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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[AMS–CN–12–0074]

RIN 0581–AD30

User Fees for 2013 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2013 crop cotton classification services at $2.20 per bale—the same level as in 2012. Revenues resulting from this cotton classing fee and existing reserves are sufficient to cover the costs of providing classification services for the 2013 crop, including costs for administration and supervision.

DATES: *Effective Date:* July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Maintaining the user fee at the 2012 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost per-unit currently borne by those entities utilizing the services. (According to USDA's Economic Research Service, the U.S. average total cost of production in 2011 was $755 per bale. The user fee for classification services of $2.20 per bale represents less the one third percent of this average U.S. per-bale cost of production.);

(2) The fee for services will not affect competition in the marketplace;

(3) The use of classification services is voluntary. For the 2012 crop, 16,800,600 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service; and

(4) Based on the average price paid to growers for cotton from the 2012 crop of 0.7162 cents per pound, 500 pound bales of cotton are worth an average of $358.10 each. The user fee for classification services, $2.20 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements contained in the provisions to be amended by this rule have been previously approved by OMB and were assigned OMB control number 0581–0008, Cotton Classing, Testing, and Standards.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This final rule establishes a 2013 user fee of $2.20 per bale charged to producers for cotton classification—the same level as the 2012 user fee. The 2013 user fee was set in accordance to section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). Section 14201 of the 2008 Farm Bill provides that: (1) the Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. Specifically, it states that the classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar amount per bale classed) is established for the 2013 cotton crop that, when combined with

other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing. Furthermore, the operating reserve is expected to meet minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to at least four months of projected operating costs.

The user fee charged cotton producers for cotton classification in 2013 is $2.20 per bale, which is the same fee charged for the 2012 crop. This fee is based on the preseason projection that 13,250,000 bales will be classed by the United States Department of Agriculture during the 2013 crop year.

Accordingly, § 28.909, paragraph (b) reflects the continuation of the cotton classification fee at $2.20 per bale.

As provided for in the 1987 Act, a 5 cent per bale discount continues to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 remains at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National Database remains at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period remains the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the National Database for the business convenience of an owner without reclassification of the cotton remains the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 is maintained at $2.20 per bale.

The fee for returning samples after classification in § 28.911 remains at 50 cents per sample.

Summary of Comments

A proposed rule was published in the **Federal Register** on March 28, 2013, with a comment period of March 28, 2013 through April 12, 2013 (78 FR 18898). AMS received two comments: one from a national trade organization that represents approximately 80 percent of the US cotton industry, including cotton producers, ginners, warehousemen, merchants, cooperatives, cottonseed processors, and textile manufacturers from Virginia to California; and one from a national trade organization comprised of eight state and regional membership organizations that represent approximately 680 individual cotton ginning operations in 17 cotton-producing states. Comments from these national trade organizations expressed support for the decision to maintain the fee at the level established for the 2012 crop. Comments may be viewed at *www.regulations.gov.*

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is amended to read as follows:

PART 28—[Amended]

■ 1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 51–65; 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: May 21, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12651 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–FV–12–0052; FV12–905–2 FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Revising Reporting Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the reporting requirements prescribed under the Federal marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) is responsible for local administration of the order. This rule requires all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information will enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers.

DATES: *Effective Date:* May 30, 2013.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the reporting requirements prescribed under the order. This rule requires all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled each season. This information will enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers. This rule was unanimously recommended by the Committee at a July 17, 2012, meeting.

Section 905.71 of the order provides the Committee, with the approval of the Secretary, authority to collect information from handlers that is deemed necessary for administering the order. This rule utilizes this authority to establish a new § 905.171 under the rules and regulations of the order. This new section requires handlers of fresh citrus to report to the Committee a list of names and contact information for all growers whose fruit they have shipped by June 15 of each season.

Prior to this action, the Committee did not require handlers to report any information regarding the growers who supply them. In order to communicate with its grower base regarding the order or Committee actions, the Committee depended on mailing lists from other industry groups. However, third party lists are often incomplete, out-of-date, or do not distinguish between those growing for the fresh market or those growing for the processed market.

