1–11	Feedstock consistent with production process	X	
1–12	Feedstock is not renewable fuel where RINs generated.	X	

b. Production Process-Related Components

We propose t 10 required elements in Option A QAPs designed to ensure that the renewable fuel production process is appropriate for the RINs being generated. Auditors submitting QAPs for EPA approval would be required to provide a list of specific steps they will take to audit each of the elements.

For each batch of renewable fuel, the QAP would require mass and energy balances of the production process, and verify that the results match expectations for the type of facility being audited (e.g., biodiesel from soybean oil may have different expectations than biodiesel from non-food grade corn oil) based on typical values from prior input/output values, or similar facilities if prior values are not available. Energy inputs from on-site energy creation (e.g., propane, natural gas, coal, heating oil, diesel, gasoline, etc) and/or energy bills, and mass inputs/outputs such as feedstocks, additional chemicals, water, etc. would be required as part of the mass and energy balances. In addition, the QAP would be required to verify that yields, production of co-products, and production of wastes match expectations for the type of facility being audited.

In addition to mass and energy balances, QAPs under Option A would be required to verify that the production process is capable of producing, and is producing, renewable fuel of the type being claimed. The QAP would be required to verify the accuracy of all process-related factors used in calculation of the feedstock energy under § 80.1426(f)(3)(vi) or (f)(4), as applicable.

The QAP would be required to verify workforce size and conduct random employee interviews to confirm the production process. We believe this element is useful as verification that the plant is running as stated. Staffing levels, or a reasonable metric such as whether the workforce is appropriate per shift for throughput, would confirm that the plant is operating as expected. We understand that automation, plant complexity and staff skill levels and experience, among other factors, can result in some variation here, but believe this is easily accessible and useful data.

The QAP would be required to also verify that production process technology and capacity used matches information reported in EMTS and in the facility's RFS registration. The QAP also would be required to verify that the production process is consistent with D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

The QAP would be required to verify a number of things related to the fuel type. For instance, the QAP would include verification of the existence of certificates of analysis demonstrating that the renewable fuel being produced meets the applicable specifications and/or definitions in § 80.1401, and would be required to verify contracts with lab(s) for certificates of analysis, unless a facility has an on-site laboratory. If on-site, the QAP would be required to verify lab procedures and test methods. The QAP would be required to verify that renewable fuel being produced at the facility and that can be produced, matches information in RFS registration in terms of chemical composition. The QAP would also be required to verify the existence of quality process controls regarding test equipment (e.g., accuracy of flow meters, temperature gauges), and would be required to monitor equipment integrity to ensure proper procedures for equipment replacement, maintenance, and cleaning are in place.

Finally, the QAP would be required to verify that production volume being claimed is consistent with storage and/or distribution capacity and other applicable reports generated by the producer.

The production process-related elements that we are proposing to require for QAPs under Option A are shown in the table below, along with whether each item would be required to be monitored on an ongoing basis.

TABLE IV.A.1.b–1—OPTION A: QAP MONITORING FREQUENCY—PRODUCTION PROCESS-RELATED

	Component	Ongoing monitoring	Quarterly monitoring
2–1	Mass and energy balances		X
2–2	Workforce size		X
2–3	Process-related factors used in feedstock energy calculation.		X
2–4	Production process consistent with EMTS	X	
2–5	Production process consistent with D code	X	
2–6	Certificates of analysis verify fuel	X	
2–7	Verify existence of quality process controls		X
2–8	Volume production consistent with other reports required by EPA or other government entities.		X
2–9	Volume production consistent with storage and distribution capacity.		X
2–10	Volume production capacity is consistent with RFS registration.		X

c. RIN Generation-Related Components

We propose nine required elements in Option A QAPs designed to ensure that the renewable fuel being produced qualifies to generate RINs, and that the number of RINs generated is accurate.

For each batch of renewable fuel, the QAP would be required to verify that volumes of renewable fuel for which RINs are being generated meet, are designated for, and are sold for as transportation fuel, heating oil, and/or jet fuel as defined in § 80.1401.

The QAP would be required to verify that renewable fuel being produced matches the D code being claimed under § 80.1426, or approved petition under § 80.1416.

The QAP would be required to verify a number of things related to the volume of renewable fuel produced, including a check to ensure that volume temperature correction procedures are followed correctly. The QAP would be required to verify that volume of renewable fuel produced is consistent with expectations for the amount of feedstock being processed. The QAP also would be required to verify the accuracy of all fuel-related factors used in calculation of the feedstock energy, as applicable, including equivalence value for the batch of renewable fuel and the renewable fraction of the fuel as measured by a carbon-14 dating test method (see § 80.1426(f)(9)).

The QAP would be required to verify that fuel shipments are consistent with production, and would be required to review, if applicable, purchases and storage of petroleum-based fuel, and contracts with any company that removes wastes, co-products, off-spec products or any other material other than renewable fuel from the facility. The QAP would be required to review bills of lading (BOL), invoices, product transfer documents (PTDs), EMTS inputs, EPA quarterly reports and Energy Information Administration data.

Finally, the QAP must verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (4), or (5) as applicable, and that RIN generation was consistent with wet gallons produced.

The RIN generation-related elements that we are proposing to require for QAPs under Option A are shown in the table below, along with whether each item would be required to be monitored on an ongoing basis.

TABLE IV.A.1.c–1—OPTION A: QAP MONITORING FREQUENCY—RIN GENERATION-RELATED

	Component	Ongoing monitoring	Periodic monitoring
3–1	Renewable fuel sold for qualifying uses	X	
3–2	Standardization of volumes	X	
3–3	Renewable fuel matches D code or petition	X	
3–4	RIN generation consistent with wet gallons	X	
3–5	Fuel shipments consistent with production	X	
3–6	Renewable content R is accurate	X	
3–7	Registration, reporting, recordkeeping		X
3–8	Equivalence value EV is accurate, appropriate	X	
3–9	RIN generation calculations	X	

d. RIN Separation-Related Components

We propose three required elements in Option A QAPs designed to verify RIN separation. First, under the limited circumstances where a renewable fuel producer or importer separates RINs, the QAP would be required to verify that any RIN separation being done by the producer is done according to the requirements of § 80.1429, was reported to EMTS accurately and in a timely manner, and is supported by records. The QAP would be required to ensure that fuel that is exported was not used to generate RINs, or alternatively that RINs were generated but retired. Finally, the QAP must verify the accuracy of the annual attestation.

The RIN separation-related elements that we are proposing to require for QAPs under Option A are shown in the table below, along with whether each item would be required to be monitored on an ongoing basis.

TABLE IV.A.1.D–1—OPTION A: QAP MONITORING FREQUENCY—RIN SEPARATION-RELATED

	Component	Ongoing monitoring	Quarterly monitoring
4–1	Verify RIN separation	X	
4–2	Exported fuel not used to generate RINs	X	
4–3	Verify accuracy of annual attestation		X

2. Approval and Use of Option A QAPs

a. Approval of Quality Assurance Plan

We are proposing that a third-party auditor choosing to verify RINs under the quality assurance program must submit a QAP to EPA for approval. A separate QAP is required for each different feedstock/production process/fuel type combination (i.e., pathway). A QAP for a given pathway may be used for multiple facilities for which that pathway applies. We are also proposing that a QAP must be submitted for approval every year. A QAP would be deemed valid on the date EPA notifies the party that submitted the QAP that it has been approved. Only an EPA-approved QAP could be used by a third-party auditor to provide audit services to renewable fuel producers.

b. Frequency of Updates or Revisions to QAPs

We are proposing that a QAP approval by EPA only applies to the plan that was submitted to EPA, and there are specific cases in which we believe a QAP should be modified and resubmitted for approval. We are proposing that a QAP would need to be revised if the renewable fuel producer makes a change in feedstock, production process, or fuel that is not covered by the QAP. Under even one of these conditions, the plan submitted to EPA would no longer be applicable, and thus a new QAP would be required to be submitted and approved. We request comment on what changes would require a new QAP to be submitted for approval. Specifically, we request comment on whether a new QAP should be required to be submitted to EPA if the audited facility changes operations, feedstock, fuel type, etc.

B. RIN Replacement Mechanisms Under Option A

Auditors operating under Option A would be responsible for replacing invalid verified RINs if the RIN generator does not first replace them. Upon registration with EPA, auditors would be required to demonstrate that they have access to a RIN replacement mechanism that can replace a minimum percentage of any invalidly generated RINs they verify as A–RINs. See Section VI.B of this preamble for full registration requirements. If the party who generated the invalid A–RINs did not replace them, the RIN replacement mechanism would ensure the auditor's ability to fulfill its replacement requirement. We are proposing that there would be no requirement for a RIN replacement mechanism under Option B, where only producers and obligated parties, not auditors, would be responsible for replacing invalid verified RINs.

The reason we are proposing to require a RIN replacement mechanism under Option A (for auditors), but not under Option B (for obligated parties), is that the business models, size, and assets of the parties expressing interest in operating as auditors suggests that they would not be capable of self-financing a RIN replacement obligation. The obligated parties, on the other hand, are generally owners of major capital assets and are capable of self-financing a potential RIN replacement responsibility. While this may change in the future, it is appropriate at this point to ensure that there would be a reliable mechanism available to fulfill the auditor's replacement obligation. We intend that the requirement of a RIN replacement mechanism would provide stability in the marketplace and ensure that the RIN replacement obligation would in fact be fulfilled.

Whatever mechanism is used must be capable of fulfilling the auditor's potential replacement requirement for invalid RINs audited under an Option A QAP in a given calendar year and the previous four years. The calculation of this potential replacement requirement is further discussed in Section IV.B.1, below, in the context of the proposed cap on RIN replacement under Option A.

There are a number of RIN replacement mechanisms that may exist or become available to auditors. We are proposing to leave the choice of the type of mechanism to the auditors, who are in the best position to know what arrangement will work best for their businesses. The proposed rules do not therefore limit or specify the types of mechanisms we would accept. Rather, we propose only general minimum requirements for an acceptable replacement mechanism, and we solicit comments on these and potential additional requirements for these mechanisms. We have considered three possible types of mechanisms that could provide this function: traditional financial assurance instruments, RIN banks, and RIN escrow accounts. However, these mechanisms, outlined below, are not intended to be inclusive of all possible ways a RIN replacement mechanism could work, and are merely suggestions of potential pathways Option A auditors might follow.

We request comment on the various factors that will impact the effectiveness and cost of establishing and maintaining the minimum required balance in a RIN replacement mechanism, such as how many year's worth of RINs the mechanism should be required to be capable of replacing, whether a minimum percentage of the potential replacement obligation should be used as a baseline for the mechanism, and alternative methods to determining the appropriate minimum funding of the mechanism. We also seek comment on the perceived feasibility and necessity of the replacement mechanism requirement for auditors under Option A. Finally, we seek comment on whether any of the replacement mechanisms described below or any other form of replacement mechanism might provide the required type and amount of coverage, whether any should be prohibited, and any other relevant comments on this issue.

1. Required Replacement Capability for RIN Replacement Mechanisms

We do not believe it would be reasonable to require replacement mechanisms under Option A to provide coverage for all of the RINs an auditor verifies because we believe that properly functioning QAP audits will significantly reduce the chance of invalid A–RINs entering the market. We also recognize that the market will need time to evaluate the risk associated with bonds or other traditional financial assurance mechanisms and properly price these financial assurance instruments. Accordingly, we are proposing to phase in the RIN replacement mechanism over time to balance the benefits of encouraging early implementation of the more robust QAP A program with the cost of early

implementation. Under this approach, the minimum ''replacement cap'' will be set relatively low through 2015, and may change on January 1, 2016.

We propose that an auditor using an Option A QAP must be capable of replacing 2% of the total A–RINs that it verifies during the first phase of the program, i.e. through 2015, and we will finalize a replacement cap for subsequent years in the final rulemaking. We believe incidences of invalid RINs will be significantly below historic levels. Invalid RINs in 2010 and 2011 were generated when there was little due diligence being performed by downstream parties to ensure that RINs were valid, and we believe that incidences of invalidity would be significantly fewer in number once the QAP verification processes are in use. The auditor's replacement responsibility is therefore equal to the ''replacement cap'' for this first phase of the program. For further information on the replacement cap, see Section IV.D.4, below.

Nevertheless, historically, invalid RINs have not been generated with equal probability by all biodiesel producers. Instead, it has been a few producers that were responsible, with essentially all RINs generated by those producers being invalid. If such circumstances were repeated in the future, the potential impacts on auditors would be twofold. First, some auditors would not have to replace any of the RINs they verify, since many producers would have generated no invalid RINs. Second, in the event that an auditor was required to replace invalidly generated RINs, those invalid RINs would likely represent more than 2% of the RINs that the auditor verified. As a result, it is possible that the number of invalid RINs could be higher than 2% of a single auditor's throughput even if the total number of invalid RINs represented only 2% of all RINs generated for the nation as a whole. We therefore seek comment on the level of coverage required for RIN replacement mechanisms. We believe that the appropriate level of coverage for RIN replacement mechanisms should strike a balance between the benefits of ensuring that invalid RINs are replaced and reducing the risk of invalid RINs entering the market, and the costs associated with implementing RIN replacement mechanisms. We also seek comment on whether it would be appropriate to require a minimum dollar value as a floor for coverage. The minimum dollar value might help ensure that the auditors who participate in this program have the capital to function appropriately, but might also cause some qualified auditors to refrain from participating in the program because of the additional costs. We seek comment on whether to require an additional floor for the RIN replacement mechanism and the correct amount of the floor.

Beginning January 1, 2016, the Option A RIN replacement mechanism cap may change from the initial 2%. Our goals for the cap in 2016 and later years, as they are for the cap in 2013, 2014, and 2015, would be for it to ensure that most if not all of invalidly generated A–RINs would be replaced and at the same time provide assurance that the costs of a RIN replacement mechanism would not be excessive. We invite comment on what level would meet these goals, i.e., whether a lower cap, the same 2% cap, or a higher cap, for example 25%, would be appropriate. As noted above, we will finalize the replacement cap for 2016 and later years in the final rulemaking. As described in greater detail in Section IV.D.4, below, we also propose that the auditor's replacement responsibility extend back to cover no more than five years.[9] Therefore, the auditor must maintain the ability to replace the cap percentage of A–RINs verified in the current year to date plus the cap percentage of A–RINs verified in the previous four calendar years. If the replacement cap changes in 2016, we expect that the auditor's replacement responsibility for the years in the initial phase would not change.

Maintenance of a RIN replacement mechanism is a condition of an auditor's registration, which would be renewed annually. A failure to maintain the ability to replace up to the given cap percentage would therefore be a sufficient condition for denying a registration renewal or revoking an Option A auditor's registration. However, we recognize that if an auditor's replacement capacity has been significantly depleted by a replacement action, it might be difficult or even impossible for it to re-fund the replacement mechanism and maintain its registration in the short term. We therefore propose that the replacement mechanism be re-funded on an ongoing basis, i.e. by the given cap percentage of A–RINs verified, until the maximum required amount is again achieved. The formula for this calculation is in § 80.1470(c) of the proposed regulations, and this re-funding mechanism is mirrored in the calculation of the replacement cap, *see* Section IV.D.4 below. We request comment on all aspects of the calculation of the replacement mechanism and re-funding of a depleted replacement mechanism.

2. Financial Assurance Instruments

As noted above, we would not prescribe that auditors under Option A must use any particular RIN replacement mechanism, but would only require that the mechanism used be capable of covering an auditor's potential replacement responsibility described above. Since obligated parties would not be responsible for replacing invalid RINs under Option A, any replacement mechanism held by the auditor would need to make disbursements directly to the auditor or to a third-party contractually obligated to perform the auditor's replacement responsibility and retire the correct number and type of A–RINs, up to the replacement cap discussed above.

We have considered a number of traditional financial instruments that we believe are not suitable to provide the coverage required under Option A. For instance, a liability policy obtained by an auditor would typically only cover losses incurred by another party contracting with the auditor, in this case, most likely the RIN purchaser. This would not be an acceptable replacement mechanism under Option A because the RIN purchaser is not responsible for replacement of A–RINs and therefore would have no compensable harm. If an insurance policy could be written to cover the replacement obligation of the auditor instead of a third-party, regardless of the fault of the auditor or the source of the invalidity (i.e., covering potentially fraudulent acts by the producer), then such an instrument may be acceptable as a replacement mechanism under Option A. Similarly, a replacement mechanism that would pay out directly to EPA instead of the auditor would not be acceptable because EPA cannot purchase or retire RINs. Surety bonds and letters of credit payable to EPA would therefore not be suitable replacement mechanisms for Option A.

On the other hand, a surety bond or other financial instrument, such as a letter of credit, could be used as a RIN replacement mechanism if capable of providing direct replacement of invalid RINs, either by itself or by contracting with a third party. A performance bond, for example, might directly guarantee the performance of the auditor's RIN replacement responsibility. The bond agreement could allow the surety the option of purchasing and retiring replacement RINs itself, hiring a third-party agent to complete the purchase and retirement, or paying into a standby

[9] While there is no statute of limitations on EPA taking enforcement actions with respect to invalid RINs, there is a five year limit on records retention.

trust that could, in turn, fulfill the replacement responsibility on its own or by hiring a third-party agent to do so. A payment bond, similarly, could be established to pay out to a standby trust authorized to purchase and retire RINs on demand by the EPA administrator, or to contract with a third-party to perform the replacement.

In an effort to provide regulated parties with an option where the auditor could use a traditional liability policy as a RIN replacement mechanism while relieving the obligated party of RIN replacement responsibility, we considered a modified Option A approach. In this modified approach, the obligated party would be responsible for replacing invalid A–RINs that it had retired for compliance purposes, but the auditor would carry a third-party liability policy to cover the cost of that RIN replacement. In the event that the insurance policy failed for whatever reason to pay out the replacement costs, or paid out only part of the replacement costs, the obligated party would not be liable for fulfilling the remaining portion of its RIN replacement responsibility. Essentially, the obligated party would be responsible for RIN replacement, but would be assured that their replacement costs would be covered entirely by a third party. However, we found significant problems with this approach. The primary problem is that if an obligated party incurred a replacement obligation and sought compensation through the insurance policy, it would have little reason to press its claim with any vigor, knowing that any lack of payment from the insurer would effectively be forgiven by EPA. The obligated party, in short, would be rendered whole regardless of how little the policy paid, or even if the policy paid at all. As a result, we consider it very likely that under this modified Option A system, the invalid RINs would not be replaced. This approach would also affect the behavior of the insurer, who would define the limits of its liability on the basis of the potential harm that the obligated party might suffer. Since the obligated party would not be responsible for replacing any RINs not covered by the insurance policy, its ''harm'' would be limited to whatever amount the insurer chose or intended to pay out. The insurer would not be penalized or pursued for failing to pay out to the limits of the policy because such a decision would cause no harm or loss to the obligated party or the policy holder. It is arguable that this situation would effectively create a fictitious insurance contract, because the insurer would control most if not all of the total amount of the loss it was insuring against. We seek comment, however, on whether this or some other modification to Option A would be considered acceptable and feasible.

The inapplicability of a third-party liability policy as a replacement mechanism under Option A would not, of course, diminish its availability and use under Option B. While liability insurance is not a required feature of the Option B program, auditors and obligated parties could nonetheless choose to contract for it voluntarily. Third-party liability insurance, therefore, would still provide a way for obligated parties to cover their potential replacement responsibility under Option B. Obligated parties and auditors would remain free to set up whatever kinds of contracts and/or third-party agreements to cover potential losses due to invalid RINs.

We also considered a ''hybrid'' approach, combining certain features of Option A with certain features of Option B. Under this approach, the obligated party would retain the replacement responsibility, but the auditor would be required to carry a third-party liability policy to cover the obligated party's potential losses due to the use of invalid A–RINs. In this scenario, the obligated party would remain liable for replacement of invalidly generated RINs even if the insurance instrument provided only partial coverage, or if it failed to provide coverage at all. This option would give obligated parties the extra assurances of an Option A QAP and a dedicated liability insurance policy held by the third-party auditor to cover their potential losses. However, as noted above, this approach is essentially already available under Option B. An independent third-party auditor could offer a QAP that met the requirements of Option A and could also provide the assurance of a third-party liability policy to cover the RIN purchaser's potential replacement responsibility. Moreover, by leaving this as an independent and voluntarily chosen option, auditors and obligated parties have more flexibility to decide what level of coverage and risk they are willing to bear, instead of being required to maintain a set minimum amount of coverage. We therefore decided not to propose this as an independent option, but we request comment on whether this hybrid approach or some variation of it would be a valuable addition to the proposed program.

3. RIN Banks

Another potential replacement mechanism is a RIN bank. A RIN bank would be a repository for valid RINs to which multiple Option A auditors (the ''members'' of the bank) contribute, and which could be used as a source of replacement RINs in the event that any one of the members was required to replace invalid RINs. As with any other replacement mechanism, the bank would have to be capable of fulfilling any member's replacement requirement, meaning that it would have to contain RINs sufficient to meet the replacement responsibility of the member with the largest potential replacement requirement at any given point in time.

The primary advantage of a RIN bank is that it would give each member access to a large quantity of A–RINs in exchange for contributing a relatively small quantity of A–RINs. However, if RINs from the RIN bank were used to replace RINs for which one of the bank's members was responsible, the withdrawn RINs would have to be replaced in the bank. While the bank managers might require the responsible party to reimburse the bank for any RINs withdrawn as a result of its actions, if the responsible party declared bankruptcy or was otherwise unable to reimburse the bank, the remaining members would be responsible for re-populating the bank to the required level.

A RIN bank could be established, funded and managed by members of the bank. Members would each purchase and contribute verified A–RINs to the bank. While such contributions could be proportional to each party's RIN replacement liability, it would be up to the bank managers to stipulate how the bank would be populated, how withdrawals from the bank are administered and managed, how to re-populate the bank in the event that RINs are withdrawn to replace invalid RINs, and how to grant or revoke membership in the bank.

A RIN bank would establish an EMTS account to identify the RINs contributed by the bank's members. RINs would be held by the bank and be available to replace invalid RINs that were verified under Option A by a member of the bank. Each member of the bank would be required to have access to all of the RINs in the bank to replace A–RINs they had audited that were found to be invalid. If at any point the number of RINs held by the bank no longer met the EPA's requirements, either due to the addition of a new member(s) to the bank, an increase in the liability of one of the members of the bank, or a withdrawal to replace invalid RINs, the members of the bank would again be required to contribute RINs to the bank

until the minimum required level of RINs was reached.

RINs deposited in RIN banks would expire just like other RINs. We contemplated creating a special category of RINs that do not expire if deposited in a RIN bank which would allow the bank to provide perpetual backing for its members' replacement responsibilities, as long as the RINs were not withdrawn to replace invalid RINs. However, RINs that do not expire could acquire a higher market value compared to RINs from the same facility without this new status. If EPA adopted this system, we would also have to stipulate that RINs placed in a RIN bank could not be withdrawn for any reason other than to replace invalid RINs to prevent auditors from depositing RINs into the bank, achieving this new status, and then withdrawing them to be sold with a new higher market value. This stipulation would place restrictions on the use of RINs owned by the auditors participating in this system and could be problematic in cases where an auditor wanted to disassociate from a bank.

The alternative to this system, and the one we are proposing today, would not change the status of RINs deposited in a RIN bank and would allow them to expire just like any other RINs. Auditors would be free to regularly withdraw older RINs from the bank and replace them with newer RINs (in addition to their new contributions) to prevent RINs in the bank from expiring and losing their value. While we recognize that this would add some administrative burden to auditors and potentially impact the value of RINs that are deposited in the bank (since RINs from a previous year are limited to being used to cover 20% of an obligated party's RVO) we nevertheless believe this is a better option than creating a new class of RINs. This approach would allow auditors to have the most control over their own RINs, depositing and withdrawing them at any time, provided they maintain their required minimum balance in the bank. Further, since the rollover cap limitation on the previous year's RINs that may be used to meet the current year's RVO (see § 80.1427(a)(5)) is significantly higher than the percentage of RINs that would be required to be held by a bank, we believe the depreciation in the value of RINs deposited in a bank is likely to be minimal.

4. A–RIN Escrow Accounts

An A–RIN escrow account would work very much like a RIN bank, but would be funded by a single auditor instead of a group of auditors, and would be supervised and managed by a third-party escrow agent. The advantage of this option is that an auditor would have total control over the funding of the escrow account and, in contrast to the RIN bank, an auditor using an escrow account would never be adversely affected by the actions of another contributor to the account, such as failure to contribute its required share or a large withdrawal from the RIN bank that might leave the bank underfunded. On the other hand, an auditor using an escrow account would be solely responsible for the funding of the account, and so would be required to maintain a balance equal to a much larger percentage of its potential replacement responsibility than it might be if using a RIN bank.

To qualify as an acceptably funded account, we propose that the escrow account would be required to maintain a balance of A–RINs equal to the auditor's replacement responsibility at any given point in time. As with the RIN bank, the RINs held in escrow would expire just like any other RIN and would have to be retired and replaced on a rolling basis to maintain the auditor's ability to replace invalid RINs at any given point in time. Thus, the RIN auditor would eventually be able to use the proceeds from the sale of RINs in the escrow account to fund the purchase of new RINs, reducing the total long-term costs of this RIN replacement instrument. Likewise, if the account's balance fell below the minimum required amount for any reason, the auditor would be precluded from verifying RINs unless and until the account's balance was brought back to the minimum level until the cumulative five year cap is reached (as further described in Section IV.D.4)

The escrow account would contain verified A–RINs and would be used as a source of RINs to retire upon a finding that RINs verified by the auditor were in fact invalid. An originally signed copy of the escrow account agreement would be submitted by the auditor to EPA as part of its registration. The agreement would stipulate, for example, that the escrow agent would release RINs from the account upon demand by or with the concurrence of the EPA Administrator. RINs would be released directly to the auditor (for roll-over purposes or for meeting a replacement requirement) or to a designated third party such as a standby trust (solely for meeting the auditor's replacement requirement). Maintenance of the account's minimum balance requirements would be part of the auditor's regular compliance reporting. The auditor would set up a separate account in EMTS to identify RINs placed in the escrow account.

C. Affirmative Defenses

After meeting with industry stakeholders over the course of several months, we recognize that providing an affirmative defense to civil liability arising from the transfer or use of invalid RINs would promote greater liquidity in the RIN market, especially the market for RINs generated by smaller producers. EPA believes that in the circumstances present in the RFS program, an affirmative defense combined with a reasonable QAP and adequate mechanisms to replace RINs that are invalidly generated, is an appropriate way to promote greater liquidity in the RIN market. It is our intent to design a system that would provide RIN owners with such an affirmative defense to civil liability provided appropriate measures are in place with respect to a QAP and a mechanism for replacement of invalidly generated RINs.

To this end, under the proposed regulations renewable fuel producers and obligated parties would have the option of participating in a quality assurance program that would provide significant assurance (Option A) or reasonable assurance (Option B) that RINs are validly generated at production facilities. EPA would approve Quality Assurance Plans (QAPs) that meet the basic criteria prescribed in the regulations, and these QAPs would be the template for production oversight by an independent third-party auditor. Performance of an EPA-approved QAP audit would be the foundation of an affirmative defense for parties that transfer or use QAP-verified RINs for compliance purposes. The affirmative defense would only be available to RIN owners for RINs that were verified by an independent third-party auditor using an EPA-approved QAP, whether Option A or Option B. Additionally, it is our intent that affirmative defenses would not be available to the generator of an invalid RIN. Since the quality assurance program would be voluntary, parties could still purchase RINs not verified by an EPA-approved QAP and transfer or use these unverified RINs, but they could not assert an affirmative defense if the RINs were found to be invalid, regardless of their level of good faith or any independent due diligence they perform prior to purchase.

Once a RIN has been verified by the auditor, any person, other than the generator of the RIN, who transfers or uses that verified RIN would be eligible for an affirmative defense if the RIN was in fact invalidly generated and the

person then transferred it to another party or used it for compliance purposes. Once a RIN was verified through an audit based on an Option A QAP, it would remain verified for the purpose of asserting an affirmative defense.[10] The QAPs would be designed to verify valid generation of RINs, and the assertion of an affirmative defense would be limited to the prohibited acts of transferring and using invalidly generated RINs. The proposed affirmative defense addresses violations of 40 CFR 80.1460(b)(2) and the use violation of 40 CFR 80.1460(c)(1). 40 CFR 80.1460(b)(2) prohibits any person from transferring to any other person a RIN that is invalid. 40CFR 80.1460(c)(1) provides that no person shall use invalid RINs to meet the person's RVO, or fail to acquire sufficient RINs to meet the person's RVO. The proposed affirmative defense would apply to violations arising from a person's use of invalid RINs whether or not his/her use of the invalid RINs caused them to fail to acquire sufficient RINs to meet their RVOs.

We are proposing new regulations in Section VIII to address RINs that become invalid downstream of the RIN generator, but an affirmative defense would not apply in this situation. It should again be noted that an affirmative defense is not available for a RIN that was not verified under an EPA-approved QAP. In other words, the system as it exists under the current regulations would continue to be an option for obligated parties who do not wish to purchase RINs verified by a QAP.

As noted above in Section III of this preamble, there are two types of verified RINs: those verified by a third-party auditor who is required to have a replacement mechanism to guarantee replacement of invalidly generated RINs (''Option A'' or ''A–RINs'') and those verified by a third-party auditor who is not required to replace invalidly generated RINs (''Option B'' or ''B–RINs''). The requirements for establishing an affirmative defense under Option A are described below, while Option B is described in Section V.C. In order to establish an affirmative defense under Option A or Option B, we are proposing that the elements would be required to be proven by a preponderance of the evidence. This means that each element was more likely than not to have been met. Additionally, we are proposing that when a person seeks to establish an affirmative defense, he/she would submit a written report to EPA, along with any necessary supporting documentation, that would demonstrate how the elements were met. The written report would need to be submitted within 30 days of the person discovering the invalidity of the RIN. We welcome comment on the elements of the affirmative defense and the effects of establishing an affirmative defense.

In the event that invalidly generated A–RINs are transferred or used, the person could establish an affirmative defense to liability arising from transferring or using the invalid A–RINs for compliance with an RVO if the following elements were proven by a preponderance of evidence:

(1) The RINs in question were verified in accordance with an EPA-approved Option A QAP as defined in EPA regulations;

(2) The RIN owner did not know or have reason to know that the RINs were invalidly generated prior to being verified by the third-party auditor;

(3) The QAP auditor or RIN owner informs the Agency within the next business day of discovering that the RINs in question were invalidly generated;

(4) The RIN owner did not cause the invalidity; and

(5) The RIN owner did not have a financial interest in the company that generated the invalid RIN.

Allowing invalid RINs to circulate in the market without EPA's knowledge would subvert the intent of the quality assurance program and the RFS program. In that context, the knowledge and notification requirements, (2) and (3) of the above list, ensure that the RIN owner did not knowingly allow invalid RINs to enter the market, and did not benefit from the use or retirement of the invalid RINs without informing EPA that the RIN was invalid.

An affirmative defense is a defense that precludes liability even if all of the elements of a claim are proven, and generally is asserted in an administrative or judicial enforcement proceeding. In this proposed rule, we are including an explicit notification requirement to allow EPA to evaluate affirmative defense claims before deciding whether or not to commence an enforcement action.

We request comment on all the elements we are proposing as prerequisites to asserting an affirmative defense, and in particular the requirement to report invalid RINs to the EPA within the next business day of discovery.

D. Treatment of Invalid A–RINs

Under both the current and proposed regulations, RIN purchasers must assess the level of risk associated with purchasing a particular RIN to comply with their RVOs. For instance, a purchaser unfamiliar with the renewable fuel producer generating the RIN risks the possibility that the RIN is invalid, while a well-known producer might seem less risky. The use of the QAPs as described in this NPRM would reduce the risk of purchasing invalid RINs, especially in situations where the producer of the RIN is unknown or new to the market. Where a producer is considered less risky in a given situation by a given purchaser, the RIN buyer may not need as extensive a QAP to reduce its risk to an acceptable level, and would be willing to risk the obligation to replace the RIN if it were found invalid. On the other hand, a RIN deemed more risky might require a more stringent QAP and additional assurances against the responsibility to replace it if the RIN turns out to be invalid. The obligation to replace invalid RINs that have been retired for compliance purposes will differ depending on whether the RIN was unverified, or verified through an Option A or Option B QAP.

Additionally, as discussed in Section III.C, we are proposing an administrative process for replacement of invalid RINs that places initial responsibility to replace invalidly generated RINs on the RIN generator responsible for causing the invalidity. In the event the RIN generator does not replace the invalidly generated RINs according to the administrative process, the third-party auditor under Option A would also be required to replace the invalid RINs. Thus, for invalidly generated RINs verified by an Option A QAP, the auditor would have the responsibility to replace the invalidly generated RINs, and the obligated party would have no responsibility for RIN replacement, if they met the requirements of the affirmative defense. However, in the event that regulated parties fail to implement the administrative process for replacement of any invalid RINs, the EPA could bring an enforcement action against any or all of the parties that were required to replace the invalid RINs, which under QAP Option A includes the RIN generator or auditor, but not the obligated party. See § 80.1474 of the proposed regulations for details of the administrative process for replacement of invalid RINs.

[10] If a RIN was improperly verified, the QAP auditor could be liable for committing the prohibited act of verifying a RIN without following the requirements of the EPA-approved QAP plan. However, the RIN would remain verified for purposes of asserting an affirmative defense by parties who transferred or used that RIN after it was verified.

This section describes the responsibilities of regulated parties that generate RINs or take ownership of RINs verified under Option A but which are ultimately found to have been invalidly generated. We also describe the conditions under which invalid RINs must be replaced, by whom, and the mechanisms for doing so.

1. Responsibilities for Replacement of Invalid Verified A–RINs

For Option A we are proposing a system wherein RINs would be verified by a third-party auditor using an EPA-approved QAP, and the third-party auditor would be liable for replacing invalidly generated RINs. Obligated parties would not be liable for replacing invalid RINs under Option A, and could use invalid A–RINs for compliance.

Obligated parties that purchase A–RINs would not be subject to civil liability if an A–RIN transferred or used for compliance purposes was later found to have been invalidly generated, if all the elements of an affirmative defense were successfully asserted, as described in Section IV.C. Moreover, obligated parties would be under no obligation to replace A–RINs used for compliance that were subsequently found to be invalid and could transfer and use invalidly generated A–RINs (if they did not know or have reason to know the A–RINs were invalidly generated prior to being verified) without violating the Prohibited Acts section, § 80.1460.

Under Option A, the third-party auditor would be required to have a replacement mechanism capable of replacing invalidly generated A–RINs that were verified by that auditor.[11] We chose to have the third-party auditor replace invalidly generated A–RINs to provide obligated parties the greatest amount of incentive to buy RINs from smaller producers, who might be perceived to be higher risk producers, which would increase the liquidity of the market. The third-party auditors would have the greatest oversight of A–RIN generation because of the robustness of the verification product they are providing to the market under Option A. Thus, charging them with the corresponding replacement obligation is a reasonable approach to achieving the goals of the proposal. Additionally, as discussed above, after meeting with several third-party auditors, we discovered that they, in most cases, do not have the same level of financial resources that many obligated parties possess. Therefore, requiring a replacement mechanism provides a level of security for the Agency in making sure the statutory volume mandate is met. As described more fully in Section IV.B, the form of this replacement mechanism would determine how this replacement occurs.

QAP Option A would provide the greatest risk mitigation for obligated parties in the event that their RINs were invalidly generated and later used for compliance purposes. Not only could they assert a defense to civil liability for using an invalid A–RIN for compliance purposes, but they would not be responsible for later replacing that RIN. QAP Option A would provide a means for all producers to participate in the market because obligated parties would bear no risk of a replacement obligation for any A–RINs, regardless of who produced them. Smaller producers would thus have access to a larger number of obligated parties as potential customers than they might have under the existing regulations, where obligated parties are always subject to a replacement obligation if the RINs they have retired are deemed invalid. We seek comment on this approach. In particular, we seek comment on what types of entities would seek to serve as auditors, what the potential risk burden might be, and how this burden could be quantified. We further seek comment on the impact of the RIN replacement cap on the cost of the program.

2. Invalid A–RIN Replacement

The current regulations do not specify that an obligated party must replace invalid RINs. Rather, obligated parties choose to replace invalid RINs in order to meet their RVOs. If the party holding an invalid RIN is an obligated party, and he does not have a sufficient number of valid RINs to meet his RVO, he must acquire additional valid RINs.

Under the quality assurance program the requirement to replace an invalid RIN may be placed on a party other than the owner of the invalid RIN. As a result, the regulations governing the replacement of invalid verified RINs must specify which party is responsible. Under Option A only the renewable fuel producer or importer who generated the invalid RINs and the auditor who verified those RINs would be responsible for replacing them.

In general, as discussed above, the administrative process for replacement of invalid RINs places initial responsibility of replacement of invalid RINs on the RIN generator, regardless of who actually owns the invalid RINs at the time that the invalidity is discovered. Even though we are proposing that invalid verified A–RINs could continue to be transferred and used for compliance, the generator of an invalid A–RIN would never be permitted to transfer verified A–RINs that are invalid.

If the RIN generator failed to replace invalidly generated A–RINs in the time frame established in the administrative process specified in the proposed regulations, the third-party auditor would be required to replace the invalid A–RINs. A QAP A auditor would be responsible for replacing invalidly generated A–RINs up to the levels discussed in Sections IV.B and IV.D.5. All regulated parties that are potentially liable for replacing invalid RINs would be free to obtain more coverage for RIN replacement than the regulations require. In the event that regulated parties fail to implement the administrative process for replacement of any RINs, the EPA could bring an enforcement action against any or all of the parties that were required to replace the invalid RINs, i.e., the RIN generator or auditor, but not the obligated party.

The methods for replacing invalidly generated RINs under QAP Option A are outlined below. See § 80.1474 of the proposed regulations for details of the administrative process for replacement of invalid RINs. In general, RINs verified under Option A could always be transferred or used even if they are discovered to have been invalidly generated, since RIN replacement would be carried out by the RIN generator or the auditor.

In the event that EPA or the independent third-party auditor alleged that an A–RIN was invalidly generated, that RIN would be a ''potentially invalid RIN'' or ''PIR''. The RIN generator would be required to take one of three possible corrective actions within 30 days of being notified of the PIR:

- Retire a valid A–RIN of the same D-type as the PIR, either by purchasing it or generating a new valid RIN and separating it from the physical volume that it represents;
- Retire the invalidly generated RIN (if still in the RIN generator's possession); or
- If the RIN generator believed the PIR was in fact valid, it would submit a written demonstration providing a basis for its claim of validity to either the third-party auditor or EPA, whoever identified the PIR. If the third-party auditor determined that the demonstration was sufficient, the RIN would not need to be replaced; however, EPA would reserve the right to make a determination regarding the validity of the RIN. If EPA determined

[11] It should be noted that the replacement mechanism could not be funded by RINs that were both generated and verified by the same auditor. Auditor requirements are discussed in further detail in Section VI.

that the demonstration was sufficient, the RIN would not need to be replaced. However, if the third-party auditor determined it was not sufficient and if the EPA confirmed that determination, or if EPA determined it was not sufficient, it would notify the RIN generator of that finding and again require the RIN generator to replace the PIR within 30 days.

In order to allow a producer to replace a PIR with a new valid RIN from renewable fuel that it has generated, we are proposing a new provision in § 80.1429 that would permit producers to separate RINs from volume they produced for the specific purpose of retiring RINs to replace a PIR. If the RIN generator retired a valid RIN to replace the PIR, the invalid RIN that it replaced could continue to be transferred or used for compliance by any party.

If the RIN generator did not replace an invalidly generated A–RIN for any reason, the regulations would require the third-party auditor to replace the invalid A–RIN. The auditor would have 60 days from the day it received notification of the PIR to retire a valid RIN to replace the PIR. Regardless of whether the RIN generator or auditor replaced the invalid A–RIN or not, any other party that owned the potentially invalid A–RIN could transfer or use that A–RIN for compliance purposes. Additionally, if an obligated party or other third-party owner of an A–RIN successfully established an affirmative defense, they would not be responsible for replacing the A–RIN if it was deemed invalidly generated.

3. Process for Replacing Invalid Verified RINs

When an auditor or EPA determines that a RIN is a PIR, the RIN generator would be notified directly. At this point, the process of retiring an appropriate valid RIN would begin.

There would be two forms of invalid RIN replacement under the proposed quality assurance program:

1. If a party that is required to replace an invalid verified RIN owns the RIN in question, it may be retired through EMTS in the same way that invalid RINs under the current regulations are retired.

2. If a party that is required to replace an invalid verified RIN does not own the RIN in question, or the RIN has already been used for compliance, the party would be required to acquire a valid RIN and retire it in place of the invalid RIN. In this case, since it would be a valid RIN that is being retired, a new retirement code reason would be created in EMTS for this purpose.

a. Types of RINs That Can Replace Invalid Verified RINs

Parties that retire valid RINs to replace invalid RINs would be required to match the renewable fuel category and the QAP category of both the valid and invalid RINs. For instance, an invalid verified RIN with a D code of 4, representing biomass-based diesel, could only be replaced with a valid verified RIN with a D code of 4. Moreover, we propose that invalid RINs verified through Option A could only be replaced with valid RINs verified through Option A, not Option B (and vice-versa). Since the balance of cost and risk could be different under Options A and B of the quality assurance program, RINs verified under the two options could have different prices even though they have the same D code. Thus there could be a financial incentive for valid RINs verified under one option to be used to replace invalid RINs verified under the other option, and this could lead to unforeseen market imbalances. Nevertheless, we request comment on whether valid RINs verified under one option should be permitted to replace invalid RINs verified under the other option.

We do not believe that valid RINs generated under the existing regulations (i.e. not under the proposed quality assurance program) should be permitted to replace an invalid verified RIN. The replacement of invalid RINs with valid RINs is an approach that we have designed in the context of the quality assurance program to allow verified RINs that are found to be invalid to continue to be transferred and used for compliance. We do not believe it would be appropriate to replace a RIN that had been verified through the quality assurance program with one that has not been verified. We request comment on this approach.

b. Impacts of RIN Replacement on Renewable Fuel Demand

The purpose of requiring invalid RINs to be replaced is to ensure that the annual renewable fuel volume mandates provided in CAA 211(o)(2) are fulfilled. However, the process of identifying invalid RINs and replacing them could potentially unfold over months or even years. This process could result in some portion of a given year's applicable volume requirement being fulfilled in a subsequent year, as replacement RINs may not be generated in the same year that the invalid RINs were generated. Thus there is a possibility that RIN replacement could cause greater demand for renewable fuel in a given year than the applicable standards are intended to require for that year. While we expect the number of invalidly generated RINs to be considerably less under our proposed quality assurance program than they were in 2010 and 2011, nevertheless we believe that this issue should be addressed.

While the RFS program is designed to result in the use of specified volumes of renewable fuel within each calendar year, the current regulations include provisions that allow the volumes used in a given year to be more or less than the specified volume. For instance, the RIN rollover cap at § 80.1427(a)(5) allows up to 20% of a given year's volume requirement to be met with previous-year RINs. Effectively, this means that the demand for renewable fuel in a given year can be up to 20% below the volumes required. In addition, the deficit carryover provision at § 80.1427(b) allows an obligated party to delay compliance with any portion of his RVOs by one year. Although an obligated party cannot carry over a deficit for two years in a row, the fact that there is no limit to the size of deficit carryovers means that in theory there could be substantial differences between the volumes required in a given year and the actual demand for renewable fuel in that year. In addition, the applicable percentage standard set by EPA is based on projections of gasoline and diesel production, and to the extent the actual production varies from these projections, the actual volume of renewable fuel may be more or less than the national volume called for in section 211(o)(2). Finally, under the current regulations, the future replacement of RINs may occur in the context of an enforcement action related to the transfer or use of invalid RINs. This replacement obligation under the proposed regulations has a similar effect as far as timing of RIN replacement, recognizing that under the proposal there should be many fewer invalid RINs generated, and therefore much less need for future RIN replacement.

Consistent with the effect of these various provisions, we believe it would also be appropriate to permit an invalid verified RIN to be replaced outside of the year in which it was generated. In the case of RIN replacement using valid RINs from a RIN escrow account or RIN bank, valid RINs are set aside before invalid RINs are generated and discovered. The small increase in demand for renewable fuel caused by setting aside these valid RINs would occur before RIN replacement, not after, and they would accrue at the same rate that RINs are being generated and verified. We believe that these features of RIN escrow accounts and RIN banks

would mitigate the impacts of RIN replacement on the renewable fuel market, and thus the use of future year RINs to replace invalid RINs generated in the past would be very unlikely to create a difficulty in meeting the volume mandates in a given year.

4. Cap on RIN Replacement

Another mechanism we are proposing to reduce the costs associated with the Option A quality assurance program is a cap on RIN replacement. Such a cap would help to ensure that QAP Option A could be implemented at a reasonable cost, and thus help to achieve the overall goals of this proposal. We are proposing that the cap would not apply to invalid RIN replacement for the nation as a whole, but rather to individual auditors that would be required to replace invalid RINs. However, since its primary benefit would be to reduce the costs of a RIN replacement mechanism that an auditor would be required to hold, we are proposing that the cap would apply only to auditors under QAP Option A, since auditors under QAP Option B would not be required to hold a RIN replacement mechanism. The cap would apply to all RINs that the auditor validates through an Option A QAP within a calendar year, and would apply separately to RINs of each D code.

The level of the cap reflects a balance between the need to ensure that the volume mandates of the RFS program are met and providing auditors with reasonable assurance that the costs of replacing invalid RINs will not be excessive. We believe that the incidences of invalidly generated RINs would be significantly lower for RINs verified under an Option A QAP than they were over the previous few years. Since we are proposing that the required RIN replacement mechanism should provide coverage for 2% of each D code of A–RINs verified by an auditor in the current year and (up to) the previous four years (*see* Section IV.B above), we likewise believe it would be appropriate to cap the number of A–RINs that each auditor must replace at 2% of the A–RINs it has verified in the same period. In other words, the RIN replacement cap should be equal to the minimum replacement coverage required for Option A auditors. As stated above, we believe that this cap would ensure that most if not all of invalidly generated A–RINs would be replaced and would provide assurance that the costs of a RIN replacement mechanism would not be excessive.

We are proposing that the cap apply to all A–RINs that have been verified by an auditor to date, up to a maximum of the most recent five year's worth of verified RINs. The table below provides an example for how the cap would be applied. (This table assumes the 2% cap continues into the second phase of the program, i.e. in 2016 and beyond, though as discussed above, we are proposing that the cap may change in 2016.)

TABLE IV.D.5–1—EXAMPLE OF APPLICATION OF RIN REPLACEMENT CAP UNDER OPTION A

	A–RINs verified by the auditor	2% cap	Maximum number of A–RINs that the auditor would be responsible for replacing
2013	50,000,000	1,000,000	1,000,000
2014	30,000,000	600,000	1,600,000
2015	35,000,000	700,000	2,300,000
2016	40,000,000	800,000	3,100,000
2017	60,000,000	1,200,000	4,300,000

In 2018, the auditor's responsibility for replacing any 2013 RINs would expire and be replaced by its responsibility for 2018 RINs. Therefore, assuming a relatively static number of A–RINs verified each year and a static replacement cap, the auditor's replacement responsibility would plateau in year six of its auditing activities.

Finally, we are proposing that the 2% cap on A–RIN replacement would not apply to invalid RINs that were erroneously verified based on negligence, error, or omission of the auditor, including any failure by the auditor to properly implement its QAP. This issue is discussed further in Section VI.A.3.

V. Provisions for RIN Verification Under Option B

As described in Section IV, the voluntary quality assurance program we are proposing today would include two compliance options that would be available to regulated parties. Both options would be intended to provide a more efficient mechanism for ensuring that RINs are validly generated, and both options would provide an affirmative defense against civil violations for certain actions involving invalid RINs. However, the two options would differ in whether invalidly generated RINs could be used for compliance, and in which party would be responsible for replacing invalidly generated RINs.

In this section we describe our proposed requirements for Option B. Under this option, obligated parties would be responsible for replacing RINs that were invalidly generated, as under the current regulations. Also, obligated parties would not be permitted to use an invalidly generated RIN for compliance unless the generator of the invalid RIN replaced it. However, since obligated parties are more likely to conduct their own oversight to verify that the RINs they acquire are valid, we are proposing that the requirements for QAPs used to verify RINs would be less rigorous than those under Option A. Moreover, we would not require third-party auditors who verify RINs as having been validly generated to replace RINs that are invalidly generated. For clarity, we refer to RINs that have been verified through Option B as B–RINs.

In this section we first cover the proposed elements of QAPs for Option B. We then describe how regulated parties could assert an affirmative defense for transferring invalidly generated RINs or using them for compliance. Finally, we discuss the treatment of invalidly generated RINs, from the responsibilities of owners of such RINs to the parties that would be required to replace them.

A. Requirements for Option B Quality Assurance Plans

As described more fully in Section IV.A, QAPs would be used to verify that the production of renewable fuel at a given facility meets all EPA requirements and that corresponding RINs are validly generated. In general,

QAPs under Option B would operate in the same way that QAPs under Option A would operate. The primary difference would be the frequency of monitoring of the required QAP elements. Specifically, we propose that there would be no requirement for ongoing monitoring under Option B, rather, all elements of an Option B QAP would be evaluated on a quarterly basis. In addition, there are fewer required elements under an Option B QAP compared to an Option A QAP.

1. Elements of an Option B QAP

Option B QAPs would be used by EPA-approved independent third-party auditors to audit renewable fuel production. The QAP would have to include a list of elements that the auditor would check to verify that the RINs generated by a renewable fuel producer or importer are appropriate given the feedstock, production process and fuel for which RINs were generated. Therefore, each QAP must identify the specific RIN-generating pathway from Table 1 to § 80.1426 or a petition granted pursuant to § 80.1416 that it is designed to audit. The proposed required elements of an Option B QAP are discussed below. We request comment on these proposed elements, including detailed descriptions of any elements not mentioned below.

We also request comment on whether quarterly monitoring is appropriate under Option B, or whether different components could or should be subject to different schedules (e.g., monthly, biannually, etc), and what those schedules should be, and why.

a. Feedstock-Related Components

We propose eight required elements in Option B QAPs designed to ensure that the feedstocks used in the production of renewable fuel qualify to generate RINs. First, for each batch of renewable fuel, we propose that the QAP should verify that feedstocks meet the definition of ''renewable biomass,'' and identify which renewable biomass per § 80.1401.

We are also proposing specific elements depending on the type of feedstock. For instance, if the feedstock is separated yard waste, separated food waste, or separated MSW, the QAP would be required to verify that a separation plan has been submitted and accepted or approved, as applicable, as part of the registration requirements under § 80.1450, and meets the requirements of § 80.1426(f)(5), and that all feedstocks being processed meet the requirements of the separation plan. If the renewable fuel producer claims that the feedstocks qualify under the aggregate compliance approach, the QAP would be required to verify that the feedstocks are planted crops or crop residue that meet the requirements of § 80.1454(g).

The QAP would be required to verify that the feedstocks used to produce renewable fuel are valid for the D code being claimed under § 80.1426 (or have an approved petition under § 80.1416) and must be consistent with the information reported in EMTS. The QAP would be required to verify that the feedstock used to produce renewable fuel is not a renewable fuel from which RINs were already generated.

Finally, the QAP would be required to verify the accuracy of all feedstock-related factors used in calculation of the feedstock energy used under § 80.1426(f)(3)(vi) or (f)(4), as applicable, including the average moisture content of the feedstock, in mass percent, and the energy content of the components of the feedstock that are converted to renewable fuel, in Btu/lb. The feedstock-related elements that we are proposing to require for QAPs under Option B are shown in the table below. All items would be required to be monitored on a quarterly basis.

TABLE V.A.1.a–1—OPTION B: QAP MONITORING FREQUENCY—FEEDSTOCK-RELATED

	Component
1–1	Feedstocks are renewable biomass.
1–2	Separation plan for food or yard waste submitted and accepted.
1–3	Separation plan for municipal solid waste submitted and approved.
1–4	Feedstocks meet separation plan.
1–5	Crop, crop residue feedstocks meet land use restrictions.
1–6	Feedstock valid for D code, consistent with EMTS.
1–7	Feedstock is not renewable fuel where RINs generated.
1–8	Accuracy of feedstock energy calculation.

b. Production Process-Related Components

We are proposing four required elements in Option B QAPs designed to ensure that the renewable fuel production process is appropriate for the RINs being generated. Auditors submitting QAPs for EPA approval would be required to provide a list of specific steps they will take to audit all four elements.

First, the QAP would be required to verify that production process technology and capacity used matches information reported in EMTS and in the facility's RFS2 registration. The QAP also would be required to verify that the production process is capable of producing, and is producing, renewable fuel of the type being claimed, i.e., is consistent with the D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

For each batch of renewable fuel, the QAP would require mass and energy balances of the production process, and verify that the results match expectations for the type of facility being audited (e.g., biodiesel from soybean oil may have different expectations than biodiesel from non-food grade corn oil) based on typical values from prior input/output values, or similar facilities if prior values are not available. Energy inputs from on-site energy creation (e.g., propane, natural gas, coal, biodiesel, heating oil, diesel, gasoline, etc) and/or energy bills, and mass inputs/outputs such as feedstocks, additional chemicals, water, etc., would be required as part of the mass and energy balances.

Finally, the QAP would be required to verify the accuracy of all process-related factors used in calculation of the feedstock energy (FE) under § 80.1426(f)(3)(vi) or (f)(4), as applicable. The production process-related elements that we are proposing to require for QAPs under Option B are shown in the table below. All items would be required to be monitored on a quarterly basis.

TABLE V.A.1.b–1—OPTION B: QAP MONITORING FREQUENCY—PRODUCTION PROCESS-RELATED

	Component
2–1	Production process consistent with EMTS.
2–2	Production process consistent with D code.
2–3	Mass and energy balances appropriate.
2–4	Accuracy of process-related factors used in feedstock energy (FE) calculation.

c. RIN Generation-Related Components

We propose seven required elements in Option B QAPs designed to ensure that the renewable fuel being produced qualifies to generate RINs, and that the number of RINs generated is accurate.

For each batch of renewable fuel, the QAP would be required to verify that volumes of renewable fuel for which RINs are being generated meet, are designated for, and are sold as transportation fuel, heating oil, and/or jet fuel as defined in § 80.1401.

The QAP would be required to verify a number of things related to the fuel type. For instance, the QAP would include verification of the existence of certificates of analysis demonstrating that the renewable fuel being produced meets the applicable specifications and/or definitions in § 80.1401, and would be required to verify contracts with lab(s) for certificates of analysis, unless a facility has an on-site laboratory. If on-site, the QAP would be required to verify lab procedures and test methods. The QAP would be required to verify that renewable fuel being produced at the facility and that can be produced, matches information in RFS2 registration in terms of chemical composition, and would be required to sample and test the final fuel and compare to specifications. The QAP would be required to verify that renewable fuel being produced matches the D code being claimed under § 80.1426, or approved petition under § 80.1416.

The QAP would be required to verify a number of things related to the volume of renewable fuel produced, including a check to ensure that volume temperature correction procedures are followed correctly. The QAP would be required to verify that volume of renewable fuel produced matches expectations for the amount of feedstock being processed. The QAP also would be required to verify the accuracy of all fuel-related factors used in calculation of the feedstock energy, as applicable, including equivalence value for the batch of renewable fuel and the renewable fraction of the fuel as measured by a carbon-14 dating test method.

The QAP would be required to verify that production volume being claimed matches storage and/or distribution capacity and that actual volume production capacity matches the value specified in the facility's RFS2 registration. Finally, the QAP must verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (4), or (5) as applicable, and that RIN generation was consistent with wet gallons produced. The RIN generation-related elements that we are proposing to require for QAPs under Option B are shown in the table below. All items would be required to be monitored on a quarterly basis.