Ninety percent of the volume of citrus produced in Florida is sold for processing into juice, which is not regulated under the order. Consequently, while there are an estimated 8,000 citrus growers, it is estimated only 750 growers produce for the fresh market. Because there is no readily available comprehensive list of fresh citrus growers, the Committee could allocate a great deal of resources into information distribution and still not be certain that the information is getting to those covered under the order.

Recently, the Committee began discussing potential changes to the order to make it more efficient and responsive to industry needs. In these discussions, the Committee recognized that grower involvement could be improved through focused communication with fresh market citrus growers. However, in order to actively reach out to growers in the industry, the Committee must have accurate information. The Committee discussed developing a list of growers compiled annually from information provided by handlers to make effective outreach possible. Some members expressed concerns about the disclosure of proprietary information. The Committee addressed these concerns by stating the scope of the information collection could be limited to only grower contact information.

In addition, while this action assists the Committee in its efforts to keep growers informed and to solicit their input on potential changes to the order, it also can be used to increase grower outreach and involvement in Committee elections and membership, facilitate grower participation in amendment and continuance referenda, and provide for a more efficient use of Committee resources.

As a result, Committee members recommended collecting grower names and contact information each season from handlers of fresh citrus so that the Committee will have an accurate and updated list to use in communicating with fresh market citrus growers. June 15 was selected as the due date for this information as it is toward the end of the season and Committee members agreed handlers will have a complete list at that time.

This change revises reporting requirements to require all fresh citrus handlers regulated under the order to provide the Committee with contact information for all growers whose fruit they have shipped. This information is due by June 15 of each season. The change enables the Committee to more efficiently administer the order and communicate fresh market issues to fresh market citrus growers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 8,000 growers of citrus in the production area and approximately 45 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida citrus growers, the average annual grower revenue is below $750,000. In addition, based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2010–11 season was approximately $12.16 per 4/5 bushel carton, and total fresh shipments were approximately 30.4 million cartons. Using the average f.o.b. price and shipment data, about 55 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. Thus, assuming a normal distribution, the majority of producers and handlers of Florida citrus may be classified as small entities.

This rule revises the reporting requirements prescribed under the order. This action requires all fresh citrus handlers to provide the Committee with a list of all growers whose fruit they handled by June 15 of each season. This information will enable the Committee to more efficiently administer the order and better communicate fresh market issues to fresh market citrus growers. This rule creates a new § 905.171, which establishes the new reporting requirement. The authority for this action is provided for in § 905.71. This change was unanimously recommended by the Committee at a July 17, 2012, meeting.

Requiring grower contact information each season imposes a minor increase in the reporting burden on all citrus handlers. However, this data is already

recorded and maintained by handlers as a part of their daily business. Handlers, regardless of size, should be able to readily access this information. Consequently, any additional costs associated with this change will be minimal and apply equally to all handlers.

This action will also help growers receive more information about the activities under the order, and make them more aware of their opportunities to participate in the efforts of the Committee. The benefits of this rule are expected to be equally available to all fresh citrus growers, regardless of their size.

The Committee discussed making no change as an alternative to this action, but determined that in order to efficiently carry out the objectives of the marketing order, the information collection within this new report was necessary. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this collection has been submitted to the Office of Management and Budget (OMB) with the reference number 0581–0284. Upon approval, the collection will be merged with OMB No. 0581–0189, Generic OMB Fruit Crops. This final rule establishes the use of a new Committee form, which imposes a minor burden increase of 15 hours. The form, Handler Supplier Report, requires minimum information necessary to effectively carry out the requirement of the order. The information would enable the Committee to more efficiently administer the order and improve communication with growers.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 17, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on March 5, 2013 (78 FR 14236). Copies of the rule were mailed or sent via facsimile to all Committee members and citrus handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending May 6, 2013, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee requires time to prepare and mail out a handler information packet that should include the Handler Supplier Report, prior to the beginning of shipments for the next crop year that begins August 1. In addition, handlers are aware of this rule that was recommended at a Committee meeting on July 17, 2012. Also, a 60-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 905

Citrus, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.171 is added to read as follows:

§ 905.171 Handler supplier report.