TABLE V.A.1.c–1—OPTION B: QAP MONITORING FREQUENCY—RIN GENERATION-RELATED

	Component
3–1	Renewable fuel sold for qualifying uses.
3–2	Certificates of analysis.
3–3	Renewable fuel matches D code or petition.
3–4	Renewable content R is accurate.
3–5	Equivalence value EV is accurate, appropriate.
3–6	Volume production capacity is consistent with registration.
3–7	RIN generation calculations.

d. RIN Separation-Related Components

We propose three required elements in Option B QAPs to verify RIN separation. First, under the limited circumstances where a renewable fuel producer or importer separates RINs, the QAP would be required to verify that any RIN separation being done by the producer is done according to the requirements of § 80.1429, was reported to EMTS accurately and in a timely manner, and is supported by records. The QAP would be required to ensure that fuel that is exported was not used to generate RINs, or alternatively that RINs were generated but retired. Finally, the QAP must verify the accuracy of the annual attestation.

The RIN separation-related elements that we are proposing to require for QAPs under Option B are shown in the table below. All items would be required to be monitored on a quarterly basis.

TABLE V.A.1.d–1—OPTION B: QAP MONITORING FREQUENCY—RIN SEPARATION-RELATED

	Component
4–1	Verify RIN separation.
4–2	Exported fuel not used to generate RINs.
4–3	Verify accuracy of annual attestation.

2. Approval and Use of QAPs

a. Approval of Quality Assurance Plan

We propose that approval of QAPs under Option B would operate in essentially the same way as under Option A, i.e., a third-party auditor choosing to verify RINs under the quality assurance program must submit a QAP to EPA for approval. A separate QAP is required for each different feedstock/production process/fuel type combination (i.e., pathway). A QAP for a given pathway may be used for multiple facilities for which that pathway applies. We are also proposing that a QAP must be submitted for approval every year. A QAP would be deemed valid on the date EPA notifies the party that submitted the QAP that it has been approved. Only an EPA-approved QAP could be used by a third-party auditor to provide audit services to renewable fuel producers.

b. Frequency of Updates/Revisions to QAPs

We are proposing that a QAP approval by EPA only applies to the plan that was submitted to EPA, and there are specific cases in which we believe a QAP should be modified and resubmitted for approval. We are proposing that a QAP would need to be revised if the renewable fuel producer makes a change in feedstock, production process, or fuel that is not covered by the QAP. Under even one of these conditions, the original plan submitted to EPA would no longer be applicable, and thus a new QAP would be required to be submitted and approved. We request comment on what changes would require a new QAP to be submitted for approval. Specifically, we request comment on whether a new QAP should be required to be submitted to EPA if the audited facility changes operations, feedstock, fuel type, etc.

B. RIN Replacement Mechanisms

As outlined in Section IV, auditors operating under Option A must have a replacement mechanism sufficient to cover a minimum percentage of invalid RINs they verify. We are proposing that there would be no requirement for a replacement mechanism under Option B, though this does not preclude any regulated party from setting up such a mechanism voluntarily or contracting amongst themselves to ensure that the obligated party's potential replacement responsibility is accounted for.

C. Affirmative Defenses

As discussed in Section IV.C, we believe that making an affirmative defense available against otherwise applicable civil liability arising from the transfer or use of invalid RINs would promote greater liquidity in the RIN market, especially the market for RINs generated by smaller producers.

Under the proposed quality assurance program, there would be two types of verified RINs: Those verified through an Option A QAP by a third-party auditor who is required to replace invalidly generated RINs, and those verified through an Option B QAP by a third-party auditor who is not required to replace such RINs. The requirements for establishing an affirmative defense

under Option B are described below. As discussed under Option A, we are proposing that when a person seeks to establish an affirmative defense, they would submit a written report to EPA, along with any necessary supporting documentation, that would demonstrate how the elements were met. The written report would need to be submitted within 30 days of the person discovering the invalidity of the RIN. We welcome comment on the elements of the affirmative defense and the effects of establishing an affirmative defense.

In the event that invalidly generated B–RINs are transferred or used, the person could establish an affirmative defense to the prohibited act of transferring or using the invalid B–RINs for compliance with an RVO if the following elements were proven by a preponderance of evidence:

(1) The RINs in question were verified in accordance with an EPA-approved Option B QAP as defined in EPA regulations;

(2) The RIN owner did not know or have reason to know that the RINs were invalidly generated at the time of transfer or use for compliance, unless a remedial action had been implemented by the RIN generator;

(3) The QAP provider or RIN owner informs the Agency within the next business day of discovering that the RINs in question were invalidly generated;

(4) The RIN owner did not cause the invalidity;

(5) The RIN owner did not have a financial interest in the company that generated the invalid RIN; and

(6) If the RIN owner used the invalid RINs for compliance, the RIN owner adjusted its records, reports, and compliance calculations in which the invalid RIN was used as required by regulations, unless a remedial action by the RIN generator had been implemented.

The affirmative defense requirements pertaining to B–RINs are the same as those for A–RINs, except for the element of knowledge, item (2), and for the element dealing with adjusting RVO calculations, item (6). Owners of verified B–RINs must not have known or had reason to know of the invalidity of the RIN at the time they either transferred a RIN or used a RIN for compliance purposes. This restrains the use of B–RINs more than A–RINs. This is because under Option B, obligated parties are responsible for replacing any invalid RINs used for compliance purposes, notwithstanding an affirmative defense to liability for the civil violation arising from the transfer or use of invalid RINs. We do not believe it would be appropriate to allow an obligated party to use an invalid RIN for compliance with its RVO if it already knew of the invalidity and therefore knew that, even if it successfully avoided liability for a civil violation, it would still be liable for retiring valid RINs in the future to replace the invalid RINs. Similarly, we do not believe it would be appropriate to allow a RIN owner to transfer an invalid RIN to a third party if it knew that the third party could not retire the RIN for compliance with an RVO (or even that it would be possible to sell an invalid B–RIN, given that it had lost its value for compliance purposes). For these reasons, we propose that the owner of an invalid but verified B–RIN cannot assert an affirmative defense if it knows or has reason to know of its invalidity at the time it transfers or uses the RIN for compliance purposes. Such knowledge would subvert the purpose of the quality assurance program. In regard to item (6), we have chosen to have the affirmative defense for B–RINs contingent upon obligated parties taking the invalid B–RINs out of the system or demonstrating that the producer implemented a remedial action by retiring a replacement B–RIN. This would help the Agency efficiently ensure that the environmental goals of the RFS program are achieved by incentivizing obligated parties to make the system whole.

D. Treatment of Invalid B–RINs

The treatment of invalid RINs would differ depending on the type of verified RIN that is chosen by the RIN owner. The treatment of invalid RINs verified under Option A is discussed in Section IV.D. This section describes the responsibilities of regulated parties that generate RINs or take ownership of RINs verified under Option B, but which are ultimately found to have been invalidly generated. We also describe the conditions under which invalid B–RINs must be replaced, by whom, and the mechanisms for doing so.

Additionally, we reiterate that we are proposing an administrative process for replacement of invalid B- RINs that places initial responsibility to replace invalidly generated RINs on the RIN generator responsible for causing the invalidity. In the event the RIN generator does not replace the invalidly generated B–RINs according to the administrative process, the obligated party would be required to replace the invalid RINs if the RINs were verified under Option B or were unverified. Thus, for invalidly generated RINs verified by an Option B QAP and for unverified RINs, the obligated party who owns the RINs would bear the replacement responsibility. However, in the event that regulated parties fail to implement the administrative process for replacement of any RINs, the EPA could bring an enforcement action against any or all of the parties that were required to replace the invalid RINs. See § 80.1474 of the proposed regulations for details of the administrative process for replacement of invalid RINs.

1. Responsibilities for Replacement of Invalid Verified B–RINs

Under Option B, RINs would be verified by a third-party auditor using an EPA-approved QAP just as under Option A. However, under Option B the obligated parties would be responsible for replacing invalidly generated RINs if the RIN generator failed to do so under the administrative process for replacement of invalid RINs.

Obligated parties that purchase B–RINs would not be subject to a civil violation if a B–RIN transferred or used for compliance purposes was later found to have been invalidly generated, if the elements of an affirmative defense were successfully asserted. See Section V.C. However, obligated parties would be responsible for replacing any invalidly generated B–RINs used for compliance purposes. Obligated parties would be free to contract with producers, independent third-party auditors, or other parties, such as brokers, to limit their exposure for replacement of invalidly generated B–RINs. Obligated parties would not be permitted to transfer or use B–RINs they know or have reason to know have been invalidly generated. Any such transfer or use would be deemed a prohibited act, pursuant to § 80.1460.

Option B would provide flexibility for obligated parties, producers, and third-party auditors to minimize the cost of verification services for RINs they deem to be less risky. Obligated parties that want the protection of an affirmative defense but would rather contract on their own terms regarding replacement of invalidly generated RINs could find this option appealing, as it would be easier for them to find coverage for less risky RINs and/or to demand replacement assurance as a term of their purchase contract or audit service contract. Additionally, smaller producers could be drawn to this option because the cost to participate in the quality assurance program could be less under Option B due to the absence of a requirement for a RIN replacement mechanism and the less stringent audit requirements for an Option B QAP.

However, as with Option A, Option B might not work for all parties in all

situations. Obligated parties could still view the potential risk of replacing invalidly generated B–RINs, even though they could be protected by contracts, as too high to purchase from smaller producers. Producers deemed more risky could therefore choose to use Option A QAP auditors. We seek and welcome comments on potential risk containment measures to alleviate obligated parties' potential concerns of purchasing from smaller producers

2. Invalid B–RIN Replacement

As mentioned above and in Section IV.D, the proposed administrative process for replacement of invalid RINs places initial responsibility of replacement of invalid RINs on the RIN generator, regardless of who actually owns the invalid RINs at the time that the invalidity is discovered.

If the RIN generator fails to replace invalidly generated B–RINs in the time frame established in the administrative process specified in the proposed regulation, the obligated party would be responsible for replacing the invalid B–RINs. In the event that regulated parties fail to implement the administrative process for replacement of any RINs, the EPA could bring an enforcement action against any or all of the parties that were required to replace the invalid RINs.

The methods (fully detailed in the proposed regulations in § 80.1474) for replacing invalidly generated RINs under QAP Option B are outlined below. In general, and in contrast to Option A, potentially invalid RINs verified under Option B could not be transferred or used for compliance purposes.

In the event that EPA or the independent third-party auditor alleges that a B–RIN was invalidly generated, the RIN would be a potentially invalid RIN or ''PIR''. The RIN generator would be required to take one of three possible corrective actions within 30 days of being notified of the PIR:

- Retire a valid B–RIN of the same D-type as the PIR, either by purchasing it or by generating a new valid RIN and separating it from the physical volume it represents;
- Retire the invalidly generated RIN (if still in the RIN generator's possession); or
- If the RIN generator believed the PIR was in fact valid, it would submit a written demonstration providing a basis for its claim of validity to either the third-party auditor or EPA, whoever identified the PIR. If the third-party auditor determined that the demonstration was sufficient, the RIN would not need to be replaced; however, EPA would reserve the right to make a determination regarding the validity of the RIN. If EPA determined that the demonstration was sufficient, the RIN would not need to be replaced. However, if the third-party auditor determined it was not sufficient and if the EPA confirmed that determination, or if EPA determined it was not sufficient, it would notify the RIN generator of that finding and again require the RIN generator to replace the PIR within 30 days.

As discussed in section IV.D.2, producers would be permitted to separate RINs from volume they produced for the specific purpose of retiring a RIN to replace a PIR. Similarly, if the RIN generator retired a valid RIN to replace the PIR, the invalid RIN that it replaced could continue to be transferred or used for compliance by any party. However, if the RIN generator for any reason failed to replace the PIR, the obligated party would be notified of the failure and would be required to retire the invalid RIN within 60 days. If the PIR had already been used for compliance with its RVO, the obligated party would be required instead to correct its RVO by subtracting the number of PIRs from it. Unless and until the PIR was replaced, either by the RIN generator or the obligated party, it would remain a PIR and could not be transferred or used for compliance purposes.

3. Process for Replacing Invalid Verified RINs

The process for replacing invalid RINs under Option B would in general be the same as under Option A. This includes the use of particular codes in EMTS for retiring replacement RINs, and a requirement that replacement RINs match the invalid RINs in terms of their D codes and type of verification under the quality assurance program (i.e. Option A or Option B). See the broader discussion under Section IV.D.3 regarding the general process for replacing invalid verified RINs.

In Section IV.D.3.b we discussed the possibility under Option A that replacement RINs may not be generated in the same year that the invalid RINs were generated, and that such circumstances could result in a portion of a given year's applicable volume requirement being fulfilled in a subsequent year. Thus there is a possibility that RIN replacement could cause greater demand for renewable fuel in a given year than the applicable standards are intended to require for that year. This same situation could occur under Option B. However, we do not believe that this circumstance would create a problem for the renewable fuels market under our proposed program for the reasons discussed in Section IV. In addition, we are proposing a limited exemption to B–RIN replacement that would absolve obligated parties from replacing a small percentage of invalidly generated B–RINs. See Section V.D.4 below. The level of this limited exemption may be above the number of invalid B–RINs generated, given that our proposed quality assurance program is expected to reduce incidences of invalidly generated RINs. As such, the occasions in which invalid B–RINs must be replaced would be correspondingly smaller, or even non-existent.

4. Temporary Limited Exemption for Invalid RIN Replacement

During the development of the proposed QAP process for today's NPRM, some regulated parties raised the possibility of a regulatory provision that would permit a small fraction of invalid RINs to not be replaced by parties downstream from the generator/producer. Given the perceived concerns about RINs generated by the smallest producers, such a limited exemption for invalid RIN replacement could help provide a means for those small producers to sell their RINs, particularly during the first two years while auditors are learning to implement QAPs. We believe that a provision for a temporary limited exemption for invalid RIN replacement may be appropriate, and we request comment on it. It is important to note that this would only apply to replacement by parties other than the producer. The issue is not whether some percentage of RINs should never have to be replaced, but instead what is the appropriate approach for replacement by parties other than the producer.

a. Determination of the Appropriate Exemption Level

The number of invalid RINs that could be exempt from replacement should be a small fraction of the overall volume obligation. We believe that this fraction should be consistent with some measure of real-world uncertainty in whether the renewable fuel volume requirements will be precisely met. Since there are several potential sources of uncertainty, there are several different ways that an appropriate exemption level for invalid RIN replacement could be calculated.

One source of uncertainty is the roundoff in the applicable percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. In the RFS1 program that was finalized on May 1,

2007, we determined that the applicable percentage standards would be specified to two decimal places.[12] As a result, the total number of RINs that are actually used to comply with the applicable standards may differ by up to 0.005% from the precise number of RINs that would be needed to exactly match the volume mandates. For example, the applicable 2012 standard for biomass-based diesel was set at 0.91% on January 9, 2012, corresponding to a volume requirement of 1.0 bill gal. Since this percentage standard was the result of rounding to two decimal places, the actual calculated value could have been as high as 0.91499% and still round to 0.91%. Obligated party compliance with a standard of 0.91% instead of 0.91499% would mean that the actual volume of biodiesel consumed could be 0.9945 bill gal instead of 1.0 bill gal, a difference of 0.0055%. This same result can be obtained by dividing the maximum potential rounding error of 0.005% by the applicable percentage standard of 0.91%.

If we were to base the exemption for invalid RIN replacement on the roundoff error in the applicable percentage standards, the calculation would be carried out as follows:

$$\textit{Exemption for invalid RIN replacement} = \frac{\textit{Maximum potential roundoff error}\,(0.005\%)}{\textit{Applicable percentage standard}}$$

Table V.D.4.a–1 provides the results if this formula were applied to the applicable 2012 standards.

TABLE V.D.4.a–1—EXEMPTION FOR INVALID RIN REPLACEMENT BASED ON ROUNDOFF ERROR IN APPLICABLE STANDARDS

	Applicable standard (percent)	Exemption for RIN replacement (percent)
Cellulosic biofuel	0.006	[a] 8.3
Biomass-based diesel	0.91	0.55
Advanced biofuel	1.21	0.41
Total renewable fuel	9.23	0.05

[a] Based on a maximum potential roundoff error of 0.0005% instead of 0.005%

Another source of uncertainty in whether the required volumes of renewable fuel will actually be consumed is the difference between the projected volumes of gasoline and diesel that are used to calculate the applicable percentage standards, and the volumes of gasoline and diesel that are actually consumed. Using EIA's Short-Term Energy Outlook (STEO), we determined that projections of the sum of gasoline and diesel have typically exceeded the actual volumes by an average of 1.7%.

TABLE V.D.4.a–2—COMPARISON OF PROJECTED VERSUS ACTUAL OBLIGATED VOLUMES

	Projected (bill gal)	Actual (bill gal)	Difference (percent)
2011	196.9	193.1	−1.9
2010	196.6	196.2	−0.2
2009	200.1	193.7	−3.2
2008	210.0	198.4	−5.5
2007	208.4	206.8	−0.7
2006	206.5	205.9	−0.3
2005 [a]	204.0	203.7	−0.2
Average	.....	.....	−1.7

Source: EIA's Short Term Energy Outlook, Table 4a. Values represent the sum of motor gasoline and distillate fuel oil consumption. All projected volumes for a given year are from the October release in the previous year.
[a] STEO for years prior to 2005 do not include projections.

Based on the formula used to calculate the applicable percentage standards, a shortfall of 1.7% in actual gasoline + diesel consumption volumes will produce a 1.7% shortfall in the volume of renewable fuel consumed. Since Congress established the mechanism for calculating the applicable standards, including the use of projected volumes, this shortfall represents an acceptable source of uncertainty in the RFS program. As such, it may also represent an acceptable level of uncertainty in the context of establishing a limited exemption for invalid RIN replacement by parties other than the renewable fuel producer.

Based on our review of potential sources of uncertainty, it appears that differences between projected and actual gasoline and diesel volumes is the largest source of uncertainty. Using the historical differences shown in Table V.D.4.a–2, we propose that the limited exemption for invalid RIN replacement be set at 2%, approximating the 1.7% value to account for the variability shown in Table V.D.4.a–2. However, we request comment on a different value based on one of the alternative methods described above.

b. How would the limited exemption be applied?

A primary purpose of the overall proposal would be to address the market liquidity concerns discussed above,

[12] Since the required volumes of cellulosic biofuel have been significantly less than the volumes specified in the statute, we have used three decimal places for the percentage standard for cellulosic biofuel.

largely focused on the ability of small producers to sell RINs. As described in Section IV, QAP Option A addresses this by providing a significant degree of oversight on RIN generation, and placing the replacement obligation on the QAP auditor, not the obligated party. As a result, we do not believe that it would be necessary for the limited exemption to apply under Option A, and we propose that the limited exemption would only apply under Option B. In addition, we propose that the limited exemption would be available only to obligated parties that are required to replace invalid RINs, not renewable fuel producers that are required to replace invalid RINs.

Nevertheless, under Option A an auditor would be responsible for replacing invalidly generated RINs. If the limited exemption for RIN replacement was also available to the auditor, it might help reduce the costs associated with any RIN replacement mechanisms that auditors carry. We request comment on whether the limited exemption should also apply under Option A.

While a limited exemption for RIN replacement could also apply under the existing regulations, where RINs are not verified by an EPA-approved independent auditor, we do not believe that this would be appropriate. The voluntary QAP process that we are proposing in today's NPRM is an alternative to the existing regulatory provisions governing liability for the transfer or use of invalid RINs and their replacement. We are considering a limited exemption for RIN replacement only in this context, as a component of the voluntary QAP process and other measures aimed at achieving a regulatory structure that facilitates reasonable oversight of RIN generation, adequate assurance that invalid RINs will be replaced, and a market for RINs where the opportunity to produce and sell RINs is spread broadly across producers, including small producers.

We propose that the limited exemption would apply separately to each of the four standards under the RFS program: cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. We do not believe it would be appropriate to apply the limited exemption only to the total renewable fuel standard, since doing so would permit much more than 2% of invalid advanced biofuel RINs to not be replaced. For instance, in 2012 the required volume of advanced biofuel is 2.0 bill gal, while the total renewable fuel requirement is 15.2 bill gal. If the 2% limited exemption was applied only to the total renewable fuel requirement, allowing up to 258 mill invalid RINs to not be replaced, this would represent 13% of the advanced biofuel requirement if all the invalid RINs were advanced biofuel RINs. It would represent an even larger fraction of biomass-based diesel.

We also propose that the limited exemption would apply separately to each obligated party that is responsible for replacing invalid RINs rather than to the industry as a whole. For instance, an obligated party would apply the 2% limited exemption to each of its four Renewable Volume Obligations (RVOs) to determine the number of RINs of each of the four types that would not need to be replaced should they be found to be invalidly generated. This approach would ensure that each obligated party can estimate at the beginning of each year how many RINs would not need to be replaced should they be determined to be invalid, and moreover would allow him to adjust his RIN acquisition activities in real-time to address risk based on the number of invalid RINs he had already acquired. If instead we applied the limited exemption to the nationwide volumes, we do not believe it would have the intended effect of reducing perceived risk for obligated parties considering acquiring RINs from smaller renewable fuel producers. So long as the total nationwide number of invalid RINs fell below 2%, no obligated party would be required to replace invalid RINs. However, each individual obligated party would never know if any RINs he acquires would be protected from replacement should they be determined to be invalid. Moreover, this approach would create an inherent imbalance among obligated parties holding invalid RINs since it could potentially allow one party to avoid replacing a large number of invalid RINs while effectively forcing another party to replace all of its invalid RINs.

We propose that the limited exemption would represent the threshold below which invalid RINs would not be required to be replaced rather than a trigger that determines when all invalid RINs must be replaced. Under our proposed threshold approach, an obligated party would know at the beginning of each year that 2% of the RINs needed to meet each of his RVOs would not need to be replaced if those RINs were B–RINs and were determined to be invalidly generated. The limited exemptions would be calculated as follows:

$$LE_{CB,i} = 0.02 \times RVO_{CB,i}$$
$$LE_{BBD,i} = 0.02 \times RVO_{BBD,i}$$
$$LE_{AB,i} = 0.02 \times RVO_{AB,i}$$
$$LE_{RF,i} = 0.02 \times RVO_{RF,i}$$

Where:

$LE_{CB,i}$ = Limited exemption for cellulosic biofuel for year i

$LE_{BBD,i}$ = Limited exemption for biomass-based diesel for year i

$LE_{AB,i}$ = Limited exemption for advanced biofuel for year i

$LE_{RF,i}$ = Limited exemption for renewable for year i

$RVO_{CB,i}$ = The Renewable Volume Obligation for cellulosic biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for the obligated party for calendar year i after 2010, in gallons, pursuant to § 80.1407.

$RVO_{AB,i}$ = The Renewable Volume Obligation for advanced biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{RF,i}$ = The Renewable Volume Obligation for renewable fuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

Under this threshold approach, the number of B–RINs than an obligated party would be required to replace would be those in excess of the applicable limited exemption LE as calculated above. Under an alternative trigger approach, an obligated party would not be required to replace any invalid RINs so long as the number of invalid RINs it owns falls below 2% of his RVOs. However, if at any time within a calendar year the number of invalid RINs it owns exceeded 2% of his RVOs, it would be required to replace all of them. We do not believe that this alternative would have the intended effect of reducing perceived risk for obligated parties considering acquiring RINs from smaller renewable fuel producers.

Finally, we propose that the limited exemption would be applicable only during the first two years of the quality assurance program, for RINs verified under Option B in calendar years 2013 and 2014. During this timeframe, we expect regulated parties to be working to optimize implementation of the quality assurance program, and it may not be possible for all of the smallest renewable fuel producers to participate under QAP Option A. The limited exemption can help to ensure that the RIN market is more liquid as the program starts up, as obligated parties would be less concerned about potential invalidity for B–RINs. But as the program matures, we believe that there will be much less need for a limited exemption since small renewable fuel producers will have greater opportunities to have their RINs verified under Option A. Moreover, obligated parties will gain experience in the first

two years of the program with Option B, and we would expect their confidence in the validity of B–RINs to grow over this timeframe as well. We request comment on this approach and whether it should apply for a period longer than two years.

VI. Proposed Requirements for Auditors

Today, we are proposing a number of requirements for the independent third-party auditors that would use approved quality assurance plans (QAPs) to audit renewable fuel production to verify that RINs were validly generated by the producer. Qualified, independent third-party auditors would be integral to the successful implementation of the combination of provisions EPA is proposing. Under both options, third-party auditors would need to meet minimum qualifications (e.g. independence and professional competency requirements). All third-party auditors would be required to register with EPA, similar to how other parties (e.g. gasoline refiners, renewable fuel producers, etc.) register for other EPA fuels programs. We are also proposing to require that third-party auditors under both options have professional liability errors and omissions insurance (E&O Insurance). However, under Option A, third-party auditors would also be required to have an approved RIN replacement mechanism since, as discussed in Section IV.B, they would be responsible to replace RINs that become invalid for any reason after being verified by the auditor. During registration, third-party auditors would submit QAPs to EPA for approval, demonstrate that they meet minimum qualifications, and provide the Agency with other information as discussed below. After EPA has approved a QAP and registered the third-party auditor, we propose that the auditor could flag RINs in EMTS as verified. This would provide parties throughout the renewable fuel distribution chain the confidence that a RIN has been validly generated and that an affirmative defense may be established. Finally, in order to ensure that QAPs are appropriately implemented, we are also proposing recordkeeping, reporting, and attest engagement requirements on third-party auditors consistent with similar requirements on other parties in RFS.

A. Who can be an auditor?

One key element of the QAP process is the minimum qualifications that the auditors conducting facility visits must have. Today we are proposing minimum qualifications for an auditor in order to implement a QAP and verify RINs. First, as is required of independent third-parties that conduct engineering reviews for renewable fuel producers under RFS, auditors would be required to be independent of the renewable fuel producers that they are auditing. Second, auditors would be required to have the professional expertise to effectively implement QAPs. Third, under Option A, third-party auditors would be required to also have an approved RIN replacement mechanism, as discussed in Section IV above to assure replacement of invalid RINs generated from facilities that an auditor has audited, as well as E&O insurance. EPA believes that these key qualifications would provide assurances that auditors could successfully implement QAPs and would help avoid the generation of invalid RINs at the fuel producer level. We seek comment on whether any additional minimum qualifications would be necessary for auditors to successfully implement QAPs or aid in the generation of invalid RINs at facilities.

1. Independence

The first, and perhaps the most important, requirement for auditors is that they remain independent of renewable fuel producers. Independence of the auditor from upstream parties is necessary to ensure that RINs are not inappropriately validated due to a conflict of interest between the third-party auditor and the renewable fuel producer. For example, if auditors were employed by the renewable fuel producers to validate RINs produced from a facility owned by the producer, the auditor would have an incentive to ensure that RINs produced from that facility appeared valid, while the RINs may in fact be invalid. In the RFS2 final rule, we defined an independent third-party as a party that was not operated by the renewable fuel producer (or any subsidiary or employee of the producer) and free from any interest in the renewable fuel producer's business. Similar provisions have also appeared in RFS1 and other fuels programs when a third-party is required to independently test fuel samples, audit reporting and recordkeeping requirements, and/or conduct in-use compliance surveys. Thus, we are proposing the same independent third-party definition for third-party auditors that we used in RFS2 for an independent third-party to conduct engineering reviews. Additionally, we are proposing that independent third-party auditors submit an affidavit attesting to their independence as part of registration (discussed below).

Although the proposed requirement for independence is limited to renewable fuel producers, it could be extended to include independence from other parties as well. However, we believe this is unnecessary. This proposed rulemaking is not intended to discourage any current efforts that an obligated party or other intermediary may take to ensure compliance with RFS requirements, and requiring that third-party auditors be independent of all parties may hamper existing efforts by industry to mitigate invalid RIN generation. However, some parties may have a conflict of interest with third-party auditors that might promote the improper validation of RINs. For example, a third-party auditor could also be acting on behalf of a RIN-owner, which may be an incentive to validate RINs fraudulently to sell to other parties. Therefore, we specifically seek comment over whether we should expand the proposed definition of independence to include other parties.

We also recognize that a conflict of interest may exist if the independent third-party implementing a QAP for a renewable fuel production facility was the same party that conducted the facility's engineering review required under § 80.1450(b)(2), since the auditor would essentially be verifying its own assessment of a facility. Similar reasoning could apply to the independent third-parties that do attest engagements. However, we recognize that, especially in the beginning, there may be a limited number of qualified independent-third party auditors capable of implementing QAPs for a facility if we do not allow independent third-parties that conducted engineering reviews or attest engagements to also implement QAPs for a given facility. Therefore, we specifically seek comment on whether we should exclude a third-party that has conducted an engineering review or attest engagement for a facility from implementing a QAP for that same facility. We also seek comment on whether any other situations present a conflict of interest for independent third-party auditors that may disqualify a third-party from being able to implement a QAP for a facility.

2. Professionally Qualified To Implement a QAP

Another key element to ensure the effective implementation of QAPs at renewable fuel production facilities would be that auditors have the necessary professional expertise and credentials. In RFS2, we require that each renewable fuel production facility undergo an engineering review by a

licensed professional engineer as part of registration. In this NPRM, we are proposing a similar requirement for auditors since the verification of production capabilities of a quality assurance program should be similar to the type of review conducted in the engineering review process for RFS registration. Independent third-party auditors would demonstrate that they possess the required professional expertise during registration. We are not proposing that companies that register as a third-party auditor be solely constituted of professional engineers to implement an EPA-approved QAP and conduct facility audits; however, a licensed professional engineer would need to supervise and or work in a team with other employees of the third-party auditing company.

However, since the complexity of QAP implementation may vary substantially based on size and scope of the QAP and whether RINs are verified under Option A or Option B, independent third-parties that conduct audits may need to demonstrate additional professional qualifications to EPA before they can be registered to implement QAPs. For example, periodic (e.g. quarterly) audits may include careful review of several months' worth of invoices and other bookkeeping records for a facility, and this type of audit may be more suitable to a certified public accountant (CPA) than a professional engineer. Additionally, we require that all responsible parties in RFS undergo annual attest engagements conducted by a licensed certified public accountant (CPA) or certified internal auditor (CIA) to verify similar information. Although we are not proposing that independent third-parties that implement QAPs demonstrate that CPAs conduct audits, we are seeking comments over whether third-parties must have any additional qualifications (e.g. minimum years of experience, professional licensing in states where audited facilities are located, etc.) before we register them as auditors under the proposed quality assurance program.

Another potential qualification, suggested by a party that may conduct third-party facility audits, could be that an independent third-party auditor has sufficient knowledge of the RFS program in order to conduct audits and potentially validate RINs. Although we believe that third-party auditors should have thorough knowledge of RFS requirements to implement QAPs, it would be difficult to construct a standard to measure a third-party auditors ''competency.'' It was suggested by a party that may conduct third-party facility audits that we require elements of various ISO validation standards such as, for example, ISO standards used for validation of international greenhouse gas programs. We believe that these standards could serve as a useful template in the development of similar voluntary consensus standard board (e.g. ISO and ASTM International) specifications for third-party auditors. However, we also believe that standards such as these are best developed through the existing collaborative processes that draw upon the expertise of affected stakeholders. It is also important to note that several independent third-parties have developed sufficient expertise with RFS to provide useful validation services to obligated parties, and we believe that there exist adequate incentives for parties to ensure that third-party auditors understand the RFS program sufficiently to prepare and implement QAPs. Therefore, we are not proposing to create such a requirement for auditors, but we do seek comment on whether the Agency should be responsible for the development of a similarly detailed professional competency standard to validate RINs.

3. Errors and Omissions Insurance

An additional element to ensure the effective implementation of QAPs at renewable fuel production facilities would be to require independent third-party auditors to maintain professional liability insurance, commonly known as Errors and Omissions or E&O insurance. We are proposing this as a registration requirement for both QAP Option A and Option B. The amount of insurance should be, at a minimum, equal to 2% of the RINs the auditor verifies in a year to cover the replacement of any RINs verified by an auditor that turn out to be invalid as a result of auditor error, omission, or negligence. Additionally, we are proposing that independent third-party auditors would be required to use insurance providers that possess a financial strength rating in the top four categories from either Standard & Poor's or Moody's (i.e., AAA, AA, A or BBB for Standard & Poor's and Aaa, Aa, A, or Baa for Moody's). We feel that requiring E&O insurance would help to achieve the level of professionalism necessary for the quality assurance program to work as intended. Possession of E&O insurance would lend business and financial credibility to a potential QAP auditor in the eyes of their customers, as well as provide a level of comfort for the Agency that the statutory volume mandate would be met in the event of error, omission, or negligence on the part of a QAP auditor.

Since E&O insurance policies are intended to provide coverage for any failings on the part of the auditor, we do not believe that the 2% cap on RIN replacement proposed for Option A should apply to RIN replacement that is covered by an E&O insurance policy. Thus we are proposing that the 2% cap on RIN replacement would only apply to invalidly generated RINs that the auditor is responsible for replacing, but which are not the result of errors, omissions, or negligence on the part of the auditor as defined in the E&O policy.

We seek comment on (1) Whether the requirement of E&O insurance would fulfill the goals discussed above, (2) whether the requirement would prevent some third-party auditors from being able to participate in the quality assurance program, and (3) what, if any, minimum amount of coverage should be required and what that minimum amount should be based on.

B. Registration Requirements

In order to implement and enforce the new quality assurance program that we are proposing today, we believe that third-party auditors must become regulated parties under the RFS program. We believe that it would be necessary to impose registration, recordkeeping, and reporting requirements on third-party auditors to ensure that appropriate QAPs are executed according to the requirements specified in the proposed regulations. This would allow EPA and affected parties to monitor and have confidence that third-party auditors are implementing QAPs appropriately.

One necessary requirement for third-party auditors would be that they have to register with EPA as a regulated party through the Agency's Central Data Exchange (CDX). We already require that obligated parties, renewable fuel producers, and RIN owners register with EPA, and that those parties provide us with production information, basic company information, and in the case of renewable fuel producers, third-party engineering reviews. Requiring third-party auditors to register would allow EPA to determine that the basic minimum requirements discussed in Section VI.A. are met. Registering auditors would also facilitate the process of allowing third-party auditors to indentify RINs as having been verified in EMTS so other parties may recognize RINs as having been verified under an EPA-approved QAP.

During registration, we propose that third-party auditors would need to

provide basic contact information as well as their basic corporate structure. This information is useful both as contact information and to help the Agency determine whether a third-party auditor is a legitimate legal entity. Third-party auditors would be required to indicate which facilities they intend to audit. EPA recognizes that a third-party auditor may contract with additional renewable fuel producers and facilities to implement QAPs after initial registration, and therefore, we are also requiring that a third-party auditor be required to update their registration each time they wish to verify RINs for additional renewable fuel producers or new facilities. This information would help the Agency ensure that QAPs submitted to the EPA as part of the registration process are consistent with the type of renewable fuel facilities being audited.

Since we are proposing a requirement that third-party auditors implementing QAPs under both Options A and B have E&O insurance (see Section VI.A.3), third-party auditors would be required to provide copies of any applicable E&O insurance policies during the registration process. If a third-party auditor is implementing a QAP under Option A, they would need to also provide EPA with copies of pertinent documents and other evidence that demonstrate they have an adequate replacement mechanism in place. This information is necessary to ensure that third-party auditors have the ability to cover their RIN replacement responsibilities. Third-party auditors would also be expected to provide EPA with copies of professional certifications (see Section VI.A.2) and a signed affidavit that states that the third-party auditor is independent of and free from any conflicts of interest with any renewable fuel producer that for which they intend on verifying RINs.

Third-party auditors would also be required to provide QAPs for Agency approval during registration, and EPA would be required to approve a QAP before a third-party auditor could be registered and use a QAP for a facility audit. EPA believes that it would be inappropriate to register a third-party auditor without an appropriate QAP. QAP details are discussed in more detail in Sections IV.A and V.A for Options A and B, respectively.

Recognizing that foreign third-party auditors may have unique challenges compared with domestic third-party auditors, EPA is proposing additional registration requirements for foreign third-party auditors. In the final RFS2 rulemaking, we outlined a number of requirements that applied to foreign RIN owners (see 40 CFR 80.1467). These additional requirements are designed to ensure enforcement of RFS regulations at the foreign RIN owner's place of business and are similar to requirements for foreign parties under other fuels regulations. For example, under RFS, foreign RIN owners must submit reports in English and provide translated documents in English upon demand from EPA inspectors or auditors, must submit themselves to administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, and post a bond covering a portion of the gallon-RINs that a foreign RIN owner owns. EPA is proposing the same requirements be extended to foreign third-party auditors and seeks comment over whether fewer or additional requirements would be necessary.

The effectiveness of this proposed rule is contingent on the integrity of the third-party auditors and their ability to competently implement approved QAPs. The registration process is designed to help ensure that QAPs are implemented by competent, qualified and independent third-party auditors. A third-party auditor may only verify RINs under a voluntary quality assurance program if the auditor is registered with EPA. In order to ensure that auditors fulfill their regulatory obligations, we propose that each auditor would renew its registration on an annual basis. The renewed registration submissions would include updates to information required for initial registration and an affidavit by the auditor that it is in full compliance with applicable QAP regulations. The affidavit would include a specific certified statement that the third-party auditor (1) Has only verified RINs that it reviewed under an EPA-approved QAP, (2) has informed EPA and RIN generators about all potentially invalid RINs that it discovered, and (3) has fulfilled its RIN replacement obligation if applicable. Third-party auditors that fail to accurately and completely renew their registrations will no longer be registered and therefore can no longer implement QAPs and verify RINs. We also propose that we may revoke a third-party auditor's registration at any time if it determines that the third-party auditor has failed to meet its regulatory requirements. Furthermore, we are proposing that we can deny a registration application from any third-party auditor that employs any person that was involved in the verification of RINs for a third-party auditor whose registration was revoked. We seek comment on whether this approach is appropriate.

We also seek comment on whether we should require that third-party auditors' registration information, including QAPs, be made publicly available. We believe that there is a positive correlation between the effectiveness of a quality assurance program and the amount of transparency in the third-party auditor's registration and QAP implementation processes. By making registration information publicly available, it would allow other parties to evaluate whether they have confidence in a QAP conducted by a third-party auditor. This would also allow affected stakeholders to notify EPA of concerns or deficiencies in a third-party auditor's registration or QAP. Some third-party auditors may argue that such information is confidential business information. To address this concern, EPA could allow third-party auditors to submit both confidential and public versions of registration documents to ensure that sensitive information is protected.

C. Other Responsibilities of Auditors

1. Notifying the Agency When There Are Problems

We believe that an important element of today's proposed quality assurance program is the timely notification and correction of problems that are identified during the facility audit process, and a requirement to communicate potential problems that are uncovered through this process. Historically, in other EPA fuels programs, such as the RFG, ULSD, and E15 Survey Programs, we require that the independent party that implements the program report potential violations of standards within 24 hours of identifying the potentially non-compliant fuel sample. This has allowed the Agency to work with responsible parties to correct potential issues in a timely manner, thereby reducing the potential environmental impact of the non-compliant fuel. We believe that the utility of this third-party notification would enhance the effectiveness of today's proposed quality assurance program. Therefore, we are proposing requirements that third-party auditors would be required to notify EPA and the renewable fuel producer of potential problems, including but not necessarily limited to fraud, errors, and/or omissions, within 24 hours after a problem has been identified. We seek comment on whether EPA should allow third-party auditors more or less time to report potential issues that arise during

audits of renewable fuel production facilities.

2. Indentifying Verified RINs in EMTS

The primary goal of today's proposed quality assurance program is to allow downstream parties to feel confident that RINs are being appropriately generated at renewable fuel production facilities. Third-party auditors have an integral role in providing this assurance by verifying that facilities are in fact producing the type and quantity of renewable fuels from the appropriate feedstocks using specified pathways, and that the associated RINs have been validly generated. The next step would be for third-party auditors to identify RINs as having been verified so that downstream parties would know which RINs had been subjected to review by an auditor and thus can be the basis for an affirmative defense. To attain this goal, we are proposing requirements that third-party auditors would be responsible for tagging RINs as having been ''verified'' in a way that would be clearly visible in EMTS after they have been generated.

We propose that verifying a RIN in EMTS be prospective, meaning that a RIN could only be verified after an auditor has audited a facility in accordance with an approved QAP and met other conditions discussed below. Apart from the verification of RINs during the interim period between release of the NPRM and the final rule, we do not believe that there are any benefits from allowing verification of RINs retroactively in EMTS that warrant the complication, confusion, and risks associated with it.

We also believe that before a QAP can be implemented by a third-party auditor, a relationship must be established in CDX between the third-party auditor and the renewable fuel producer or importer. This process would occur during the initial registration of a third-party auditor and after any updates to a third-party auditor's registration. This procedure would be necessary to ensure that both the third-party auditor and the renewable fuel producer or importer have agreed to establish a quality assurance program under a proposed affirmative defense option. Also as discussed in Section IV.B, EPA may not recognize this relationship unless the third-party auditor satisfies applicable replacement mechanism requirements. Hence, we propose that renewable fuel producers would have to acknowledge through an update of their registration that a third-party auditor will implement a QAP and verify RINs at the renewable fuel producer's facility.

Third-party auditors should also have the ability to stop verification of newly generated RINs should a problem arise during the QAP implementation process. Since third-party auditors would be in the best position to identify potentially invalid RINs before EPA and other parties, allowing third-party auditors this flexibility is necessary to ensure that problems with invalid RINs are quickly identified and corrected. Additionally, since under Option A and potentially as a contractual matter Option B, a third-party auditor may have some liability to replace RINs, they should have the ability to limit their liability should they notice through the implementation of a QAP that RINs may be invalid. However, if a third-party auditor removes the ''flag'' for a facility that is generating RINs, this will not affect a previously verified RIN's ability to be used for compliance if it has been generated prior to the third-party auditor choosing to no longer validate a facility's RINs. Since one of the goals of today's proposed quality assurance program would be to mitigate the transaction and use of invalid RINs for compliance purposes, we are proposing that third-party auditors under both options be required to remove the validation flag for RINs generated at a facility until problems are rectified and confidence is restored to both the third-party and EPA that newly generated RINs are valid.

As mentioned above, one key requirement for the effective implementation of a QAP by a third-party party auditor would be that the third-party auditor must be free from conflicts of interest with renewable fuel producers that are being audited. However, some existing third-party auditors currently act as agents for renewable fuel producers by not only verifying that RINs are appropriately generated at renewable fuel producer's facilities, but by also handling a renewable fuel producer's reporting activities in EMTS (e.g. they submit reports to generate RINs in EMTS for renewable fuel volumes produced at a facility owned/operated by the renewable fuel producer). This may present a conflict of interest since those third-party auditors have a contractual relationship to act on behalf of the renewable fuel producer. On the other hand, since third-party auditors are going to be responsible for verifying all RINs generated at a facility in EMTS, they may be able to serve as an agent for a renewable fuel producer in this capacity without an apparent conflict of interest. We seek comment on whether we should allow third-party auditors to act as agents in the generation of RINs for renewable fuel producers. We also seek comment on any element of today's proposal to require third-party auditors to validate RINs in EMTS.

Finally, as pointed out elsewhere, Option A RINs may have more value in the marketplace than Option B RINs. We seek comment on mechanisms that the market will employ to differentiate such RINs across the supply chain and how EPA may facilitate such transfers in the context of EMTS.

3. Recordkeeping, Reporting, and Attest Engagements

a. Recordkeeping Requirements

Under both options, we propose third-party auditors would be required to implement EPA-approved QAPs and maintain records of all verification and validation activities related to the implementation of a quality assurance program. These records would serve to demonstrate that a QAP was appropriately implemented if invalid RINs are reported at a later date.

b. Reporting Requirements

Under the existing RFS program, obligated parties, exporters of renewable fuel, producers and importers of renewable fuels, and any party who owns RINs must report appropriate information to EPA on a regular (e.g. quarterly and/or annual) basis. Similarly, we are proposing that the third-party auditors would be required to submit quarterly reports, in line with existing RFS quarterly reporting deadlines, identifying how many RINs the auditor has verified the previous quarter. We are also proposing that independent third-party auditors would have to include the facilities audited and the dates of those audits. This information would allow EPA to compare a third-party auditor's reported activity to information gleaned from EMTS to ensure that third-party auditors are appropriately implementing QAPs.

If a third-party auditor were to implement a QAP under Option A, then he would be required to also report the size of the replacement mechanism he has obtained to cover their potential RIN replacement liability. We believe that these reports would help the Agency ensure that third-party auditors are maintaining an appropriate replacement mechanism to replace invalid RINs relative to the number of RINs verified by the third-party auditor. For example, renewable production facilities sometimes increase production levels, which may increase the size of the RIN

replacement mechanism a third-party auditor would need to have.

We recognize that some may see this as providing the same information twice since we are proposing to require that independent third-party auditors identify facilities they intend to audit and provide proof of an appropriate replacement mechanism during registration. However, we believe that quarterly reports indicating where and when audits occurred and the size of the appropriate RIN replacement mechanism relative to the number of RINs validated by third-party auditors would provide a useful compliance tool to better ensure that third-party auditors are effectively implementing QAPs since failure to fulfill reporting requirements may constitute a violation to the Clean Air Act and may subject the responsible party to the penalties discussed below. We seek comment on whether we should require quarterly reports from third-party auditors, or more/less frequent reporting, and whether we should require third-party auditors to report additional information on a regular basis.

c. Attest Engagements

We seek comment on whether to require that third-party auditors have an annual attest engagement similar to those required of other parties currently required under § 80.1464. Attest engagements are used in many of the Agency's fuels programs and are similar to financial audits. Attest engagements consist of an independent, professional review of compliance records and reports. During discussions with stakeholders, some suggested that we establish an ''audit the auditor'' program. We believe that attest engagements may be an appropriate means of verifying the accuracy of the information reported to us by the third-party auditors. Similar to current RFS requirements, the attest engagement could consist of an outside certified CPA or certified independent auditor following agreed upon procedures to determine whether underlying records, reported items, and transactions agree, and issuing a report as to their findings and that attest engagements occur annually. These requirements would be similar to those we require of other parties in RFS.

d. Prohibited Activities for Third-Party Auditors

We are proposing new prohibition and liability provisions applicable to third-party auditors. Since we are creating a new regulated party that will be integral to the successful implementation of voluntary quality assurance programs, we believe it is appropriate to hold these parties liable if they fail to comply with the proposed requirements. The prohibition and liability provisions would be similar to those of other fuels programs. We propose to identify certain prohibited acts, such as failing to properly implement an EPA-approved QAP; failing to timely notify RIN generators and EPA of potentially invalid RINs; failing to replace invalid RINs, if applicable; and verifying RINs that are invalid.

In addition, a third party auditor who is subject to an affirmative requirement under this proposal will be liable for a failure to comply with the requirement. For example, third-party auditors will be liable for separate violations for failing to comply with the registration, reporting and recordkeeping requirements. Like other fuels programs, we propose that if the third party auditor causes another person to violate a prohibition or fail to comply with a requirement, the third party auditor may be found liable for the violation.

The penalty and injunction provisions in section 211(d) of the Clean Air Act apply to violations of the renewable fuels regulations implemented pursuant to section 211(o). Accordingly, under the proposed rule, any person who violates any proposed prohibition or requirement may be subject to civil penalties of $37,500 for every day of each such violation and for the amount of economic benefit or savings resulting from the violation.

We request comment on the need for any additional prohibition and liability provisions specific for third-party auditors.

VII. Proposed Requirements for Audits

Under the proposed quality assurance program, an auditor would use an approved QAP as the basis for the verification of renewable fuel produced and RINs generated at a facility. In order to verify production, the auditor must review documents, monitor facility activity, contact entities that do business with the facility, and conduct onsite visits. All of these components constitute an audit of the facility. The elements of a QAP are discussed in some detail in sections IV and V. The following provides some additional detail on the proposed elements of an audit. As with other provisions of the RFS program, the proposed use of a QAP and the associated audit would also be available to foreign producers of renewable fuel. We request comment on specific aspects of the proposed program with respect to foreign producers, and specifically request comment on possible additional program elements that may only be applicable to foreign producers.

A. Document Review and Monitoring

The auditor should ensure that the producer has and is fulfilling the EPA record-keeping requirements at § 80.1454(c)(1)(i)(A)–(B) and (ii). We expect the auditor to evaluate reports submitted to EPA, and propose that these be reports year-to-date, as applicable, and from the previous year, for comparison. These include Activity Reports, RIN transaction reports, RIN generation reports, and Renewable Fuel producer Co-product reports. The third-party engineering review and annual attestation report should also be reviewed.

Reports submitted to EPA should be cross-checked with other records. For instance, the auditor should have access to certificates of analysis. The auditor must check recent feedstock receipts (if the producer uses a variety of feedstocks, then the auditor should be provided with receipts for each feedstock). Integrated facilities may not have internal sales receipts for feedstock usage, so an alternative paper trail will likely be required. Similar to the feedstock document review and crosscheck, renewable fuel and co-product delivery documentation should be part of any audit.

For all documentation reviews, we would expect the auditor to analyze reports to determine whether a producer is reporting volumes consistently, and to require (from the producer) explanation for missing or inaccurate reports. The auditor should investigate discrepancies between volumes reported and processed. Other reports the auditor should consider as part of its review include the EIA M22 Survey, any state reports, federal and state tax returns, and association dues reports. The auditor should also determine if there is any import or foreign biofuel producer documentation.

Of prime concern to the proposed quality assurance program is the verification of RINs, and there are many aspects to this part of the audit. The auditor should evaluate monthly RIN generation reports submitted through the EMTS, verify that RINs generated match wet gallons sold, determine if the facility purchases or separates RINs, and review product transfer documents for all RIN activity. We propose that this review encompass random samples of documentation; however, based on the documentation provided by the producer, the auditor could decide to review all documentation. Furthermore, and in order to ensure that renewable

fuel producers will maintain their records in a manner that will allow third party auditors and the EPA to efficiently evaluate whether RINs were properly generated, we are also proposing to change § 80.1426 to state that RINs may only be generated for fuel that is demonstrated pursuant to the reporting requirements of § 80.1451, the recordkeeping requirements of § 80.1454, or in other records maintained by the producer, to be produced in accordance with the applicable pathway listed in Table 1 to § 80.1426(f) or a petition approved by EPA pursuant to § 80.1416.

Finally, for those components of the audit that we propose to require ongoing, or batch-level monitoring, the QAP would be required to provide details of the means for collection and evaluation of the data collected on an ongoing basis.

We request comment on whether and how the document review and monitoring discussed here should be more detailed (and/or include different details) for facilities subject to an Option A QAP than for those subject to an Option B QAP.

B. Buyer/Seller Contacts

At the end of an audit, the auditor should know all customers of and suppliers to the facility, and all parties that distribute feedstock to and fuel from the facility. We expect the auditor to contact the customers and suppliers in order to verify sales and purchases, in accordance with the requirements under the applicable QAP (i.e., Option A or Option B). We envision this proposed requirement as a ''spot check''; the auditor should be able to provide a reason for such calls regarding the entity called, questions asked, etc. We request comment on whether and how the audit requirements for Buyer and Seller contacts should differ between facilities subject to an Option A QAP than for those subject to an Option B QAP.

C. Onsite Visits

The goal of the onsite visit is to verify that plant has the technology to produce, store, and blend biofuels at registered levels, is operating in accordance with the facility's registration, and that the RINs generated since the last visit are valid. The auditor will likely use plant maps and photos as part of this analysis, and should compare and contrast the plant's infrastructure with the third-party engineering review reports on file with EPA. The auditor should note the size and number of storage and blending tanks, and observe the measurement of volume in the tanks. The auditor should determine whether the process rate is consistent with annual and quarterly production of the facility, and whether the facility has quality process controls in place (e.g., are ASTM International specifications being followed where appropriate).

We believe that mass and energy balances on the facility are critical components of any audit. Because integrated facilities will likely have energy usage that is not directly related to biofuel production, the auditor should have alternate means of assessing and correlating energy usage to production.

The proposed requirements for onsite visits are the same for Option A QAP and Option B QAPs. We are proposing that an auditor conduct at least four (4) onsite visits per year, or every three (3) months. We request comment on this proposed onsite visit frequency. In addition, we request comment on whether, over time, less frequent audits would be reasonable under an Option B QAP. We are proposing that new production facilities should be audited before verification of RINs.

We expect that each visit could take from one to several days, depending on the size and complexity of the facility, the availability of records, changes since the last audit, etc. The proposed required visits are the minimum. There may be value in visiting more often. It is possible that there may be some value to requiring unannounced visits as well, and we request comment on the value and impact that such unannounced site visits would have on the effectiveness of the program and its associated costs.

D. RIN Verification

We are proposing that RINs would be verified only for a specified period *following* an audit. Although an audit of any entity usually certifies what *was* done, the audits we are proposing are prospective in that the audits are verifying that past practices and procedures have been followed, and are currently in place for future RINs that will be generated. RINs generated after the completion of the audit could then be verified until the next audit is completed, but for no longer than 100 days after completion of the audit. We believe this prospective approach is appropriate for the proposed quality assurance program because the audit would be verifying the starting point from which future RINs would be generated. In that sense, the upcoming period of RIN generation is starting with a verified set of conditions. In addition, it could place a serious impediment in the market for RINs if their verification followed RIN generation by any significant period of time.

To allow for some flexibility around the proposed standard audit schedule (i.e., quarterly, or roughly every 90 days), we are proposing that RINs generated for up to 100 days after the last audit could be verified, unless the real time monitoring data or other information obtained by the QAP auditor prior to the onsite audit indicates that RINs are invalid. If another audit was not conducted within 100 days, RINs could no longer be verified for that facility until a new audit was conducted. We request comment on this coverage period.

If a verified RIN was invalidly generated, it would indicate that the QAP that had been used to verify that RIN was deficient in some aspect. We request comment on whether, in the event of discovery of invalid RINs, a more frequent onsite visit schedule should be required. We are not inclined to require such an outcome at this point because one of the purposes of the quality assurance programs is to proactively identify invalidly-generated RINs. In addition, it is highly anticipated that there will also be situations where no invalid RINs have been generated for an extended period of time for a given facility. Under this scenario, less frequent onsite visits may be warranted. We request comment on whether lower audit frequency levels should be allowed after a significant period of time with no invalidly generated RINS, and suggestions as to appropriate reduced onsite visit frequencies.

VIII. Additional Changes Related to the Definition and Treatment of Invalid RINs

A. Export and Exporter Provisions

In this action, we propose to address the following issues regarding the export of renewable fuels: Exporter RVO requirements, identification of renewable fuel content for all fuel transfers, and retirement of RINs at the time of export. The Agency is proposing to address these issues primarily because the export of renewable fuel, particularly ethanol and biodiesel, has become more prevalent in the transportation fuel market. These proposed changes address how RINs should be handled when renewable fuel is exported. In addition, it will provide EPA with the data needed to track renewable fuel exports. The intent is to ensure that exported renewable fuel is not included in meeting the mandated domestic annual renewable fuel volume requirement.

1. Exporter RVO

Any volume of renewable fuel which is exported, either neat or blended, requires calculation of an export RVO. In this rule, we are making minor changes to the regulations to address concerns that some regulated parties may be misinterpreting the regulations and only establishing an RVO for exported renewable fuel that is ''in its neat form or blended with gasoline or diesel.'' The opening clause of 40 CFR 80.1430(a) clearly provides that an RVO must be satisfied by any party that ''owns any amount of renewable fuel'' that is exported, and 40 CFR 80.1430(f) also states that ''each exporter of renewable fuel'' must satisfy an RVO. The portion of 80.1430(a) that provides that the regulation applies ''whether [the exported renewable fuel] is in its neat form or blended with gasoline or diesel'' was intended to make the point, through specific examples, that the regulation applies to both neat renewable fuels and renewable fuel blends that are exported. Thus, the reference to ''gasoline or diesel'' blends is illustrative, and does not exclude other exported renewable fuel blends, such as biodiesel blended into fuel oils, from the scope of the regulation. We are proposing changes to 40 CFR 80.1430(a) to remove the references to examples of fuel blended with ''gasoline and diesel,'' and state in this section of the regulations that the requirement to establish an RVO applies whether the exported renewable fuel is in its neat form or blended.

We seek comment on what additional amendments, if any, should be made to the export provisions at 80.1430, the recordkeeping requirements at 80.1454, and the reporting requirements at 80.1451, to ensure that exporter RVOs adequately make the RIN market whole for any exported biofuel for which RINs may have been generated. In particular EPA seeks comment on whether EPA should limit exporter RVO requirements in situations where exporters can document that either no RINs were ever generated for the exported fuel, or that any such RINs were previously retired.

2. Require Identification of Renewable Fuel Content

As background, the Federal Trade Commission, as directed by EISA established labeling requirements for biofuel blends.[13] EISA specifically addressed three categories of biodiesel fuel blends, requiring labels with precise wording for two. First, fuel blends containing no more than five percent biodiesel and no more than five percent biomass-based diesel, and that meet ASTM D975 (''Standard Specification for Diesel Fuel Oils''), need not be labeled. Second, fuel blends containing more than five but no more than twenty percent biomass-based diesel or biodiesel ''shall be labeled 'contains biomass-based diesel or biodiesel in quantities between five percent and 20 percent.' '' EISA Sec. 205(b)(2) (emphasis added). Finally, blends containing more than 20 percent biodiesel or biomass-based diesel ''shall be labeled 'contains more than 20 percent biomass-based diesel or biodiesel.' '' EISA Sec. 205(b)(3) (emphasis added). As fuel blends containing no more than five percent biomass-based diesel are not required to be labeled, it is possible that some exporters may believe that the fuel they are exporting has a lower biofuel content than it actually does or they may be claiming that it's straight diesel fuel.

To better document and communicate the biodiesel content of any biofuel blend throughout the fuel supply chain (not just biofuel blends containing more than five percent biomass-based diesel), we propose to extend the existing product transfer document requirements at 40 CFR 80.1453 to fuel blends such that any person that sells or otherwise transfers title to any biomass-based diesel blend or biodiesel blend to any other person for resale of the product shall prepare a product transfer document evidencing such transfer. Such product transfer documents may be in the form of an invoice, bill of lading, bill of sale or other written instrument meeting the requirements of this subsection. All such transfer documents shall include the name of the transferor, the name of the transferee, the date of transfer, the volume in gallons of the product transferred, and either the volume in gallons or percentage of biomass-based diesel or biodiesel that is contained in the blended product. Each person making such transfer shall maintain each transfer document required by this subsection for a period of four years from the transfer date.

3. RIN Retirement Requirements

The current RFS regulations require exporters to demonstrate compliance with their exporter RVOs on an annual basis, by February 28 of the year following the compliance year in question. 40 CFR 80.1451(a). EPA is seeking comment on the period of time that should be allowed for retirement of RINs as a result of renewable fuel export, and whether the current deficit carry-over provision in 80.1451(a)(1)(xii) should be eliminated for exporters. Given the volatility in the renewable fuel export market, a shorter time period may ease concerns for related uncertainty in the RIN market. This problem was anticipated, as stated in the final RFS2 Rule: ''However, we are aware of some exporters who sell RINs that they separate as a source of revenue, with the intention to purchase replacement RINs on the open RIN market later in the year to comply with their RVOs.'' This provision was included to allow flexibility for exporters. However, EPA is considering whether a change is required at this time to prevent instability and abuse.

One approach under consideration would require exporters to clearly demonstrate on a quarterly basis that they have acquired RINs sufficient to cover volumes exported in the quarter. This shorter time frame would significantly reduce the window of opportunity for large exports of renewable fuel without exporters having obtained the RINs that must ultimately be retired. Alternatively, EPA could require the immediate retirement of RINs, at the time of export or within a limited window such as 30 days after export. This would prevent rolling deficits carried by exporters, and guard against unanticipated market changes, or even ''shell companies'' closing up shop in order to avoid the cost of meeting their export RVO. Eliminating the deficit carry-forward provision as it applies to exporters would also further the same objectives. EPA solicits comment on these options.

B. ''Downstream'' Invalidation and Product Transfer Documents

The definition of ''renewable fuel'' requires that the fuel be used to replace or reduce the quantity of fossil fuel present in transportation fuel, heating oil, or jet fuel. Several stakeholders have requested that the EPA amend the regulations to address concerns that properly generated RINs may become invalid as a result of the fuel not being used in or as transportation fuel, heating oil, or jet fuel ''downstream'' of the renewable fuel producer or importer, that is after it has left the custody of the producer or importer. In response to these concerns, EPA is proposing amendments to clarify and expand on existing requirements regarding the designation of qualifying renewable fuel, and is also proposing new limitations on RIN generation for those types of renewable fuel that can be expected to be used in or as non-qualifying fuel.

[13] Automotive Fuel Ratings, Certification and Posting Final Rule, 73 FR 40154, July 11, 2008.

1. Designation of Intended Renewable Fuel Use

The existing regulations at § 80.1426(a) and (c) require renewable fuel producers and importers to generate RINs for fuel that: (1) Qualifies for a D code pursuant to § 80.1426(f) or has been approved by a petition pursuant to § 80.1416, and (2) is demonstrated to be produced from renewable biomass pursuant to the recordkeeping and reporting requirements in the regulations. However, § 80.1426(c) also specifies that RINs may not be generated for fuel that is not designated or intended for use as transportation fuel, heating oil or jet fuel, i.e., for a ''non-qualifying fuel use''.

We are proposing amendments to § 80.1426(a) and (c), and conforming amendments to the product transfer document (PTD) regulations in § 80.1453, to require all renewable fuel producers and importers to designate all RIN-generating renewable fuel as transportation fuel, heating oil or jet fuel on the PTDs that a renewable fuel producer or importer prepares to accompany a fuel shipment. These changes would standardize the existing ''designation'' requirement for RIN generators by specifying the location and content of the designations. The requirement to designate intended fuel uses in PTDs would operate as a constant reminder to renewable fuel producers and importers that RINs may only be generated for fuel intended for use as transportation fuel, heating oil or jet fuel, i.e., qualifying fuel uses, and would facilitate EPA enforcement of the designation requirement. The regulations would require that designations be made in good faith. Parties designating fuel for a qualifying fuel use who in fact knew that the fuel would likely be used in a fuel other than transportation or jet fuel or heating oil (a ''non-qualifying fuel use'') would be in violation of this proposed regulation, and subject to civil penalties.

We are also proposing to include special conditions, in addition to the PTD requirements, related to the distribution and sale of any renewable fuel that is not typically sold for use in or as transportation fuel, jet fuel, or heating oil. We propose that these conditions would apply to all RIN-generating renewable fuels other than ethanol, biodiesel, and ''drop in'' renewable diesel. Biogas and renewable electricity would also be excluded from these conditions since sections 80.1426(f)(10) and (11) include specific conditions designed to ensure that these fuels are used in transportation fuel. These special conditions must be satisfied in order for RINs to be generated for those fuels. We are proposing to include these new requirements together with other conditions for RIN generation in §§ 80.1426(a) and (c), and conforming amendments to the registration, reporting and recordkeeping sections.

EPA believes that denatured ethanol, biodiesel that meets the ASTM 6751 specifications and renewable diesel that meets the ASTM D 975 Grade No. 1–D or No. 2–D specifications are highly likely to be used as transportation fuel, heating oil or jet fuel. Accordingly, to relieve burdens associated with identifying what we expect to be de minimis volumes of these fuels used for non-qualifying purposes, and to avoid the potential for downstream invalidation of RINs for such fuels and associated detrimental impacts that such potential may have on RIN markets, we are proposing that validly generated RINs for these fuels will remain valid regardless of the downstream use of the fuel. However, parties upstream from the ultimate consumer who re-designate any renewable fuel for which RINs were generated for a non-qualifying use would be subject to the proposed RIN retirement provisions in 80.1433 that are discussed below. We seek comment on whether these fuels are highly likely to be used only as transportation fuel, heating oil or jet fuel, and on whether other biofuel types should be similarly recognized. We also seek comment on whether biodiesel and renewable fuel diesel producers who generate RINs should be required to sample and test their fuels to ensure that the fuel is appropriate for use as transportation fuel, and what specific sampling and testing requirements would be appropriate. For all other fuels, we think that it is appropriate to limit the opportunity for RIN generation to circumstances where the producer or importer has taken actions to ensure that the fuel is used for transportation fuel, heating oil or jet fuel. Where such actions are taken, we are proposing that RINs generated for qualifying renewable fuel will remain valid regardless of the final downstream use.

While we are proposing that the special conditions related to renewable fuel that is not typically sold for use in or as transportation fuel, jet fuel, or heating oil would not apply to ''drop in'' renewable diesel, we also recognize that there is at least one circumstance in which renewable diesel may benefit from being subject to the same special conditions. Renewable diesel is a product that was originally introduced by companies attempting to create a ''drop-in'' transportation fuel made from renewable sources that met the same specifications as petroleum based transportation diesel. Some renewable fuel producers are currently generating RINs for fuel that they claim meets the exiting definition of renewable diesel, but which is not chemically equivalent to a petroleum diesel fuel under the renewable diesel definition. This product is primarily composed of triglycerides that have not been chemically converted to a hydrocarbon, and can be produced through simple filtration of vegetable oils with little processing equipment or effort. Further, this product cannot be used as a ''drop-in'' transportation fuel but instead can only be used at blend levels with diesel fuel that are approved under 40 CFR part 79, and moreover it is commonly used for non-qualifying fuel uses. To address these issues, we are proposing to clarify in the definition of ''non-ester renewable diesel'' that qualifying products must be approved under 40 CFR part 79 at specific blend levels with diesel fuel. However, it may also be necessary to differentiate between the two types of renewable diesel (''drop in'' and triglycerides) so industry may easily determine which product and which RINs they are purchasing, and to allow EPA enforcement to differentiate between the two products upon inspection of a renewable fuel facility. We request comment on limiting the definition of non-ester renewable diesel, or renewable diesel, to fuel that meets the ASTM D 975 Grade No. 1–D or No. 2–D, and that are homogenous hydrocarbons. We could then refer to all other fuels that meet the current definition of renewable diesel as viscous non-ester renewable diesel, and they would be subject to the special conditions related to the distribution and sale of renewable fuel that is not typically sold for use in or as transportation fuel, heating oil or jet fuel. This approach would not remove anyone from the program and could give greater certainty to the industry.

The new regulatory requirements are designed to ensure that these fuels are in fact used in or as transportation fuel, heating oil or jet fuel, and therefore that RINs are appropriately generated for these fuels. These requirements are necessary because these other renewable fuels are commonly used in non-qualifying fuels. For instance, butanol is a common chemical feedstock but can also be used in transportation fuel. The EPA believes that the only current allowable use for these other fuels (insofar as RINs are associated with them) would be as a blending

component or additive for gasoline or diesel fuels. We are proposing two options for generating valid RINs for these fuels. First, the renewable fuel producer or importer of these fuels may generate RINs if they maintain contemporaneous records demonstrating that they used the fuel as a blendstock or additive and that the final product is a transportation fuel, heating oil or jet fuel that met all applicable standards. Second, if the renewable fuel producer or importer does not use the fuel itself as a blendstock or additive for gasoline or diesel fuel, they may still generate RINs if they enter into a contract that requires the party who purchases the fuel to use it as a blendstock or additive for gasoline or diesel fuel, and that meets certain requirements designed to assure that the buyer does, in fact, use the fuel as a blendstock or additive in a transportation fuel, heating oil or jet fuel that meets all applicable standards.

In order to verify that these fuels are produced for use as a transportation fuel, heating or jet fuel, EPA is proposing conforming registration, recordkeeping and reporting requirements. We are proposing that parties who generate RINs for the production of these renewable fuels will have to include information in their registration stating if they will be using the fuel as a blendstock or additive at their facility or if they will be selling the fuel to another party who will be using the fuel as a blendstock or additive. If the renewable fuel producer or importer will be using the fuel as a blendstock or additive, they will be required to describe their blending activities in their registration application. If the renewable fuel producer or importer will be selling the fuel to another party who will be using the fuel as a blendstock or the fuel was blended into a qualifying fuel downstream of the renewable fuel producer or importer, these parties will need to provide additional information to verify that the fuel was, in fact, blended for a qualifying fuel use. We solicit comment on how these new registration requirements should apply to currently-registered entities. Options include requiring an immediate (within 30–60 days) registration update, or allowing the new submissions to occur at the facilities' next 3-year registration update. We propose that renewable fuel producers or importers who contract with a downstream party to blend their product to make a qualifying renewable fuel be required to include affidavits in their reports from the downstream parties to verify that the fuel was used in or as a qualifying fuel. This concept is modeled after the existing regulations relating to RIN generation for biogas and renewable electricity, which require the use of downstream affidavits to verify proper use of the fuel. We also propose that any party who produces or blends these fuels will need to keep records relating to the blending activities to allow the QAP providers and the EPA to verify that RINs were properly generated. We seek comment on whether these requirements are appropriate for renewable fuels that are not highly likely to be used for qualifying RFS fuels or whether there are other mechanisms that could provide adequate assurance that these fuels are used for transportation fuel, heating oil or jet fuel.

2. Required Actions Regarding Fuel for Which RINs Have Been Generated That Is Used for a Non-Qualifying Fuel Use

Section 80.1429(f) of the existing regulations provides that any person who uses or designates a renewable fuel for an application other than transportation fuel, heating oil or jet fuel (i.e., a non-qualifying fuel use) must retire any RINs *received* with that renewable fuel. Section 80.1429(f) was intended to require the person using or designating RIN-generating fuel in or for a non-qualifying fuel use to retire the RINs received with the fuel so that they cannot be used for RFS compliance. This approach, however, places the burden of using fuel for a qualifying fuel use on the end user when the fuel has already been designated upstream as either a qualifying or non-qualifying fuel. In other words, once the fuel reaches the end user, it has already been designated as transportation fuel, heating oil or jet fuel, or has been redesignated for a non-qualifying fuel use. The end user has no part in the designation or redesignation of the fuel.

In order to ensure that RINs generated with renewable fuels are retired if the fuel is redesignated for a non-qualifying fuel use, we propose to tighten the requirements for RIN retirement for any party that redesignates a renewable RIN-generating fuel for a non-qualifying fuel use, and to relieve end users of such an obligation. To accomplish this, we propose to remove and reserve paragraph 80.1429(f) of the regulations and to add a new section 80.1433 to require parties that designate fuel for which RINs were generated for a non-qualifying fuel use, i.e. for something other than transportation fuel, heating oil, or jet fuel, to retire an appropriate number and type of RINs. We believe that any person designating fuel for which RINs have been generated for a non-qualifying use should make the RIN system whole by retiring an equivalent number and type of RINs. This approach places the burden of ensuring an appropriate number of RINs are retired on a party in the fuel distribution business, rather than an end user. Such parties tend to have greater expertise in complying with regulatory requirements, and the potential number of parties potentially subject to these requirements is far reduced by placing the burden for RIN retirement upstream of end users. We further propose new subsection 80.1460(g) which would prohibit a person from designating a qualifying renewable fuel for which RINs were generated for a non-qualifying fuel use, unless the requirements of section 80.1433 have been met. The proposed amendments would require retirement of applicable RINs within a 10 day period.

3. RIN Generation for Fuel Made With Renewable Fuel Feedstock

The existing regulations do not provide a pathway for any party to generate RINs for a fuel produced using another renewable fuel as a feedstock. Parties seeking to do so, however, may submit a petition requesting approval pursuant to § 80.1416. 40 CFR 80.1426(c)(6)(ii) sets forth certain prohibitions that would apply if, in the future, EPA approved a pathway that allowed a party to generate RINs for a fuel that was produced using another renewable fuel as a feedstock. These prohibitions are designed to prevent parties from generating more than one RIN for the same volume of renewable fuel. For example, the production of ETBE uses ethanol as a feedstock, and RINs may have been previously generated if the ethanol used to make the ETBE was denatured. The ETBE producer in this example should not be allowed to generate RINs representing the full energy equivalence of the finished ETBE, if RINs were previously generated for the ethanol feedstock. In order to address this type of scenario, we are proposing to modify § 80.1426(c)(6) to prohibit a party from generating new RINs for a fuel that is made from a feedstock that is a renewable fuel, where the feedstock that is a renewable fuel was produced by another party, unless EPA approves a petition under § 80.1416 to allow for the generation of RINs for a fuel that was produced using another renewable fuel as a feedstock and the petition and approval include an enforceable mechanism to prevent double counting of RINs.

We also propose to amend § 80.1426(f)(4) to address the potential

for ''double discounting'' for non-renewable feedstocks when renewable fuel is produced by co-processing renewable biomass and non-renewable feedstocks to produce a fuel that is partially renewable. Specifically, we have discovered that the existing regulations may inadvertently cause the number of RINs generated to be discounted twice for the presence of non-renewable feedstocks. The first would be in the calculation of the equivalence value under § 80.1415(c)(1), and the second would be in the calculation of the number of RINs generated under § 80.1426(f)(4)(i). To correct this problem, we are proposing to add a new paragraph (f)(4)(iii) so that for purposes of § 80.1426(f)(4) only, the equivalence value does not include a discount for non-renewable feedstocks.

4. Use of Renewable Fuel in Ocean-Going Vessels

Another issue the Agency is aware of concerns the use of renewable fuel-containing MVNRLM in ocean-going vessels. The definition of ''transportation fuel'' specifically excludes ''fuel for use in ocean-going vessels.'' 40 CFR 80.1401. In the preamble to the March 26, 2010 RFS rule, the Agency stated that '' 'for use in ocean-going vessels' means residual or distillate fuels other than Motor Vehicle Nonroad Locomotive and Marine (MVNRLM) intended to be used to power large ocean-going vessels.'' 75 FR 14670, 14721 (March 26, 2010). The rule also defines ''fuel for use in ocean going vessels'' as including ECA marine fuel. 40 CFR 80.1401. Some parties have questioned whether MVNRLM that is blended into ECA marine fuel is ''fuel for ocean going vessels'' such that RINs generated for the renewable fuel component of MVNRLM become invalid upon that use. It is the Agency's interpretation that the definition of ''fuel for use in an ocean-going vessel'' in § 80.1401 does not include MVNRLM that is blended into ECA marine fuel. This is based on the definitions of fuel for use in an ocean-going vessel and of ECA marine fuel, as explained in the March 2010 rulemaking.[14] Therefore, RINs that have been or are properly generated for any renewable fuel component of MVNRLM that is blended to produce ECA fuel remain valid. EPA notes that the vast majority of MVNRLM is used for qualifying RFS purposes, and that only a trivial quantity of such fuels is used to produce ECA fuel for ocean-going vessels. Given the complexity and regulatory burden that would be involved in tracking trivial quantities of MVNRLM that may be used in ECA fuel, the RFS regulations appropriately treat all properly generated RINS for renewable fuel blended into MVNRLM as valid, regardless of the possible downstream blending of MVNRLM with ECA fuel. In addition, under today's proposal, additional regulatory requirements designed to ensure that renewable fuel is put to a qualifying use would be imposed on certain types of renewable fuel, as discussed above. These new requirements would further limit the quantity of renewable fuel that could ultimately be blended with ECA fuel used in ocean going vessels.

We seek comment on whether our interpretation of ''fuel for use in an ocean-going vessel'' creates any potential problems.

5. Treatment of Improperly Separated RINs

Section 80.1431(a)(1)(viii) currently provides that a RIN that was improperly separated pursuant to 80.1429 is invalid. Under section 80.1460(c)(1), obligated parties may not use invalid RINs for compliance purposes. EPA proposes to remove 80.1431(a)(1)(viii) of the regulations, and to add section 80.1460(h), identifying the improper separation of RINs as a prohibited act. The net effect of these changes would be to allow obligated parties to use RINs that were improperly separated for compliance purposes, since the RINs would no longer be considered invalid. However, improper RIN separation would continue to be a prohibited act under the regulations.

EPA seeks comment on whether the RFS regulations should instead maintain section 80.1431(a)(1)(viii), but also require a more comprehensive and robust mechanism to allow parties that acquire separated RINs and EPA to evaluate whether the RINs were properly separated and used in or for a qualifying fuel. The goal would be to make it easier for EPA and obligated parties to determine whether RINs are valid. These mechanisms could require a designate and track approach, with corresponding recordkeeping and reporting requirements, similar to the program set forth in the diesel sulfur regulations at 40 CFR part 80, subpart I. In general, under Subpart I, each time custody of fuel is transferred from one facility to another, the transferor must designate the fuel and record its volume. The party who receives custody of the fuel must record the same information, to ensure that each party relies on the same designation and volume for its own compliance purposes. Maintaining proper PTDs, with proper designations, is also part of the diesel sulfur program's recordkeeping requirements. EPA seeks comment on whether the RFS regulations should establish similar designation and track requirements addressed at tracking and recording RIN separation events and end use of renewable fuels.

Additionally, EPA requests comment on whether we should require RIN separators to include with their quarterly reports additional records related to qualifying separation events that are already required as part of the recordkeeping regulations. See § 80.1454 for a description of the records that must be retained by parties. EPA believes requiring this information to be reported quarterly will allow EPA to review the information in a more timely way than in the existing structure, where EPA must request it from RIN separators on an ad hoc basis. Additionally, all parties who separate RINs must sign and certify that the information reported to EPA under the RFS program is true and accurate.

Inaccurate, misleading, and/or false reports submitted to EPA may be used in a criminal prosecution against the submitter and other culpable persons. Enhanced reporting requirements for RIN separators would facilitate EPA's ability to investigate and prosecute persons who engage in RIN separation violations. EPA seeks comment on the type and scope of reporting that would most likely assist EPA in identifying RIN separation violators.

C. Treatment of Confidential Business Information

1. Overview

In the March 26, 2010 RFS2 final rule, the EPA addressed a number of confidentiality concerns raised by comments to the rule proposed on May 26, 2009 (74 FR 24904). At the time, the Agency explained that renewable fuel producers would need to submit information to support their registration and report information to the Agency for implementation of the RFS program. The EPA also confirmed that we would treat any information submitted with a claim that it was confidential business information (''CBI'') as CBI in accordance with existing Agency regulations at 40 CFR part 2, subpart B. Information submitted to the Agency in compliance with the RFS2 regulations has been handled in that fashion. The EPA typically makes confidentiality determinations on a case-by-case basis. However, subsequent to the

[14] This does not change the fact that the blend of fuel that results from blending MVNRLM or NRLM with ECA marine fuel would still be ECA marine fuel and subject to the sulfur limits that apply to such fuel.

implementation of the RFS program, we have received hundreds of requests for information; the need for case-by-case determinations has prevented timely release of non-CBI information.

Due to the high level of interest in RFS compliance information, the EPA is considering approaches to increasing public access to information collected by the RFS program. At the same time, we want to ensure that we continue to properly process CBI claims and protect company's confidential information. The EPA is now proposing to make certain RFS registration and reporting information publicly available because we believe that greater transparency will work hand-in-hand with our QAP process to improve the integrity of information submitted for RFS compliance and deters fraudulent behavior. As discussed in more detail below, today's action provides affected businesses subject to Part 80, other stakeholders, and the general public an opportunity to comment on the proposal to publish RFS registration and reporting information that would be aggregated into monthly, quarterly, and annual reports. This action is part of a broader effort to increase transparency and provide information to the public that would promote greater liquidity in the RIN market in a way that assures reasonable oversight of RIN generation.

Notably also, many interested parties—including renewable fuel producers—have asked the EPA to publish this information. Since implementation of the RFS program, the Agency has received numerous requests for this information. Not only are members of the public and interested stakeholders interested in reviewing this information, many parties to the RFS program are requesting that the Agency release this information in order to make the RFS program more transparent. The EPA is soliciting comments on whether, for any information in the format proposed for release, there are unique circumstances where disclosing this information would cause substantial harm to a company's competitive position.

2. Proposal To Disclose Aggregated RFS Registration Information

a. Approach

The EPA is proposing to summarize and publish aggregated registration and QAP information required under 40 CFR 80.1450(b), (c), and (g) from independent third-party auditors and renewable fuel producers and importers that are registered with the RFS program. We propose to publish this information by facility and on a monthly basis. Each monthly report of registration information will disclose certain registration information for each producer, importer, and QAP. The monthly reports would be cumulative reports of all registrations accepted by the EPA; they would include existing registrations, new registrations, and registration updates. For each facility, we would publish the company name, facility name, facility type/fuel product, total permitted capacity, production volume, production process type, feedstocks, D-Code, and any co-products. This information would not reveal proprietary production processes. For example, the production process would be identified by the production process description used in Table 1 to 40 CFR part 1426, or for a production process approved through the Agency's pathway petition process, it would be identified by the name associated with that process in OTAQReg. An example of what information we intend to publish appears below:

TABLE VIII.C.2.a–1—EXAMPLE REGISTRATION REPORT

Company name	Facility name	Facility type	Total permitted capacity	Production volume	Feedstock	Process type	D code	Co-products
Example Ethanol Company.	Example Ethanol Facility.	Ethanol	125,000	20	Corn Starch ...	Wet mill process using biomass or biogas for process energy.	6	Distillers grains, corn oil.
Example Biodiesel Company.	Example Biodiesel Facility.	Biodiesel	125,000	500	Canola Oil	Trans-esterification using natural gas or biomass for process energy.	4	None.

After publishing these monthly registration reports, we intend to summarize and update the information so that we can publish quarterly and annual registration reports of the same type of information. At this time, the EPA is not proposing to publish registration information at the broader company-level or more specific batch-level. We also are not proposing, at this time, to publish registration submissions or information from supplemental registration documents (e.g., heat plans, separated food waste plans). The EPA is interested in stakeholder views on this approach.

b. Rationale for Proposal

The EPA believes that the information elements as described above are not entitled to confidential treatment for a number of reasons. First, this type of registration information is already available through other public outlets. For example, for publicly-traded companies, this information is filed with the U.S. Security Exchange Commission in their annual 10–K and quarterly 10–Q reports in the company's overview. In those reports, companies identify their fuel products, production facilities, co-products, production processes, production capacities, actual production volumes, and feedstocks. Additionally, many producers currently post this type of information on their public Web sites and issue press releases broadcasting this information. Regardless of whether a company is publicly traded or posts this information on its Web site, all renewable fuel producers report this information to the U.S. Department of Energy's National Renewable Energy Laboratory, which publishes the information on their Web site. Since this information is already publicly available, it would not be eligible for confidential treatment under the Agency's existing CBI regulations

under 40 CFR part 2, subpart B, and therefore, it could be released.

Second, the EPA believes that release of this information would not cause substantial harm to the competitive position of a Part 80 business submitter. The information elements, submitted under Part 80, and proposed to be made publicly available consist of information on renewable fuel producers' facility fuel product, total permitted capacity, production volume, production process type, feedstocks, D-Code, and co-products. These information elements do not reveal any proprietary information, or any other information that would likely provide insight for competitors to gain an advantage. For example, consider the Example Ethanol Facility:

• Example Ethanol Facility is a renewable fuel producer that produces ethanol from corn starch using a wet mill process and generates D-Code 6 RINs for its ethanol. The production of ethanol from cornstarch using a wet mill process is typical of an ethanol production facility, widely-known, and demonstrates that the facility meets RFS regulatory requirements for RIN generation. The feedstock, process, and fuel product must comply with an approved RFS pathway, which are specific to these three information elements and identified in Table 1 to section 1426 or a publicly-available EPA petition approval. These information elements are necessary for a producer to determine if it meets RFS requirements. These information elements describe commonly used renewable fuel production information and do not describe any particular specifications about an individual facility's unique processing. Because these information elements are widely known and do not reveal details about the precise production processes used, they are not the type of information that a competitor could use to develop marketing strategies to undermine the producer's competitive position. Thus, disclosing information elements containing feedstock, process type, D-Code, and fuel type would not reveal—and could not be used to determine—an individual facility's production efficiency, production costs, or pricing structure.

• That the Example Ethanol Facility is permitted to produce 125,000 gallons of ethanol but only produces 20 gallons of ethanol does not disclose proprietary information. Releasing total permitted capacity and production volumes do not disclose actual production rates; nor could it be used to determine facility-level production rates or the quantity of feedstock used to produce that volume. This information would not provide a competitor with business insights and/or any competitive advantage over the Example Ethanol Facility. Accordingly, the EPA believes that disclosing permitted capacity and production volumes would not cause substantial harm to a business submitter's competitive position.

• That the Example Ethanol Facility produced distillers grains and corn oil as co-products from wet mill process does not disclose proprietary information. Wet mill processing is widely known to result in the co-production of distillers grains and corn oil, and these co-products must be disclosed to the EPA with the producer's registration for compliance with 40 CFR 80.1426. This is not the type of information that could be used by a competitor to gain business insights or advantage over the Example Ethanol Producer. Co-product information is widely known among the renewable fuel industry and would not contain details regarding co-product characteristics, production volume, quality, quantity, production efficiency, costs, or pricing structure. Therefore, the EPA believes that disclosing a facility's co-product would not cause substantial harm to business submitter's competitive position.

3. Proposal To Disclose Aggregated RFS Report Information

a. Approach

In addition to publishing monthly, quarterly, and annual registration reports, we are also proposing to publish monthly, quarterly and/or annual report of information that is required to be reported to the EPA under 40 CFR 80.1452(b) for renewable fuel producers and importers. We are proposing to publish this information in the same manner as registration information—on a corporate and/or facility-by-facility basis, as described in the chart below. The EPA intends to publish:

• The name of the renewable fuel producer or importer and associated registration information (i.e., name, address, feedstock, process, fuel type, D-Code). The EPA also intends to depict this information in a variety of formats, including geographically (i.e., maps) or tables to identify where renewable fuel production facilities are located (40 CFR 80.1450(b) and 80.1452(b)(1)).

• The EPA company and facility registration numbers and the associated registration information of the renewable fuel producers, foreign ethanol producers and importers that generated RINs in EMTS during the applicable time period(s) (40 CFR 80.1450(b), 80.1452(b)(2), 80.1452(b)(3), 80.1452(b)(4), and 80.1452(b)(5)). This information will be provided for each facility where renewable fuel was produced.

• The D-code of RINs generated by the facility during the time period (40 CFR 80.1452(b)(6)). For each D-code generated at a facility, the EPA will publish the number of RINs generated (40 CFR 80.1452(b)(12)), volume of fuel produced (40 CFR 80.1452(b)(10)), fuel type (40 CFR 80.1452(b)(9)), production process (40 CFR 80.1452(b)(7)), feedstocks (40 CFR 80.1452(b)(13)), and co-products (40 CFR 80.1452(b)(15)).

• The EPA also intends to release the volume of denaturant (for ethanol), applicable equivalence value, and whether all the feedstocks used during the time period were claimed to have met the definition of renewable biomass (40 CFR 80.1452(b)(11), and 80.1452(b)(14)).

An example of the ''reporting'' information the EPA proposes to publish appears in the chart below:

TABLE VIII.C.3.a–1—EXAMPLE "REPORTING" REPORT

RIN generating company	Company name	Renewable fuel original producer	Facility name and address	Location in latitude/ longitude	Renewable fuel production year/month	D code/fuel type	Feedstocks used	Production process	Co-products	Volume of denaturant	Amount of fuel produced (in gallons?)	RINs generated
Example Ethanol Company.	Example Ethanol Company.	Example Ethanol Company.	111 Ethanol Street, City, State, ZIP.	Lat/Long ..	2010/July	5—Renewable Fuel/ 10—Non-cellulosic ethanol (EV 1.0).	888—Feedstock not listed (used at a grandfathered facility 100%).	888—Grandfathered (Other).	Distillers grains, corn oil.	549.52	27,476	27,476
Example Biodiesel Company.	Example Biodiesel Company.	Example Biodiesel Company.	222 Biodiesel Way, City, State, ZIP.	Lat/Long ..	2010/July	4—Biomass-Based Diesel/ 20—Biodiesel (EV 1.5).	160—Biogenic Waste Oils/ Fats/ Greases 100%.	180—Transesterification, Dedicated Renewable Biomass Facility.			21,934	32,902

As with registration information, the EPA proposes to publish ''reporting'' information in only an aggregated form (at the facility level, not the batch level), and only on a monthly, quarterly, and/or annual basis. The EPA will continue to consider the confidential nature of the batch-level information and may take further action to provide additional programmatic transparency. The EPA is interested in stakeholders' views on this approach, including whether facility-level information is the appropriate level of aggregation or whether it might be more appropriate to publish batch-level information.

b. Rationale for Proposal

The EPA believes that the disclosure of certain aggregated RFS report information is not entitled to confidential treatment for a number of reasons. First, the information elements in this category consist of publicly available and widely known information on renewable fuel producer's company name, facility name, RIN-generating name, location, production year, fuel product type, RIN D-Code, production volume, production process type, feedstocks, equivalence value, and number of RINs generated. Furthermore, disclosing this information is not likely to cause substantial harm to the competitive position of the business required to report these information elements under Part 80 because these elements of information do not reveal any proprietary information, or any other information that would likely provide insight for competitors to gain an advantage. Furthermore, because these information elements would be aggregated to the facility level and further aggregated for the time period of the EPA-published report, the information would not be presented in a form that any company's competitors could use to gain a competitive advantage. Aggregating this information at the facility level and for the monthly, quarterly, and/or annual time period would prevent competitors from reverse engineering the information to determine information that could be considered confidential (e.g., exact amounts of feedstocks used, which could potentially be used to reveal production efficiencies). Accordingly, disclosing aggregate information would not cause substantial harm to the submitter's competitive position. For example:

- The name of the renewable fuel producer or importer and associated registration information, including facility name, registration identification numbers, RIN-generating name, location, production year, fuel type, RIN D-Code, production process type, and feedstock is non-specific information that is submitted for RFS program registration. These information elements are necessary for a producer to determine if it meets RFS requirements. These information elements describe commonly used renewable fuel production information and do not describe any particular specifications about an individual facility's unique processing. Because this information does not reveal details about the precise production processes used, they are not the type of information that a competitor could use to develop marketing strategies to undermine the producer's competitive position. These information elements do not reveal—and could not be used to determine—an individual facility's production efficiency, production costs, or pricing structure. Accordingly, the EPA believes that disclosing the name of the renewable fuel producer or importer, the facility name, registration identification numbers, RIN-generating name, location, production year, fuel type, RIN D-Code, production process type, and feedstock would not cause substantial harm to business submitter's competitive position.
- The volume of denaturant, applicable equivalence value, and whether all the feedstocks used during the time period were claimed to have met the definition of renewable biomass (40 CFR 80.1452(b)(11), and 80.1452(b)(14)) is widely-known information that is submitted to demonstrate RFS program compliance. The volume of denaturant used must be less than 2% to meet RFS requirements for RIN generation. The equivalence value is a number that is used to determine how many gallon-RINs can be generated for a gallon of renewable fuel according to 40 CFR 80.1426. An affirmation that that the feedstocks a producer used meets the definition of renewable biomass is required to demonstrate that the feedstocks a facility registered to use, pursuant to 40 CFR 80.1450, were actually used. Revealing the volume of denaturant, equivalence value, and confirming that a producer affirmed use of renewable biomass would not reveal anything proprietary or otherwise about the precise production process a given producer is using, and would not provide any insight that competitors might use to gain competitive advantage. Rather, this information is commonly-known information about the renewable fuel produced that demonstrates RFS regulatory compliance for RIN generation.

4. QAP Plans and Independent Engineering Reviews

At this time, the EPA is not proposing to publish QAP plans or independent engineering reviews that are submitted for RFS registration. For QAP plans and independent engineering reviews that are claimed as CBI, the EPA proposes to require submission of two versions of those documents: One clearly marked ''CBI version,'' with appropriate areas denoted as CBI, and a second ''public version,'' with CBI information redacted. We would require the submission of both versions of QAP plans and engineering reviews begin with the effective date of this rule. For engineering reviews filed pursuant to 40 CFR 80.1450(b)(2), we would require submission for new registrations, and as necessary for updates pursuant to 40 CFR 80.1450(d)(3). Based on the Agency's experience with the RFS program, the EPA notes that certain information should not fall under a claim of CBI because this information is generally available to the public or widely-known within the industry, and disclosure of this information would not likely cause harm to the competitive position of any submitting renewable producer, importer, or any other party to a RIN transaction.

If the EPA receives a Freedom of Information Act (FOIA) request for the CBI version of an engineering review or QAP plan, the EPA would process the FOIA request pursuant to its CBI regulations under 40 CFR part 2, subpart B. Submission of the two versions of QAP plans and engineering reviews (CBI and public versions) would allow the Agency to clearly understand what information is claimed as CBI, and would also allow the Agency to make public versions available to the public without unnecessary delay. The EPA is interested in stakeholder views on this approach.

5. Request for Comments

The added transparency of making certain registration and reporting information available to the public in the form of EPA-published reports, along with the implementation of the QAP process, will strengthen the RFS program and act as a deterrent to fraudulently generated RINs. The EPA solicits comment on all aspects of these proposals.

D. Proposed Changes to Section 80.1452—EPA Moderated Transaction System (EMTS) Requirements—Alternative Reporting Method for Sell and Buy Transactions for Assigned RINs

Reporting and product transfer document (PTD) requirements, found in sections 80.1452 and 80.1453, respectively, currently state that the reportable event for a RIN purchase or sale occurs on the date of transfer. Sellers must report the sale of RINs within five (5) business days of the reportable event via the EPA Moderated Transaction System (EMTS). Buyers must report the purchase of RINs within ten (10) business days of the reportable event via EMTS. The date of transfer is the date on which title of RINs is transferred from the seller to the buyer. Some buyers and sellers of assigned RINs have expressed concerns with these requirements stating they have difficulty determining the date of transfer since title of the renewable fuel is not transferred until the fuel physically reaches the buyer. Some transactions, for example those by rail or barge, may take several weeks, and their current accounting systems do not include a means for capturing the buyer's receipt date.

EPA understands this concern, but also recognizes that some regulated parties have modified their accounting systems to address the current reporting and PTD requirements in RFS2. We also believe that for parties separating, retiring, and selling or buying separated RINs, the current reporting and PTD requirements are effective and should remain unchanged. Therefore, at this time EPA is not proposing to replace existing requirements, but is instead proposing an additional, alternative method for reporting sell and buy transactions involving assigned RINs only.

The proposed alternative method for sell and buy transactions of assigned RINs would redefine the reportable event for both the seller and the buyer, introduce a unique identifier that the seller must provide to the buyer, and require the buyer to report the date of transfer. Buyers and sellers would need to agree on which method they would be using to report transfers of assigned RINs; either the current method or the alternative method. EPA believes that this alternative would provide the regulated community with the flexibility to address their reporting concerns and also provide EPA with the data necessary to effectively administer and enforce transactions of assigned RINs. EPA welcomes comment on this proposed alternative method for reporting assigned RIN buy and sell transactions.

We propose that sellers of assigned RINs under the alternative method be required to do the following:

- Within five (5) business days of shipping renewable fuel with assigned RINs, report a sell transaction, using the alternative method, via EMTS;
- Include in the EMTS sell transaction report other required information per section 80.1452; and
- Provide a PTD to the assigned RIN buyer with a unique identifier, also reported via EMTS, in addition to the information in section 80.1453. The date of transfer is not required for the alternative method.

We propose that buyers of assigned RINs under the alternative method be required to do the following:

- Within five (5) business days of receiving a shipment of renewable fuel with assigned RINs, report a buy transaction, indicating use of the alternative method, via EMTS;
- Include in the EMTS buy transaction report other required information per section 80.1452;
- Include in the EMTS buy transaction report the unique identifier provided by the seller; and
- Include in the EMTS buy transaction report the date the renewable fuel was received, i.e. the date of transfer.

If this proposed alternative method is finalized, the EMTS would be modified to accept such transactions. EPA would provide additional instruction and guidance at the time of the new EMTS version release. EPA invites comment on all aspects of this proposal.

IX. Impacts

The quality assurance program that we are proposing in today's NPRM would provide a voluntary mechanism for regulated parties to verify that RINs are validly generated, provide an affirmative defense against violations if a regulated party transfers an invalidly generated RIN or uses it for compliance, and provide clarity regarding the responsibility of regulated parties to replace invalidly generated RINs. The proposed program would not change the volume requirements of the RFS program, but instead would help to ensure that those volume requirements are met. Likewise, the proposed changes to the regulations governing export of renewable fuel, separation of RINs from wet gallons, and qualifying uses of renewable fuel would also be intended to ensure that the RFS volume requirements are met with qualifying renewable fuel. As a result, there would be no change to the expected impacts of the RFS program in terms of volumes of renewable fuel consumed or the associated GHG or energy security benefits. Instead, the primary impacts of the quality assurance program would be improved liquidity in the RIN market and improved opportunities for smaller renewable fuel producers to sell their RINs.

The quality assurance program that we are proposing in today's action would be voluntary. As a result, there would be no obligatory costs. There would likely be costs associated with an individual party's participation in the quality assurance program. However, the fact that the quality assurance program would be voluntary means that a decision to participate will be made independently by each regulated party, and thus we cannot estimate the costs that might be incurred for the nation as a whole. Furthermore, any costs incurred would only be borne if the industry believed that those costs were less than current costs in the marketplace resulting from efforts to verify, acquire, and trade RINs.

In the discussion below, Section IX.A addresses direct costs associated with implementing Quality Assurance Plans (QAPs), such as the time required to develop a QAP and the associated recordkeeping and reporting, site visits to renewable fuel production facilities, costs for accounting services, etc. Section IX.B addresses potential costs associated with RIN replacement mechanisms that would be required under Option A.

A. Direct Costs for Implementing QAPs

Currently, there are approximately 485 biofuel producers operating more than 600 biofuel production facilities. These numbers are expected to increase as the biofuel market expands. While it is unlikely that all biofuel producers would opt to participate in the quality assurance program, that was the assumption for these cost estimates in order to reflect the maximum potential cost of the program.

EPA staff met with seven parties who are already developing RIN validation programs for the biofuels industry. We also met with several industry groups and obligated parties which have been affected by RIN fraud. These parties all provided informal estimates of the costs associated with this type of quality assurance program which was used to inform our cost calculations.

For those biofuel producers who opt into the quality assurance program, each biofuel production facility must be visited and assessed as part of any audit conducted under the proposed quality assurance program. An auditor would

use an approved QAP as the basis for the verification of biofuel produced and RINs generated at a facility. In order to verify production, the auditor must conduct site visits, review documents, and contact entities that do business with the facility. The proposed components of audits are described in Section VII.

We are proposing that production facilities should be visited on a quarterly basis. New production facilities would be visited prior to verification of any RINs and, subsequently, according to the standard quarterly schedule. We expect that each visit could take from one to several days, depending on the size and complexity of the facility, the availability of records, changes since the last audit, etc. For some components of the audit, we propose to require ongoing, or batch-level, monitoring. The QAP would be required to provide details of the means for collection and evaluation of the data collected on an ongoing basis.

Tables IX.A–1, IX.A–2, and IX.A–3 below itemize the activities anticipated for each biofuel production facility audit. The estimates include costs incurred by the biofuel producer (Table IX.A–1), the auditor (Table IX.A–2), and the EPA (Table IX.A–3). This table does not include costs associated with the RIN replacement mechanism that some QAP providers may acquire to cover loss in the event of RIN fraud. These costs are discussed separately below.

TABLE IX.A–1—COSTS TO THE BIOFUEL PRODUCER FOR IMPLEMENTING A QAP

Category	Manager time	Prof./tech. time	Clerical time	Number per yr	Capital $	Total hours	Total $
Site Visit	1	16	4	2		42	3,588
Reporting	2	12	4	3		54	4,560
Recordkeeping	0	0	2	3		*6*	*222*
Total						102	8,370

TABLE IX.A–2—COSTS TO THE QAP AUDITOR FOR IMPLEMENTING A QAP

Category	Manager time	Prof./tech. time	Clerical time	Number per yr.	Capital $	Total hours	Total $
Auditor:							
Contract Init	4	4	2	1	530	10	1,428
Site Visit	4	16	0	1	1,060	20	3,036
Follow-up	2	28	5	3	1,060	105	12,459
Monitoring	2	50	0			52	5,020
Consultants				4	1,000		4,000
Reporting	0	4	12			16	1,656
QAP Prep	2	16	4			22	3,808
EMTS	0	25	0			25	2,400
Recordkeeping	0	12	25			*37*	*2,077*
Total						250	38,839

TABLE IX.A–3—COSTS TO THE EPA FOR IMPLEMENTING A QAP

Category	Manager time	Prof./tech. time	Clerical time	Capital $	Total hours	Total $
Implementation		3			3	267
EMTS Data Management		1			*1*	*89*
Total					4	356

1. Time and Cost Assumptions

The specific times estimated for each task are shown in Tables IX.A–1, IX.A–2, and IX.A–3. These estimates are based on a number of basic assumptions. An initial site visit of the facility to be audited is assumed to require two days, and include estimated travel and per diem costs. For simplicity, we have estimated an average $600 for airfare, $150 for lodging, and $80 for the per diem expenses. It is assumed that a plant manager would meet briefly with the auditor, and that a plant chemist or other professional would escort the auditor throughout the visit. Some clerical support would be required to locate files for the related document reviews.

It was assumed that an auditor would travel and spend half a day on contract initiation. Any follow up site visits were assumed to be shorter in duration, as the auditor would now be familiar with the facility and its normal operation. A substantial amount of the auditor's time would be spent in follow up documentation of the facility, such as checking feedstock suppliers, process fuel suppliers, doing volume and mass balances, and monitoring the ongoing operation of the facility. It was assumed that an auditor would employ specialized consultants and/or local agents to perform some portion of the audit support.

In addition to tracking facility operation, an auditor would also be responsible for preparing the QAP, maintaining recordkeeping, monitoring and/or brokering activities on EMTS, and assisting with RFS reporting requirements.

2. Labor Cost Assumptions

The labor costs used in this cost estimation are average mean wages for each labor category, as provided in the Bureau of Labor and Statistics Report dated May 2011. Based on this data, we used the following hourly wages for each employee type:

Managerial—$55.04 per hour
Technical/Professional—$47.81 per hour
Clerical—$18.35 per hour

Doubling to account for company overhead and benefits, and for convenience, rounding up to the dollar, gives the following hourly rates:

Managerial—$110 per hour.

Technical/Professional—$96 per hour.

Clerical—$37 per hour.

For the Agency costs, the work was assumed to be performed by a GS–13 technical employee, doubled and rounded up, for an hourly rate of $89.

3. Cost Estimate Results

We made our total cost estimate based on the number of registered biofuel producers in the CDX as of July 2011, assuming that all parties choose to participate in the voluntary quality assurance program. This assumes 485 RIN generators with 600 biofuel production facilities. This results in a total cost for the program of $27,576,450. If all parties are participating in the program and all RINs are verified, this results in a per RIN cost of less that $0.01. However, these costs are assumed to be linear and we do not expect that there would be any economies of scale in terms of the number of RINs verified by an auditor. However, we do expect that the per-RIN cost would vary depending on the number of RINs generated by each fuel producer since the effort involved in validating many aspects of renewable fuel production are the same regardless of the size of the facility.

We do not expect that the costs of participation in the proposed quality assurance program would vary significantly by the D code of RINs. While RINs with different D codes may command different prices in the market, the verification process for each RIN is expected to be similar regardless of D code, with the biggest cost differences in feedstock verification.

B. Costs for RIN Replacement Mechanisms

For reasons described previously, some QAP providers may choose a replacement mechanism to insure against invalid RINs. Such mechanisms would be required under Option A, but would not be required under Option B. There is large uncertainty in estimating the costs of these mechanisms because it is an entirely new market. Informal discussions with potential QAP auditors, as well as other parties involved in similar markets or financial surety mechanisms in general, have suggested a broad range of potential costs. For these reasons the costs for such a mechanism were not included in the analysis above, and EPA welcomes comments on the cost impacts of any potential financial surety mechanisms.

In order to fully inform cost impacts of the various QAP options, we discuss the relevant cost factors of the three possible types of mechanisms discussed in Section IV above. The discussion includes RIN banks, RIN escrow accounts, and other traditional financial instruments. As noted previously, these mechanisms are not intended to be inclusive of all possible ways a RIN replacement mechanism could work, and are merely suggestions of potential pathways Option A auditors might follow.

A RIN bank is a managed repository of valid audited RINs which are available to all members of the bank for replacement purposes. The costs associated with a RIN bank are directly proportional to the value of the RINs banked, and the number of banked RINs required to meet the obligations of the bank members. There would also be bank management costs, which would be impacted by the number of bank members, and how the bank is managed in terms of RIN deposit, withdrawal, update, and replacement. In addition, bank managers would need to come up with a system to maintain current year RINs in the bank, which may involve additional costs for the sale of expiring RINs and any differential in the value of the RIN at the time of deposit and the time of sale or release. These costs would be born by the members of the bank, but would likely be passed on to RIN purchasers to the maximum extent possible. These parameters will vary so much from bank to bank that it is impossible to estimate an average per RIN cost across the entire program. However, it is reasonable to assume that the cost would be effectively the per-RIN value of banked RINs plus some fractional percentage to cover management costs.

A RIN escrow account would work very much like a RIN bank, but would be funded by a single auditor instead of a group of auditors, and would be supervised and managed by a third-party escrow agent. The advantage of this option is that an auditor would have total control over the funding of the escrow. However, an auditor using an escrow account would be solely responsible for the funding of the account, and so would be required to maintain a balance equal to a much larger percentage of its potential replacement responsibility than it might be if using a RIN bank. The cost of a RIN escrow account is entirely dependent upon the number and value of the RINs covered by the escrow.

Traditional financial instruments, such as surety bonds, letters of credit, or expanded insurance coverage, are also options under Option A. The cost for this type of coverage is dependent on the level of risk determined by the surety provider, as well as the value of the RINs to be covered. This type of financial instrument would most likely provide a maximum dollar amount of coverage, which would translate into a per RIN cost depending on the number of RINs covered, relative to the number of RINs audited by the QAP provider purchasing the financial protection. EPA has learned that the cost of these policies vary greatly among the parties looking into these options. For this reason, this type of financial protection was not included in the cost analysis outlined above.

X. Public Participation

We request comment by April 18, 2013 on all aspects of this proposal, including but not limited to the following:

- The RIN replacement cap of 2% and the limited exemption of 2%.
- A potential regulatory change in which renewable fuel producers would be prohibited from separating RINs.
- The proposed components of QAPs.
- The proposed elements of RIN replacement mechanisms, including the inclusion of E&O insurance.
- The costs associated with indemnifying auditor verification of RINs.
- Mechanisms to ensure that auditors are not complicit in fraud.

This section describes how you can participate in this process.

A. How do I submit comments?

We are opening a formal comment period by publishing this document. We will accept comments through April 18, 2013. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the

proposed program, we encourage you to suggest and analyze alternate approaches to meeting the goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period. If you submit proprietary information for our consideration, you should clearly separate it from other comments by labeling it ''Confidential Business Information (CBI).'' You should send CBI directly to the contact person listed under **FOR FURTHER INFORMATION CONTACT** instead of the public docket. This will help ensure that no one inadvertently places proprietary information in the docket. If you want us to use your confidential information as part of the basis for the final rule, you should send a non-confidential version of the document summarizing the key data or information. We will disclose information covered by a claim of confidentiality only through the application of procedures described in 40 CFR part 2. If you do not identify information as confidential when we receive it, we may make it available to the public without notifying you.

B. Will there be a public hearing?

We will hold a hearing on March 19, 2013, Room 1153 EPA East, Washington, DC 20004, beginning at 10:00 a.m. local time. If you would like to present testimony at the public hearing, we ask that you notify the contact person listed above under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing. We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony. We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

XI. Statutory and Executive Order Review

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal and policy issues. Accordingly EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This action is being proposed today as a result of several cases of fraudulently generated RINs. As discussed above, several biodiesel production companies have been identified as having generated RINs that did not represent qualifying renewable fuel. While these invalid RINs represented a very small amount (about 5%) of the nationwide biodiesel volume in the 2009—2011 timeframe, the net result is that this fraud has impacted the liquidity of the biodiesel RIN market as some biodiesel RINs are perceived as having less value than others. In addition, as a result of fraudulent activities, obligated parties have been subject to monetary penalties and the additional cost of purchasing new RINs to cover the invalid RINs, even though they purchased the original RINs in good faith believing that they were valid. These issues have raised novel legal and policy issues for the RFS program and EPA believes it is necessary put in place an additional regulatory mechanism that could provide an alternative way to assure that RINs used for compliance are valid to restore confidence in the RIN market and level the playing field for large and small producers.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2473.01.

The RFS program requires that specified volumes of renewable fuel be used as transportation fuel, heating oil, and/or jet fuel each year. Obligated parties demonstrate compliance with the RFS standards through the acquisition of unique Renewable Identification Numbers (RINs) assigned by the producer or importer to every batch of renewable fuel produced or imported. Validly generated RINs show that a certain volume of qualifying renewable fuel was produced or imported. The RFS program also includes provisions stipulating the conditions under which RINs are invalid, the liability carried by a party that transfers or uses an invalid RIN, and how invalid RINs must be treated.

In this action we are proposing a voluntary quality assurance program intended to provide a more structured way to assure that the RINs entering commerce are valid. The voluntary quality assurance program for RINs would provide a means for regulated parties to ensure that RINs are properly generated, through audits of production facilities conducted by independent third parties using quality assurance plans (QAPs).

The annual public reporting and recordkeeping burden for this collection is estimated to be 320 hours per response. A document entitled ''Supporting Statement for Renewable Fuels Standard (RFS2) Voluntary RIN Quality Assurance Program (Proposed Rule)'' has been placed in the public docket. The supporting statement provides a detailed explanation of the Agency's estimates by collection activity. The estimates contained the supported statement are briefly summarized here:

Total No. of Respondents: 485.

Total Burden Hours: 192,270.

Total Cost to Respondents: $ 4,062,000.

Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2012–0621. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60

days after February 21, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by March 25, 2013. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 (see table below); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The following table provides an overview of the primary SBA small business categories potentially affected by this regulation:

Industry	Defined as small entity by SBA if:	NAICS [a] codes
Petroleum refineries	≤1,500 employees	324110

[a] North American Industrial Classification System.

The program proposed in today's action is a voluntary quality assurance program intended to provide a more structured way to assure that RINs entering commerce are valid. As a result of the recent fraud issue, obligated parties are reluctant to purchase RINs from smaller refiners because of the uncertainty of their validity. While this voluntary program could be beneficial for both larger and smaller refineries it could be particularly beneficial for smaller petroleum refineries if they choose to participate. In the current climate, these smaller producers have been forced to offer their RINs at a significant discount relative to RINs from larger producers, assuming they can find obligated parties or distributors willing to purchase them at all. While there will be some cost to opt into the program, we believe these costs will be offset by leveling the playing field between larger producers and small producers, allowing small producers to effectively compete in the market.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The agency has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Because the program outlined in this proposal is optional, entities subject to this rule will have the flexibility to participate or not. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules will apply to manufacturers of on-highway engines and not to state or local governments. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on engine manufacturers who elect to participate in the program. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211 (Energy Effects)

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that any energy impacts of this rule will be negligible because the voluntary QAP audit process would ensure that the volume consumption goals of the statute are met while addressing the unique features of the RFS program that have resulted in

inefficiencies and poor liquidity in the RIN market.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the agencies to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials, specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

Today's action proposes a voluntary set of regulatory provisions that could provide regulated parties with a specific mechanism for demonstrating that they have conducted due diligence to verify the validity of RINs. Therefore, EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

RFS Renewable Identification Number (RIN) Quality Assurance Program

XII. Statutory Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from Sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Diesel fuel, Environmental protection, Fuel additives, Gasoline, Imports, Oil imports, Petroleum.

Dated: January 31, 2013.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is proposed as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521(1), 7545 and 7601(a).

Subpart M—[Renewable Fuel Standard]

■ 2. Section 80.1401 is amended by adding in alphabetical order the definitions of ''A–RIN'', ''B–RIN'', ''Independent Third-Party Auditor'', ''Non-qualifying fuel'', ''Quality assurance audit'', ''Quality assurance plan'', and ''Verified RIN'' and revising the definition of ''Non-ester renewable diesel''.

The added and revised text read as follows:

§ 80.1401 Definitions.

* * * * *

A–RIN means a RIN verified by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(a) following the audit process described in § 80.1472.

* * * * *

B–RIN means a RIN verified by a registered independent third-party auditor using a QAP that has been approved under § 80.1469(b) following the audit process described in § 80.1472.

* * * * *

Independent Third-Party Auditor means a party meeting the requirements of § 80.1471(b) that conducts QAP audits and verifies RINs.

* * * * *

Non-ester renewable diesel, also known as renewable diesel, means renewable fuel which is all of the following:

(1) A fuel which can be used at a blend level approved under 40 CFR Part 79 in an engine designed to operate on conventional diesel fuel, or be heating oil or jet fuel.

(2) Not a mono-alkyl ester.

Non-qualifying fuel use means a use of renewable fuel in an application other than transportation fuel, heating oil, or jet fuel.

Quality Assurance Audit means an audit of a renewable fuel production facility conducted by an independent third-party auditor in accordance with a QAP that meets the requirements of § 80.1469.

Quality Assurance Plan, or QAP, means the list of elements that an independent third-party auditor will check to verify that the RINs generated by a renewable fuel producer or importer are valid.

* * * * *

Verified RIN means a RIN generated by a renewable fuel producer that was subject to a QAP audit executed by an independent third-party auditor, and determined by the independent third-party auditor to be valid. Verified RINs include both A–RINs and B–RINs.

■ 3. Section 1402 is added to read as follows.

§ 80.1402 Information Submitted under 40 CFR part 80 Subpart M.

Sections 2.201 through 2.215 of 40 CFR part 2, subpart B, do not apply to the following information:

(a) Registration information submitted pursuant to §§ 80.1450(b), (c), and (g) that is not entitled to confidential treatment includes company name, facility name, facility type, fuel type, permitted capacity, production volume, feedstocks, production process, D-Code, and co-products.

(b) Reporting information submitted pursuant to reporting requirements in 40 CFR 1452(b) that is not entitled to confidential treatment includes company name, RIN-generating company name, renewable fuel producer, facility name and address, facility location, renewable fuel production month and year, fuel type, D-Code, feedstocks, production process, volume of fuel produced, and number of RINs generated.

■ 4. Section 80.1426 is amended as follows:

■ a. By revising paragraph (a)(1)(i) and (a)(1)(ii);

■ b. Adding paragraphs (a)(1)(iii);

■ c. By revising paragraphs (c)(1) and (c)(6);

■ d. By revising paragraphs (f)(4)(i)(A)(1) and (f)(4)(i)(B);

■ e. By adding paragraph (f)(4)(iii);

■ f. By revising paragraph (f)(12); and

■ g. By adding paragraph (f)(14).

The additions and revisions reads as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

(a) * * *

(1) * * *

(i) Qualifies for a D code pursuant to § 80.1426(f), or as otherwise approved by EPA, and is demonstrated pursuant to the reporting requirements of § 80.1451 and the recordkeeping requirements of § 80.1454, or other records maintained by the producer, to be produced in accordance with the applicable pathway.

(ii) Is designated on a product transfer document (PTD) for use as transportation fuel, heating oil, or jet fuel in accordance with § 80.1453(a)(12); and

(iii) For renewable electricity, biogas, and any renewable fuel other than ethanol, biodiesel, or renewable diesel, is distributed and sold in accordance with § 80.1426(f)(10), § 80.1426(f)(11), or § 80.1426(f)(12), as appropriate.

* * * * *

(c) * * *

(1) Fuel producers and importers may not generate RINs for fuel that does not satisfy the requirements of subsection (a)(1) of this section.

* * * * *

(6) A party is prohibited from generating RINs for a volume of fuel that it produces if the fuel has been produced by a process that uses a renewable fuel as a feedstock, and the renewable fuel that is used as a feedstock was produced by another party, except that RINs may be generated for such fuel if allowed by EPA in response to a petition submitted pursuant to § 80.1416 and the petition approval specifies a mechanism to prevent double counting of RINs.

* * * * *

(f) * * *

(4) * * *

(i) * * *

(A) * * *

(*1*) V_{RIN} shall be calculated according to the following formula:

$$V_{RIN} = EV * V_s * FE_R/(FE_R + FE_{NR})$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per § 80.1415, subject to qualification in paragraph (f)(4)(iii) of this section.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

FE_R = Feedstock energy from renewable biomass used to make the transportation fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks used to make the transportation fuel, heating oil, or jet fuel, in Btu.

* * * * *

(B) *Method B.* V_{RIN} shall be calculated according to the following formula:

$$V_{RIN} = EV * V_s * R$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per § 80.1415, subject to qualification in paragraph (f)(4)(iii) of this section.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

R = The renewable fraction of the fuel as measured by a carbon-14 dating test method as provided in paragraph (f)(9) of this section.

* * * * *

(iii) In determining the RIN volume V_{RIN} according to paragraph (f)(4)(i)(A) or (f)(4)(i)(B) of this section, the equivalence value used to determine V_{RIN} which is calculated according to § 80.1415 shall use a value of 1.0 to represent R, the renewable content of the renewable fuel.

* * * * *

(12)(i) For purposes of this section, any renewable fuel other than ethanol, biodiesel, or renewable diesel is considered renewable fuel and the producer or importer may generate RINs for such fuel only if all of the following apply:

(A) The fuel is produced from renewable biomass and qualifies for a D code in Table 1 to this section or has been otherwise approved by the Administrator;

(B) The fuel producer or importer maintains records demonstrating that the fuel was produced for use as a transportation fuel, heating oil or jet fuel by:

(*1*) Blending the renewable fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards;

(*2*) Entering into a written contract for the sale of a the renewable fuel, which specifies the purchasing party shall blend the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards; or

(*3*) Entering into a written contract for the sale of the renewable fuel, which specifies that the fuel shall be used in its neat form as a transportation fuel, heating oil or jet fuel that meets all applicable standards.

(C) The fuel was sold for use in or as a transportation fuel, and for no other purpose; and

(ii) Reserved.

(iii) Reserved.

* * * * *

(14) For purposes of Table 1 to this section, process heat produced from combustion of gas at a renewable fuel facility is considered derived from biomass if the gas is biogas.

(i) For biogas directly transported to the facility without being placed in a commercial distribution system, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(ii) For biogas that has been gathered, processed and injected into a common carrier pipeline, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume of biogas that is withdrawn from the pipeline is withdrawn in a manner and at a time consistent with the transport of fuel between the injection and withdrawal points.

(D) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(E) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.

(iii) The process heat produced from combustion of gas at a renewable fuel facility described in paragraph (f)(12)(i) of this section shall not be considered derived from biomass if any other party relied upon the contracted volume of biogas for the creation of RINs.

■ 5. Section 80.1429 is amended by adding paragraph (b)(10) and removing and reserving paragraph (f) to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(b) * * *

(10) Any party that produces a volume of renewable fuel may separate any RINs that have been generated to represent that volume of renewable fuel or that blend if that party retires the

separated RINs to replace invalid RINs according to § 80.1474.

* * * * *

■ 6. In § 80.1430 revise paragraph (a), (b), and (e) to read as follows:

§ 80.1430 Requirements for exporters of renewable fuel.

(a) Any party that owns any amount of renewable fuel, whether in its neat form or blended, that is exported from any of the regions described in § 80.1426(b) shall acquire sufficient RINs to comply with all applicable Renewable Volume Obligations under paragraphs (b) through (e) of this section representing the exported renewable fuel.

(b) *Exporter Renewable Volume Obligations.* An exporter of renewable fuel shall determine its Exporter Renewable Volume Obligations from the volumes of the renewable fuel exported.

(1) *Cellulosic biofuel.*

$ERVO_{CB,k} = VOL_k * EV_k$

Where:

$ERVO_{CB,k}$ = The Exporter Renewable Volume Obligation for cellulosic biofuel for discrete volume k in gallons.

k = A discrete volume of renewable fuel that the exporter knows or has reason to know is cellulosic biofuel that is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(2) *Biomass-based diesel.*

$ERVO_{BBD,k} = VOL_k * EV_k$

Where:

$ERVO_{BBDI,k}$ = The Exporter Renewable Volume Obligation for biomass-based diesel for discrete volume k, in gallons.

k = A discrete volume of renewable fuel that is biodiesel or renewable diesel and is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(3) *Advanced biofuel.*

$ERVO_{AB,k} = VOL_k * EV_k$

Where:

$ERVO_{AB,k}$ = The Exporter Renewable Volume Obligation for advanced biofuel for discrete volume k, in gallons.

k = A discrete volume of renewable fuel that is advanced biofuel (including biomass-based diesel, renewable diesel, cellulosic biofuel and other advanced biofuel) and is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(4) *Renewable fuel.*

$ERVO_{RF,i} = VOL_k * EV_k$

Where:

$ERVO_{RF,i}$ = The Renewable Volume Obligation for renewable fuel for discrete volume k, in gallons.

k = A discrete volume of exported renewable fuel that is exported in a single shipment.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

* * * * *

(e) For renewable fuels that are in the form of a blend at the time of export, the exporter shall determine the volume of exported renewable fuel based on one of the following:

* * * * *

■ 7. Section 80.1431 is amended by removing and reserving paragraph (a)(1)(viii) and revising paragraph (b) introductory text to read as follows:

§ 80.1431 Treatment of invalid RINs.

(a) * * *

(1) * * *

(viii) [Reserved]

* * * * *

(b) Except as provided in *§ 80.1473, the following provisions apply* in the case of RINs that are invalid:

* * * * *

■ 8. Section 80.1433 is added to read as follows:

§ 80.1433 Requirements for parties that designate fuel for which RINs were generated for an application that is not transportation fuel, heating oil, or jet fuel.

(a) Any party that designates any amount of fuel originally produced as renewable fuel, whether in its neat form or blended, for an application that is not transportation fuel, heating oil, or jet fuel shall retire an appropriate number and type of RINs according to one of the following equations and as specified in paragraph (b).

(1) Except as provided in (a)(5), *Cellulosic biofuel.*

$RINRET_{CB,i} = \Sigma(VOL_k * EV_k)_i$

Where:

$RINRET_{CB,i}$ = The quantity of cellulosic biofuel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel which the party designated for use in an application other than as transportation fuel, heating oil or jet fuel and which the party knows or has reason to know would have qualified as cellulosic biofuel if not put to a non-qualifying fuel use.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with paragraph (c) of this section and § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(2) Except as provided in (a)(5), *Biomass-based diesel.*

$RINRET_{BBD,i} = \Sigma(VOL_k * EV_k)_i$

Where:

$RINRET_{BBD,i}$ = The quantity of biomass-based diesel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel which the party designated for use in an application other than as transportation fuel, heating oil or jet fuel and which the party knows or has reason to know would have qualified as biomass-based diesel if not put to a non-qualifying fuel use.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(3) *Advanced biofuel.*

$RINRET_{AB,i} = \Sigma(VOL_k * EV_k)_i$

Where:

$RINRET_{AB,i}$ = The quantity of advanced biofuel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel which the party designated for use in an application other than as transportation fuel, heating oil or jet fuel and which the party knows or has reason to know would have qualified as advanced biofuel if not put to a non-qualifying fuel use.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with paragraph (c) of this section and § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(4) *Renewable fuel.*

$RINRET_{RF,i} = \Sigma(VOL_k * EV_k)_i$

Where:

$RINRET_{RF,i}$ = The quantity of renewable fuel RINs that must be retired for day i, in gallons.

k = A discrete volume of fuel which the party designated for use in an application other than as transportation fuel, heating oil or jet fuel and which the party knows or has reason to know would have qualified as renewable fuel if not put to a non-qualifying fuel use.

VOL_k = The standardized volume of discrete volume k, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

(5) If the party has reason to know that the fuel would have qualified as cellulosic diesel if not put to a non-qualifying fuel use, it must choose either the formula specified in paragraph (a)(1) or that in paragraph (a)(2) to calculate the number and type of RINs that must be retired.

(b) For the purposes of calculating the number of RINs that must be retired under paragraphs (a) of this section:

(1) If the equivalence value for the discrete volume k can be determined pursuant to § 80.1415 based on its

composition, then the appropriate equivalence value shall be used in the calculation pursuant to paragraph (a).

(2) If the discrete volume k is known to be biomass-based diesel but the composition is unknown, the EV_k shall be 1.5.

(3) If neither the category nor composition of discrete volume k can be determined, the EV_k shall be 1.0.

(c) VOL_k shall be based on one of the following:

(1) Information from the supplier of the blend of the concentration of fuel originally produced as renewable fuel in the blend;

(2) Determination of the renewable portion of the blend using Method B or Method C of ASTM D 6866 (incorporated by reference, see § 80.1468), or an alternative test method as approved by the EPA; or

(3) Assuming the maximum concentration of the renewable fuel in the blend as allowed by law and/or regulation.

(d) [Reserved]

(e) All RINs retired pursuant to this section shall be identified in EMTS according the following schedule:

(1) Within ten (10) business days of the designation of a fuel for which RINs were generated for a use other than as transportation fuel, heating oil, or jet fuel.

(f) Any volume of fuel which is designated for a purpose other than as transportation fuel, heating oil or jet fuel cannot be redesignated as renewable fuel.

■ 9. Section 80.1450 is amended as follows:

■ a. By adding paragraph (b)(1)(ix); and

■ b. By revising paragraph (g) and

■ c. By adding paragraph (h).

The revisions and additions read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b)* * *

(1)* * *

(ix) For a producer or importer or any renewable fuel other than ethanol, biodiesel, renewable diesel, biogas or renewable electricity:

(A) A description of the renewable fuel and how it will be blended to into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards;

(B) A statement regarding whether the renewable fuel producer or importer will blend the renewable fuel into gasoline or diesel fuel or enter into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards;

(C) If the renewable fuel producer or importer enters into a written contract for the sale and use of a specific quantity of the renewable fuel with a party who blends the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel, provide

(*1*) the name, location and contact information for the party that will blend the renewable fuel, and

(*2*) a copy of the contract that requires the party to blend the renewable fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel that meets all applicable standards;

* * * * *

(g) Any independent third-party auditor described in § 80.1471 must register with EPA as an independent third-party auditor and receive an EPA issued company identification number prior to conducting quality assurance audits pursuant to § 80.1472. Registration information must be submitted at least 30 days prior to conducting audits of renewable fuel production facilities. The independent third-party auditor must provide to EPA the following:

(1) The information specified under § 80.76, if such information has not already been provided under the provisions of this part.

(2) Documentation of professional qualifications as described in § 80.1450(b)(2)(i)(A) and § 80.1450(b)(2)(i)(B).

(3) Documentation of professional liability insurance as described in § 80.1471(c).

(4) Any quality assurance plans as described in § 80.1469.

(5) Name, address, and company and facility identification number of all renewable fuel production facilities that the independent third-party auditor intends to audit under § 80.1472.

(6) An affidavit from each renewable fuel producer or foreign renewable fuel producer stating its intent to have the independent third-party auditor conduct a quality assurance audit of any of the renewable fuel producer's or foreign renewable fuel producer's facilities.

(7) An affidavit stating that an independent third-party auditor is independent, as described in paragraphs § 80.1471(b), of any renewable fuel producer or foreign renewable fuel producer.

(8) Proof of a RIN replacement instrument, if applicable, as described under § 80.1470.

(9) The name and contact information for each person employed (or under contract) by the independent third-party auditor to conduct audits or verify RINs, as well as the name and contact information for the Professional Engineer performing the review.

(10) *Registration updates.*—

(i) Any independent third-party auditor who makes changes to its quality assurance plan(s) that will allow it to audit new renewable fuel production facilities, as defined in § 80.1401 that is not reflected in the producer's registration information on file with EPA must update its registration information and submit a copy of an updated QAP on file with EPA at least 60 days prior to producing the new type of renewable fuel.

(ii) Any independent third-party auditor who makes any other changes to a QAP that will affect the third-party auditor's registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update its registration information 7 days prior to the change.

(iii) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by a renewable fuel facility uses a new pathway.

(iv) Independent third-party auditors must update their QAPs at least 60 days prior to verifying RINs generated by any renewable fuel facility not identified in their existing registration.

(11) *Registration renewal.* Registrations for independent third-party auditors expire at the end of the calendar year, December 31, after EPA has approved a registration under this paragraph (g) unless:

(i) The independent third-party auditor resubmits all information, updated as necessary, described in § 80.1450(g)(1) thru (g)(7) no later than October 31; and

(ii) The independent third-party auditor submits an affidavit affirming that he or she has only verified RINs using a QAP approved under § 80.1469, notified all appropriate parties of all potentially invalid RINs as described in § 80.1471(d), and fulfilled all of his or her RIN replacement obligations under § 80.1474.

(12) *Revocation of Registration.*

(i) The Administrator may issue a notice of intent to revoke the registration of a third-party auditor if the Administrator determines that the auditor has failed to fulfill any requirement of this subpart. The notice of intent shall include an explanation of the reasons for the proposed revocation.

(ii) Within 60 days of receipt of the notice of intent to revoke, the independent third-party auditor may submit written comments concerning the notice, including but not limited to a demonstration of compliance with the requirements which provide the basis for the proposed revocation. Communications should be sent to the following address:

U.S. Mail: U.S. Environmental Protection Agency, Fuels Programs Registration (6406J), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Commercial Delivery: U.S. Environmental Protection Agency, Fuels Programs Registration, Room 647C, 202–343–9038, 1310 L Street NW., Washington, DC 20005.

The Administrator shall review and consider any such submission before taking final action concerning the proposed revocation.

(iii) If the auditor fails to respond in writing within 60 days to the notice of intent to revoke, the revocation shall become final by operation of law and the Administrator shall notify the independent third-party auditor of such revocation.

(iv) EPA may deny the registration of an independent third-party auditor if the independent third-party auditor employs any person that was previously employed by an independent third-party auditor whose registration was revoked.

* * * * *

(h) Registration shall be on forms, and following policies, established by the Administrator.

■ 10. Section 80.1451 is amended as follows:

■ a. By revising paragraphs (a)(1)(ix) through (xiii);

■ b. By adding paragraphs (a)(1)(xiv) through (xvi);

■ c. By revising paragraph (b)(1)(ii)(T);

■ d. By revising paragraphs (c)(2)(x) through (xvi);

■ e. By adding paragraphs (c)(2)(xvii) and (c)(2)(xviii);

■ f. By revising paragraph (g); and

■ g. By adding paragraph (h).

The revisions and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(ix) The total current-year RINs by category of renewable fuel, as those fuels are defined in § 80.1401 (i.e., cellulosic biofuel, biomass-based diesel, advanced biofuel, renewable fuel, and cellulosic diesel), retired for compliance that are invalid as defined in § 80.1431(a).

(x) The total prior-year RINs by renewable fuel category, as those fuels are defined in § 80.1401, retired for compliance.

(xi) The total prior-year RINs by renewable fuel category, as those fuels are defined in § 80.1401, retired for compliance that are invalid as defined in § 80.1431(a).

(xii) The total cellulosic biofuel waiver credits used to meet the party's cellulosic biofuel RVO.

(xiii) A list of all RINs generated prior to July 1, 2010 that were retired for compliance in the reporting period.

(xiv) A list of all RINs that were retired for compliance in the reporting period and are invalid as defined in § 80.1431(a).

(xv) Any deficit RVO(s) carried into the subsequent year.

(xvi) Any additional information that the Administrator may require.

* * * * *

(b) * * *

(1)(i) * * *

(ii) * * *

(T) Producers or importers of any renewable fuel other than ethanol, biodiesel, renewable diesel, biogas or renewable electricity, shall report, on a quarterly basis, all the following for each volume of fuel:

(*1*) Total volume of renewable fuel produced or imported, total volume of renewable fuel blended into gasoline and diesel fuel by the producer or importer, and the percentage of renewable fuel in each batch of finished fuel;

(*2*) If the renewable fuel producer or importer enters into a written contract for the sale of a specific quantity of the renewable fuel to a party who blends the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel, or who uses the neat fuel for a qualifying fuel use, the name, location and contact information for each puchasing party, and one or more affidavits from that party including the following information:

(i) Quantity of renewable fuel received from the producer or importer;

(ii) Date the renewable fuel was received from producer;

(iii) A description of the fuel that the renewable fuel was blended into and the blend ratios for each batch, if applicable;

(iv) A description of the finished fuel, and a statement that the fuel meets all applicable standards and was sold for use as a transportation fuel, heating oil or jet fuel;

(v) Quantity of assigned RINs received with the renewable fuel, if applicable; and

(vi) Quantity of assigned RINs that the end user separated from the renewable fuel, if applicable.

(c) * * *

(2) * * *

(x) The total current-year RINs retired that are invalid as defined in § 80.1431(a).

(xi) The total prior-year RINs retired.

(xii) The total prior-year RINs retired that are invalid as defined in § 80.1431(a).

(xiii) The number of current-year RINs owned at the end of the quarter.

(xiv) The number of prior-year RINs owned at the end of the quarter.

(xv) The number of RINs generated.

(xvi) The volume of renewable fuel (in gallons) owned at the end of the quarter.

(xvii) The total 2009 and 2010 retired RINs reinstated.

(xviii) Any additional information that the Administrator may require.

* * * * *

(g) All independent third-party auditors. Any party that is an independent third-party auditor as defined in § 80.1471 that verifies RINs must submit to EPA reports according to the schedule, and containing all the information, that is set forth in this paragraph (g).

(1)(i) For RINs verified beginning on January 1, 2014, RIN generation verification reports for each facility audited by the independent third-party auditor shall be submitted according to the schedule specified in paragraph (f)(2) of this section.

(ii) The RIN generation verification reports shall include all the following information for each batch of renewable fuel produced or imported verified, where ''batch'' means a discrete quantity of renewable fuel produced or imported and assigned a unique batch-RIN per § 80.1426(d):

(A) The RIN generator's name.

(B) The RIN generator's EPA company registration number.

(C) The renewable fuel producer EPA facility registration number.

(D) The importer EPA facility registration number and foreign renewable producer company registration number, if applicable.

(E) The applicable reporting period.

(F) The quantity of RINs generated for each batch according to § 80.1426.

(G) The production date of each batch.

(H) The fuel type of each batch.

(I) The volume of denaturant and applicable equivalence value of each batch.

(J) The volume of each batch produced.

(K) The volume and type of each feedstock used to produce the batch.

(L) Which batches met the definition of Renewable Biomass.

(M) The quantity and type of co-products produced.

(N) Any additional information the Administrator may require.

(2) RIN verification activity reports shall be submitted to EPA according to the schedule specified in paragraph (f)(2) of this section. Each report shall summarize RIN verification activities for the reporting period. The quarterly RIN verification activity reports shall include all of the following information:

(i) The submitting party's name.

(ii) The submitting party's EPA company registration number.

(iii) The number of current-year RINs verified at the start of the quarter.

(iv) The number of prior-year RINs verified at the start of the quarter.

(v) The total current-year RINs verified.

(vi) The total prior-year RINs verified.

(vii) The number of current-year RINs verified at the end of the quarter.

(viii) The number of prior-year RINs verified at the end of the quarter.

(ix) A list of all RINs subject to the audit that were not verified or that were identified as Potentially Invalid RINs (PIRs) pursuant to 80.1474, along with a narrative description of why the RINs were not verified or were identified as PIRs.

(x) Any additional information that the Administrator may require.

(3) All reports required under this paragraph (g) must be signed and certified as meeting all the applicable requirements of this subpart by the independent third-party auditor or a responsible corporate officer of the independent third-party auditor.

(h) All reports required under this section shall be submitted on forms and following procedures prescribed by the Administrator.

■ 11. Section 80.1452 is amended by revising paragraph (d) and adding paragraph (e), to read as follows.

§ 80.1452 What are the requirements related to the EPA-Moderated Transaction System (EMTS)?

* * * * *

(d) *Alternative method of reporting buy and sell transactions in EMTS.* For buyers and sellers of assigned RINs that agree to utilize this alternative reporting method, the reporting requirements of paragraph(c) of this section are modified as follows:

(1) The seller of assigned RINs shall do the following:

(i) Report the sell transaction in EMTS within five (5) business days of shipping, and;

(ii) Indicate that the alternative reporting method is being utilized; and

(iii) Report the date the renewable volume is shipped in place of the date of transfer (c)(7) in the EMTS sell transaction report; and

(iv) Report a unique identifier and provide a product transfer document (PTD) that meets all requirement of § 80.1453 and that includes the unique identifier agreed upon by the buyer and seller.

(2) The buyer of assigned RINS shall do the following:

(i) Report the buy transaction in EMTS within five (5) business days of receipt;

(ii) Indicate that the alternative reporting method is being utilized;

(iii) Include the unique identifier provided by the seller under paragraph (g)(1)(iii) in the EMTS buy transaction report; and

(iv) Report the date the renewable volume is received in place of the date of transfer (c)(7) in the EMTS buy transaction report.

(e) All information required under this section shall be submitted on forms and following procedures prescribed by the Administrator.

■ 12. Section 80.1453 is amended as follows:

■ a. Revising paragraph (a) introductory text; and

■ b. Adding paragraphs (a)(5), and (a)(12)

The revisions and additions read as follows:

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

(a) On each occasion when any party transfers ownership of neat and/or blended renewable fuels or separated RINs subject to this subpart, the transferor must provide to the transferee documents that include all of the following information, as applicable:

* * * * *

(5) Name and blend level of all blending components in a product containing renewable fuel, if applicable.

* * * * *

(12) For the transfer of renewable fuel with or without RINs, an accurate and clear statement on the product transfer document of the fuel type from Table 1 to § 80.1426, and designation of the fuel use(s) intended by the transferor, as follows:

(i) Ethanol. ''This volume of neat or blended ethanol is designated and intended for use as transportation fuel or jet fuel in the 48 U.S. contiguous states and Hawaii. Any other use in the 48 U.S. contiguous states and Hawaii is a violation of 40 CFR 80.1460(g), unless the requirements in § 80.1433 are met.''

(ii) Biodiesel. '' This volume of neat or blended biodiesel is designated and intended for use as transportation fuel, heating oil or jet fuel in the 48 U.S. contiguous states and Hawaii. Any other use in the 48 U.S. contiguous states and Hawaii is a violation of 40 CFR 80.1460(g), unless the requirements in § 80.1433 are met.''

(iii) Renewable Heating oil. ''This volume of heating oil is designated and intended for use as heating oil in the 48 U.S. contiguous states and Hawaii. Any other use in the 48 U.S. contiguous states and Hawaii is a violation of 40 CFR 80.1460(g), unless the requirements in § 80.1433 are met.''

(iv) Renewable Diesel. ''This volume of neat or blended renewable diesel is designated and intended for use as transportation fuel, heating oil or jet fuel in the 48 U.S. contiguous states and Hawaii. Any other use in the 48 U.S. contiguous states and Hawaii is a violation of 40 CFR 80.1460(g), unless the requirements in § 80.1433 are met.''

(v) Naphtha. '' This volume of neat or blended naphtha is designated and intended for use as transportation fuel or jet fuel in the 48 U.S. contiguous states and Hawaii. This naphtha may only be used as a gasoline blendstock or jet fuel. Any other use in the 48 U.S. contiguous states and Hawaii is a violation of 40 CFR 80.1460(g), unless the requirements in § 80.1433 are met.''

(vi) Butanol. ''This volume of neat or blended butanol is designated and intended for use as transportation fuel or jet fuel in the 48 U.S. contiguous states and Hawaii. This butanol may only be used as a gasoline blendstock or jet fuel. Any other use in the 48 U.S. contiguous states and Hawaii is a violation of 40 CFR 80.1460(g), unless the requirements in § 80.1433 are met.''

(vii) Renewable fuels other than ethanol, biodiesel, heating oil, renewable diesel, naptha or butanol. ''This volume of neat or blended renewable fuel is designated and intended to be used as transportation fuel, heating oil, or jet fuel in the 48 U.S. contiguous states and Hawaii. Any other use in the 48 U.S. contiguous states and Hawaii is a violation of 40 CFR 80.1460(g), unless the requirements in § 80.1433 are met.''

■ 13. Section 80.1454 is amended as follows:

■ a. By adding paragraph (b)(7);

■ b. By revising paragraphs (l), (m), (n), (o), and (p); and

■ c. By adding paragraphs (q) and (r).

The revisions and additions read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(b) * * *

(7) Records related to the implementation of a QAP under § 80.1469.

* * * * *

(l) Requirements for producers or importers of any renewable fuel other than ethanol, biodiesel, renewable diesel, biogas or renewable electricity. A renewable fuel producer that generates RINs for any renewable fuel other than ethanol, biodiesel, renewable diesel, biogas or renewable electricity shall keep all of the following additional records:

(1) Documents demonstrating the total volume of renewable fuel produced, total volume of renewable fuel blended into gasoline and diesel fuel, and the percentage of renewable fuel in each batch of finished fuel;

(2) Contracts and documents memorializing the sale of renewable fuel to parties who blend the fuel into gasoline or diesel fuel to produce a transportation fuel, heating oil or jet fuel, or who use the renewable fuel in its neat form for a qualifying fuel use; and

(3) Such other records as may be requested by the Administrator.

(m) Requirements for independent third-party auditors. Any independent third-party auditor (as described at § 80.1471) must keep all of the following records for a period of at least five (5) years:

(1) Copies of all reports submitted to EPA under § 80.1451(g), as applicable.

(2) Records related to the implementation of a QAP under § 80.1469 for each facility including records from facility audits and ongoing and quarterly monitoring activities.

(3) Records related to the verification of RINs under § 80.1471(e).

(4) Copies of communications sent to and received from renewable fuel producers or foreign renewable fuel producers, feedstock suppliers, purchasers of RINs, and obligated parties.

(5) Copies of all notes relating to the implementation of a QAP under § 80.1469.

(6) List of RINs reported to EPA and renewable fuel producers or foreign renewable fuel producers as potentially invalidly generated under § 80.1474 compliance.

(7) Records related to the professional liability insurance requirement under § 80.1471(c).

(8) Copies of all records related to any financial assurance instrument as required under § 80.1470 under a quality assurance plan implemented under § 80.1469(a).

(9) Such other records as may be requested by the Administrator.

(n) The records required under paragraphs (a) through (d) and (f) through (l) of this section and under § 80.1453 shall be kept for five years from the date they were created, except that records related to transactions involving RINs shall be kept for five years from the date of the RIN transaction.

(o) The records required under paragraph (e) of this section shall be kept through calendar year 2022.

(p) On request by EPA, the records required under this section and under § 80.1453 must be made available to the Administrator or the Administrator's authorized representative. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available; or, if requested by EPA, electronic records shall be converted to paper documents.

(q) The records required in paragraphs (b)(3) and (c)(1) of this section must be transferred with any renewable fuel sent to the importer of that renewable fuel by any foreign producer not generating RINs for his renewable fuel.

(r) Copies of all reports required under § 80.1464.

■ 14. Section 80.1460 is amended by adding paragraphs (g), (h), and (i) to read as follows.

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(g) *Failing to retire RINs when fuel for which RINs have been generated is designated for use in an application other than transportation fuel, heating oil or jet fuel.* No person shall designate fuel for which RINs were generated for a non-qualifying fuel use, unless the requirements of 80.1433 have been met.

(h) *RIN Separation Violations.* No person shall do any of the following:

(1) Identify separated RINs in EMTS with the wrong separation reason code.

(2) Identify separated RINs in EMTS without having a qualifying separation event pursuant to 80.1429.

(3) Separate more than 2.5 RINs per gallon of renewable fuel that has a valid qualifying separation event pursuant to § 80.1429.

(4) Separate RINs outside of the requirements in § 80.1452(c).

(5) [Reserved]

(6) Improperly separate RINs in any other way not listed in paragraphs (i)(1)–(5) of this section.

(i) Independent third-party auditor violations. No person shall do any of the following:

(1) Fail to fully and competently implement a QAP approved under § 80.1469.

(2) Fail to notify appropriate parties of potentially invalid RINs under § 80.1474(b).

(3) Identify a RIN as verified in accordance with § 80.1471(e) that is invalid under § 80.1431.

■ 15. Section 80.1461 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows.

§ 80.1461 Who is liable for violations under the RFS program?

* * * * *

(a) * * *

(1) Any person who violates a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (h) is liable for the violation of that prohibition.

(2) Any person who causes another person to violate a prohibition under § 80.1460(a) through (d) or § 80.1460(g) through (h) is liable for a violation of § 80.1460(e).

* * * * *

■ 16. Section 80.1469 is added to read as follows:

§ 80.1469 Requirements for Quality Assurance Plans.

This section specifies the requirements for two types of Quality Assurance Plan (QAP).

(a) Option A QAP Requirements.

(1) *Feedstock-related* components.

(i) Components requiring ongoing monitoring:

(A) Feedstocks are renewable biomass as defined in § 80.1401.

(B) Feedstocks are being separated according to a separation plan, if applicable under § 80.1426(f)(5)(ii).

(C) Crop and crop residue feedstocks meet land use restrictions, or alternatively the aggregate compliance provisions of § 80.1454(g).

(D) If applicable, verify that feedstocks with additional recordkeeping requirements meet requirements of § 80.1454(d).

(E) Feedstocks are valid for the D code being used, and are consistent with information recorded in EMTS.

(F) Feedstock is consistent with production process and D code being used as permitted under Table 1 to Section 80.1426 or a petition approved through section 80.1416.

(G) Feedstock is not renewable fuel for which RINs were previously generated.

(ii) Components requiring quarterly monitoring:

(A) Separated food waste or separated yard waste plan is accepted and up to

date, if applicable under § 80.1426(f)(5)(ii).

(B) Separated municipal solid waste plan is approved and up to date, if applicable under § 80.1426(f)(5)(ii).

(C) Contracts or agreements for feedstock acquisition are sufficient for facility production.

(D) Feedstock processing and storage equipment are sufficient and are consistent with engineering review under § 80.1450(b)(2).

(E) If applicable, accuracy of feedstock energy (FE) calculation factors related to feedstocks, including average moisture content m and feedstock energy content E.

(2) *Production process-related* components.

(i) Components requiring ongoing monitoring:

(A) Production process is consistent with that reported in EMTS.

(B) Production process is consistent with D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

(C) Certificates of analysis verifying fuel type and quality, as applicable.

(ii) Components requiring quarterly monitoring:

(A) Mass and energy balances are appropriate for type and size of facility.

(B) Workforce size is appropriate for type and size of facility, and sufficient workers are on site for facility operations.

(C) If applicable, process-related factors used in feedstock energy (FE) calculation are accurate, in particular the converted fraction (CF).

(D) Verify existence of quality process controls designed to ensure that fuel continues to meet applicable property and quality specifications.

(E) Volume production is consistent with that reported to EPA and EIA, as well as other federal or state reporting.

(F) Volume production is consistent with storage and distribution capacity.

(G) Volume production capacity is consistent with RFS registration.

(3) *RIN generation-related* components.

(i) Components requiring ongoing monitoring:

(A) Standardization of volumes pursuant to § 80.1426(f)(8) are accurate.

(B) Renewable fuel type matches the D code being used.

(C) RIN generation is consistent with wet gallons produced or imported.

(D) Fuel shipments are consistent with production volumes.

(E) If applicable, renewable content R is accurate pursuant to 80.1426(f)(9).

(F) Equivalence value EV is accurate and appropriate.

(G) Renewable fuel was intended and sold for qualifying uses as transportation fuel, heating oil, or jet fuel.

(H) Verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (4), or (5), as applicable.

(ii) Components requiring quarterly monitoring:

(A) Registration, reporting and recordkeeping components.

(4) *RIN separation-related* components.

(i) Components requiring ongoing monitoring:

(A) If applicable, verify that RIN separation is appropriate under § 80.1429(b)(4).

(B) If applicable, verify that RINS were retired for any fuel that the producer produced and exported.

(ii) Components requiring quarterly monitoring:

(A) Verify that annual attestation report is accurate.

(b) Option B QAP Requirements.

All components specified in this paragraph (b) require quarterly monitoring.

(1) *Feedstock-related* components.

(i) Feedstocks are renewable biomass as defined in § 80.1401.

(ii) If applicable, separated food waste or separated yard waste plan under § 80.1426(f)(5)(ii) is accepted and up to date.

(iii) If applicable, separated municipal solid waste plan under § 80.1426(f)(5)(ii) is approved and current.

(iv) Feedstocks are being separated according to a separation plan, if applicable under § 80.1426(f)(5)(ii).

(v) Crop and crop residue feedstocks meet land use restrictions, or alternatively the aggregate compliance provisions of § 80.1454(g).

(vi) Feedstock is consistent with production process and D code being used as permitted under Table 1 to Section 80.1426 or a petition approved through section 80.1416, and is consistent with information recorded in EMTS.

(vii) Feedstock is not renewable fuel for which RINs were previously generated.

(viii) If applicable, accuracy of feedstock energy (FE) calculation factors related to feedstocks, including average moisture content m and feedstock energy content E.

(2) *Production process-related* components.

(i) Production process is consistent with that reported in EMTS.

(ii) Production process is consistent with D code being used as permitted under Table 1 to § 80.1426 or a petition approved through § 80.1416.

(iii) Mass and energy balances are appropriate for type and size of facility.

(iv) If applicable, process-related factors used in feedstock energy (FE) calculation are accurate, in particular the converted fraction CF.

(3) *RIN generation-related* components.

(i) Renewable fuel was intended and sold for qualifying uses as transportation fuel, heating oil, or jet fuel.

(ii) Certificates of analysis verifying fuel type and quality, as applicable.

(iii) Renewable fuel type matches the D code being used.

(iv) If applicable, renewable content R is accurate pursuant to 80.1426(f)(9).

(v) Equivalence value EV is accurate and appropriate.

(vi) Volume production capacity is consistent with RFS registration.

(vii) Verify that appropriate RIN generation calculations are being followed under § 80.1426(f)(3), (4), or (5), as applicable.

(4) *RIN separation-related* components.

(i) If applicable, verify that RIN separation is appropriate under § 80.1429(b)(4).

(ii) Verify that fuel that is exported was not used to generate RINs, or alternatively that were generated but retired.

(iii) Verify that annual attestation report is accurate.

(c) Each QAP shall represent a specific RIN-generating pathway as provided in Table 1 to § 80.1426 or as approved by the Administrator pursuant to § 80.1416, and shall contain elements specific to particular feedstocks, production processes, and fuel types as applicable.

(d) Submission and approval of a QAP.

(1) Each independent third-party auditor shall annually submit a QAP to the EPA which demonstrates adherence to the requirements of paragraphs (a) and (c) or (b) and (c) of this section, as applicable, and request approval on forms and using procedures specified by the Administrator.

(2) No third-party independent auditor may present a QAP as approved by the EPA without having received written approval from the EPA.

(3) A QAP is approved on the date that EPA notifies the third-party independent auditor of such approval.

(4) EPA may revoke its approval of a QAP for cause, including, but not limited to, an EPA determination that the approved QAP has proven to be inadequate in practice.

(5) EPA may void *ab initio* its approval of a QAP upon EPA's determination that the approval was based on false information, misleading

information, or incomplete information, or if there was a failure to fulfill, or cause to be fulfilled, any of the requirements of the QAP.

(e) Conditions for revisions of a QAP.

(1) A new QAP shall be submitted to EPA according to paragraph (d) of this section whenever the following changes occur at a production facility audited by a third-party independent auditor using an approved QAP:

(i) Change in feedstock.

(ii) Change in type of fuel produced.

(iii) Change in facility operations or equipment that may impact the capability of the QAP to verify that RINs are validly generated.

(2) An original QAP ceases to be valid as the basis for verifying RINs until a new QAP, submitted to EPA under this paragraph (e), is approved pursuant to paragraph (d).

■ 17. Section 80.1470 is added to read as follows:

§ 80.1470 RIN Replacement Mechanisms for Option A Independent Third Party Auditors.

(a) *Applicability.* This section applies to independent third party auditors using a QAP approved under Option A pursuant to § 80.1469(a) and (c).

(b) *Requirements.* An independent third party auditor must establish or participate in the establishment of a RIN replacement mechanism. The RIN replacement mechanism must fulfill, at a minimum, the following conditions:

(1) The RIN replacement mechanism must be capable of fulfilling the independent third party auditor's RIN replacement responsibility, as described in section 1474(b)(5)(i) of this subpart.

(2) The independent third party auditor is responsible for calculating and maintaining the minimum coverage afforded by the RIN replacement mechanism at all times.

(3) RINs held by the RIN replacement mechanism (if any) must be identified in a unique EMTS account designated for the exclusive use of the replacement mechanism.

(4) Distribution and removal of RINs from the replacement mechanism may not be under the sole operational control of the third-party auditor.

(5) An originally signed duplicate of the agreement or contract establishing the RIN replacement mechanism must be submitted to EPA by the independent third party auditor in accordance with 40 CFR 1450(g)(7).

(6) Any substantive change to the agreement establishing the RIN replacement mechanism must be submitted to EPA within 30 days of the change.

(c) *Cap on RIN Replacement for Independent Third Party Auditors of A–RINs.*

(1) If required to replace invalid A–RINs pursuant to paragraph (b) of this section, the independent third party auditor shall be required to replace no more than the percentage specified in paragraph (c)(2) of this section of each D code of A–RINs verified by the auditor in the current calendar year and four previous calendar years.

(2)(i) The cap on RIN replacement for auditors of A–RINs shall be 2% for A–RINs generated in 2013, 2014, and 2015.

(ii) The cap on RIN replacement for auditors of A–RINs shall be [to be determined] for A–RINs generated in 2016 and beyond.

(3) The auditor's potential replacement responsibility for a given RIN will expire at the end of the fourth calendar year after the calendar year in which the RIN was verified.

(4) The minimum RIN replacement coverage (RRC) that must be held by the third-party auditor's RIN replacement mechanism is the lesser of:

(i)

$$RRC_y = \sum_{i=0}^{4} 0.02 \times ARINVER_{y-i}$$

Where:

RRC_y = RIN replacement coverage in year y in units of A–RINs that the mechanism is capable of replacing

y = The current year

$ARINVER_{y-i}$ = The sum of all A–RINs of a particular D code verified by the third-party auditor in year y-i

or

(ii)

$$RRC_y = 0.02 \times ARINVER_y + RRC_{y-1} - ARINREP_{y-1},$$

Where:

RRC_y = RIN replacement coverage in year y in units of A–RINs that the mechanism is capable of replacing

y = The current year

$ARINVER_y$ = The sum of all A–RINs of a particular D code verified by the third-party auditor in year y

RRC_{y-1} = RIN replacement coverage in year y-1 in units of A–RINs that the mechanism is capable of replacing

$ARINREP_{y-1}$ = The sum of all A–RINs of a particular D code that were replaced by the third-party auditor in year y-1

(d) The cap on RIN replacement does not apply when invalid verified RINs are a result of auditor error, omission, negligence, fraud, collusion with the renewable fuel producer, or a failure to implement the QAP properly or fully.

■ 18. Section 80.1471 is added to read as follows:

§ 80.1471 Requirements for QAP Auditors

(a) QAP audits conducted pursuant to § 80.1472 must be conducted by an independent third-party auditor that is a professional engineer, as specified in paragraphs § 80.1450(b)(2)(i)(A) and § 80.1450(b)(2)(i)(B).

(b) To be considered an independent third-party auditor under paragraph § 80.1471(a):

(1) The independent third-party auditor shall not be owned or operated by the renewable fuel producer or foreign ethanol producer, or any subsidiary or employee of the renewable fuel producer or foreign ethanol producer.

(2) The independent third-party auditor shall be free from any interest in the renewable fuel producer or foreign ethanol producer's business.

(3) The renewable fuel producer or foreign renewable fuel producer shall be free from any interest in the third-party auditor's business.

(4) The independent third-party auditor must not be debarred, suspended, or proposed for debarment pursuant to the Government-wide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR, part 9, subpart 9.4.

(c) Independent third-party auditors shall maintain professional liability insurance, as defined in 31 CFR 50.5(q), of a minimum amount equal to 2% of the RINs the auditor verifies in a year to cover replacement of any invalid verified RINs due to auditor error, omission, or negligence. Independent third-party auditors shall use insurance providers that possess a financial strength rating in the top four categories from either Standard & Poor's or Moody's, i.e., AAA, AA, A or BBB for Standard & Poor's and Aaa, Aa, A, or Baa for Moody's. Replacement of any such invalid verified RINs is not subject to the cap on RIN replacement set forth in § 80.1474(e).

(d)(1) In the event that an independent third-party auditor identifies a RIN that may have been invalidly generated, the independent third-party auditor shall, within 24 hours, send notification of the potentially invalidly generated RIN to EPA and the renewable fuel producer that generated the RIN.

(2) The independent third-party auditor shall provide the notification required under paragraph (d)(1) of this section in writing (which includes email or facsimile) and, if requested by the party being notified of a potentially invalidly generated RIN, by telephone.

(e) The independent third-party auditor shall identify RINs generated from a renewable fuel producer or foreign renewable fuel producer as having been verified under a QAP.

(1) For RINs verified under QAP Option A pursuant to § 80.1469(a), RINs shall be designated as A–RINs.

(2) For RINs verified under QAP Option B pursuant to § 80.1469(b), RINs shall be designated as B–RINs.

(3) The independent third-party auditor shall not indentify RINs generated from a renewable fuel producer or foreign renewable fuel producer as having been verified under a QAP if a revised QAP must be submitted to and approved by EPA under § 80.1469(e).

(f)(1) Except as specified in paragraph (f)(2) of this section, auditors may only verify RINs that have been generated after the audit required under § 80.1472 has been completed.

(i) For A–RINs, ongoing monitoring must have been initiated.

(ii) Verification of RINs may continue for no more than 100 days following an audit.

(2) Auditors may verify RINs that were generated before the audit required under § 80.1472 has been completed, under the following conditions:

(i) The RINs in question were generated between January 1, 2013 and December 31, 2013 inclusive.

(ii) The audit is completed between January 1, 2013 and the effective date of the final rule.

(iii) The audit is performed in accordance with the elements specified in a QAP that has been approved by the EPA per § 80.1469(c).

(iv) The audit requirements of § 80.1472(e)(1) are met for every batch of renewable fuel for which RINs were generated and are being verified.

(v) The auditor may not perform more than one (1) audit under this subparagraph for any single RIN generator.

(g) The independent third-party auditor shall permit any representative of EPA to monitor at any time the implementation of QAPs and renewable fuel production facility audits.

(h) Any person who fails to meet a requirement under (f)(1) of this section shall be subject to a separate violation pursuant to section 1460(f) of this subpart.

■ 19. Section 80.1472 is added to read as follows:

§ 80.1472 Requirements for Quality Assurance Audits

(a) General requirements.

(1) An audit shall be performed by an auditor who meets the requirements of § 80.1471.

(2) An audit shall be based on either an Option A QAP per § 80.1469(a) or an Option B QAP per § 80.1469(b).

(3) Each audit shall verify every element contained in an applicable and approved QAP.

(4) Each audit shall include direct contact with all feedstock suppliers to the facility to obtain documents related to the feedstocks used in the production of renewable fuel at the facility.

(5) Each audit shall include a review of documents generated by the renewable fuel producer.

(6) Each audit shall include direct contact with all purchasers of renewable fuel produced at the facility to obtain documents related to renewable fuel purchased from the facility.

(b) On-site visits.

(1) Option A QAP.

(i) The auditor shall conduct an on-site visit at the renewable fuel production facility at least 4 times per calendar year.

(ii) The on-site visits specified in paragraph (b)(1)(i) of this section shall occur at least 60 days apart. The 60-day period shall start the day after the previous on-site ends.

(iii) The on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility, except for any physical attribute that is verified through remote monitoring equipment per the applicable QAP.

(2) Option B QAP.

(i) The auditor shall conduct an on-site visit at the renewable fuel production facility at least 4 times per calendar year.

(ii) The on-site visit specified in paragraph (b)(2)(i) of this section shall occur at least 60 days after the previous on-site visit. The 60-day period shall start the day after the previous on-site visit ends.

(iii) An on-site visit shall include verification of all QAP elements that require inspection or evaluation of the physical attributes of the renewable fuel production facility.

■ 20. Section 80.1473 is added to read as follows:

§ 80.1473 Affirmative Defenses

(a) Any person who engages in actions that would be a violation of the provisions of either § 80.1460(b)(2) or (c)(1), other than the generator of an invalid RIN, will not be deemed in violation if the person demonstrates that the criteria under § 80.1473 (c) or (d) are met.

(b) *Applicability of affirmative defenses.* The following provisions apply to affirmative defenses asserted under subsection (a) of this section:

(1) Affirmative defenses only apply to RINs that were invalidly generated and verified through a quality assurance audit using an EPA-approved Option A or Option B QAP.

(2) Affirmative defenses only apply in situations where an invalidly generated verified RIN is either transferred to another person (violation of § 80.1460(b)(2)) or used for compliance for an obligated party's RVO (use violation of § 80.1460(c)(1)).

(3) Affirmative defenses do not apply to the generator of an invalid RIN.

(c) *Asserting an affirmative defense for invalid A–RINs.* To establish an affirmative defense to a violation of § 80.1460 (b)(2) or (c)(1) involving invalid A–RINs, the person must meet the notification requirements of § 80.1473(e) and prove by a preponderance of evidence that:

(1) The RIN in question was verified through a quality assurance audit pursuant to § 80.1472 using an approved Option A QAP as defined in § 80.1469(a).

(2) The person did not know or have reason to know that the RINs were invalidly generated prior to being verified by the independent third-party auditor.

(3) If the person self-identified the RIN as having been invalidly generated, the person notified EPA within the next business day of discovering the invalidity.

(4) The person did not cause the invalidity.

(5) The person did not have a financial interest in the company that generated the invalid RIN.

(d) *Asserting an affirmative defense for invalid B–RINs.* To establish an affirmative defense to a violation of § 80.1460 (b)(2) or (c)(1) involving invalid B–RINs, the person must meet the notification requirements of § 80.1473(e) and prove by a preponderance of evidence that:

(1) The RIN in question was verified through a quality assurance audit pursuant to § 80.1472 using an approved Option B QAP as defined in § 80.1469(b).

(2) The person did not know or have reason to know that the RINs were invalidly generated at the time of transfer or use for compliance, unless a remedial action as defined in § 80.1474 was implemented.

(3) If the person self-identified the RIN as having been invalidly generated, the person notified EPA within the next business day of discovering the invalidity.

(4) The person did not cause the invalidity.

(5) The person did not have a financial interest in the company that generated the invalid RIN.

(6) If the person used the invalid B–RIN for compliance, the person adjusted its records, reports, and compliance calculations in which the invalid B–RIN was used as required by § 80.1431, unless a remedial action as defined in § 80.1474 was implemented.

(e) *Notification Requirements.* A person asserting an affirmative defense to a violation of § 80.1460 (b)(2) or § 80.1460(c)(1), arising from the transfer or use of an invalid A–RIN or B–RIN, must submit a written report to the EPA, including all pertinent supporting documentation, demonstrating that the requirements of § 80.1473(c) or (d) were met. The written report must be submitted within 30 days of the person discovering the invalidity.

■ 21. Section 80.1474 is added to read as follows:

§ 80.1474 Replacement Requirements for Invalidly Generated RINs.

(a) *Responsibility for replacement of invalid verified RINs.*

(1) The generator of the A–RIN and the independent third-party auditor that verified the A–RIN are required to replace invalidly generated A–RINs with valid RINs pursuant to the procedures specified in paragraph (b) of this section.

(2) The generator of the B–RIN and the obligated party that owns the B–RIN are required to replace invalidly generated B–RINs with valid RINs pursuant to the procedures specified in paragraph (b) of this section.

(3) The producer of an unverified RIN and the obligated party that owns an unverified RIN are required to replace invalidly generated and unverified RINs pursuant to the procedures specified in paragraph (b) of this section.

(b) *Identification and treatment of Potentially Invalid RINs (PIRs)*

(1) Any RIN can be identified as a PIR by the RIN generator, an independent third-party auditor that verified the RIN, or EPA.

(2) For PIRs identified by the RIN generator, the generator is required to notify EPA within 24 hours of the identification, including a detailed explanation of why the RIN is believed to be invalid, and is required to take one of the following corrective actions within 30 days:

(i) Retire the PIR, or

(ii) Retire a valid RIN meeting the requirements of paragraph (c) of this section.

(3) For PIRs identified by the independent third-party auditor that verified the RIN, the independent third-party auditor is required to notify EPA and the RIN generator in writing within 24 hours of the identification, including a detailed explanation of why the RIN is believed to be invalid.

(4) Within 30 days of being notified by EPA or the independent third-party auditor that verified the RIN that a RIN is a PIR, the RIN generator is required to take one of the following actions:

(i) In the event that EPA identifies a RIN as a PIR:

(A) Retire the PIR,

(B) Retire a valid RIN following the requirements of paragraph (c) of this section, or

(C) Submit a demonstration in writing to EPA that the PIR is valid.

(*1*) If EPA determines that the demonstration is satisfactory, the PIR will be deemed to be a valid RIN.

(*2*) If EPA determines that the demonstration is not satisfactory, the PIR will be deemed invalid and the PIR generator must retire the PIR or a valid RIN following the requirements of paragraph (c) of this section within 30 days of notification by EPA.

(ii) In the event that the independent third-party auditor identifies a RIN as a PIR:

(A) Retire the PIR,

(B) Retire a valid RIN following the requirements of paragraph (c) of this section, or

(C) Submit a demonstration in writing to the independent third-party auditor that the PIR is valid.

(*1*) If the independent third-party auditor determines that the demonstration is satisfactory, the PIR will be deemed to be a valid RIN; however, EPA reserves the right to make a determination regarding the validity of the RIN.

(*2*) If the independent third-party auditor determines that the demonstration is not satisfactory, EPA will then make a determination whether the demonstration is not satisfactory, and if so, the PIR will be deemed invalid and the PIR generator must retire the PIR or a valid RIN following the requirements of paragraph (c) of this section within 30 days of notification by EPA.

(5) Within 60 days of receiving a notification from EPA that a PIR generator has failed to perform a corrective action required pursuant to this section,

(i) For A–RINs, the independent third-party auditor that verified the PIR is required to retire valid RINs meeting the requirements of paragraph (c) of this section.

(ii) For B–RINs and unverified RINs, the obligated party that owns the PIR is required to either

(A) Retire the PIR.

(B) If the PIR has already been used for compliance with the obligated party's RVO, correct the RVO to subtract the PIR.

(c) *The following specifications apply when retiring valid RINs to replace PIRs or invalid RINs:*

(1) When a RIN is retired to replace a PIR or invalid RIN, it must be of the same verification type, either A–RIN, B–RIN, or unverified. The D code of the retired RIN must be eligible to be used towards meeting all the renewable volume obligations as the PIR or invalid RIN it is replacing, as specified in paragraph (a)(2) of § 80. 1427.

(2) The number of RINs retired must be equal to the number of PIRs or invalid RINs being replaced, subject to paragraph (d) of this section and paragraph (c) of § 80.1470.

(d) *Limited Exemption for invalid B–RINs.*

(1) In the event that an obligated party is required to retire or replace a PIR that is a B–RIN pursuant to paragraph (b) of this section, the obligated party will be afforded a ''limited exemption'' equal to 2% of its annual Renewable Volume Obligation (RVO) for calendar years 2013 and 2014.

(2) Limited exemptions are calculated as follows:

$$LE_{CB,i} = 0.02 \times RVO_{CB,i}$$
$$LE_{BBD,i} = 0.02 \times RVO_{BBD,i}$$
$$LE_{AB,i} = 0.02 \times RVO_{AB,i}$$
$$LE_{RF,i} = 0.02 \times RVO_{RF,i}$$

Where:

$LE_{CB,i}$ = Limited exemption for cellulosic biofuel for year i

$LE_{BBD,i}$ = Limited exemption for biomass-based diesel for year i

$LE_{AB,i}$ = Limited exemption for advanced biofuel for year i

$LE_{RF,i}$ = Limited exemption for renewable for year i

$RVO_{CB,i}$ = The Renewable Volume Obligation for cellulosic biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for the obligated party for calendar year i after 2010, in gallons, pursuant to § 80.1407.

$RVO_{AB,i}$ = The Renewable Volume Obligation for advanced biofuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

$RVO_{RF,i}$ = The Renewable Volume Obligation for renewable fuel for the obligated party for calendar year i, in gallons, pursuant to § 80.1407.

(3) If the number of invalidly generated B–RINs required to be retired or replaced in a calendar year is less than or equal to LE as calculated in paragraph (d)(2) of this section, the entire RIN retirement obligation is excused.

(4) If the number of invalidly generated B–RINs required to be retired or replaced in a calendar year is greater than LE as calculated in paragraph (d)(2) of this section, the retirement of a number of B–RINs equal to 2% of the obligated party's RVO is excused.

(5) The limited exemption applies only in calendar years 2013 and 2014.

(e) *Failure to Take Corrective Action.* Any person who fails to meet a requirement under paragraph (b)(5) of this section shall be liable for full performance of such requirement, and each day of non-compliance shall be deemed a separate violation pursuant to section 1460(f) of this subpart.

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