Each handler shall furnish a supplier report to the Committee on an annual basis. Such reports shall be made on forms provided by the Committee and shall include the name and business address of each grower whose fruit was shipped or acquired by the handler during the season. Handlers shall submit this report to the Committee not later than June 15 of each season.

Dated: May 21, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12654 Filed 5–28–13; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–12–0064; FV13–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2013–2014 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2013–2014 marketing year, which begins on June 1, 2013. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,344,858 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,432,189 pounds and 61 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the entity responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

DATES: *Effective Date:* This final rule becomes effective June 1, 2013.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–

2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2013–2014 marketing year, which begins on June 1, 2013.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets annually in the fall to adopt a marketing policy for the ensuing marketing year or years. In determining such marketing policy, the Committee considers a number of factors, including, but not limited to, the current and projected supply, estimated future demand, production costs, and producer prices for all classes of spearmint oil. Input from spearmint oil handlers and producers regarding prospective marketing conditions is considered as well. During the meeting, the Committee recommends to USDA any volume regulations deemed necessary to meet market requirements and to establish orderly marketing conditions for Far West spearmint oil. If the Committee's marketing policy considerations indicate a need for limiting the quantity of any or all classes of spearmint oil marketed, the Committee subsequently recommends the establishment of a salable quantity and allotment percentage for such class or classes of oil for the forthcoming marketing year.

The salable quantity represents the total amount of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the marketing year. Each producer is allotted a prorated share of the salable quantity by applying the allotment percentage to that producer's allotment base for each applicable class of spearmint oil. The producer allotment base is each producer's quantified share of the spearmint oil market based on a statistical representation of past spearmint oil production, with accommodation for reasonable and normal adjustments to such base as prescribed by the Committee and approved by USDA. Salable quantities are established at levels intended to meet market requirements and to establish orderly marketing conditions. Committee recommendations for volume controls are made well in advance of the period in which the regulations are to be effective, thereby allowing producers the chance to adjust their production decisions accordingly.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 17, 2012, and recommended salable quantities and allotment percentages for both classes of oil for the 2013–2014 marketing year. The Committee, in a vote of six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 1,344,858 pounds and 65 percent, respectively. The two members opposing the action felt that the proposed levels were too high and favored establishing a lower salable quantity and allotment percentage for Scotch spearmint oil. For Native spearmint oil, the Committee, in a vote of six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage of 1,432,189 pounds and 61 percent, respectively. Once again, the two members opposing the action supported volume regulation but favored an undetermined lower salable quantity and allotment percentage for Native spearmint oil than what was proposed.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2013–2014 marketing year, which begins on June 1, 2013. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

Class 1 (Scotch) Spearmint Oil

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, Oregon, and a portion of Nevada and Utah. Scotch type oil is also produced in seven other States: Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin. Additionally, Scotch spearmint oil is produced outside of the U.S., with China and India being the largest global competitors of domestic Scotch spearmint oil production.

The Far West's share of total global Scotch spearmint oil sales has varied considerably over the past several decades, from as high as 72 percent in 1988, and as low as 27 percent in 2002. More recently, sales of Far West Scotch spearmint oil have been approximately 50 percent of world sales, and are expected to hold steady, or increase slightly, in upcoming years. In addition, imports of foreign produced spearmint oil into the U.S. have recently been trending down, while exports of domestic spearmint oil have been trending up. As a result, competition in the domestic market from foreign produced spearmint oil has decreased and the demand for Far West spearmint oil, both domestically and abroad, has been very strong.

The Scotch spearmint industry is emerging from the difficult market environment that has existed in the past few years. Many of the negative market components that were present in the spearmint oil industry from 2008 through 2011 have corrected. During that period, increased production and weakened market demand for Scotch spearmint oil combined to create large stocks of excess oil held in reserve. However, most recently, production of Scotch spearmint oil has moderated,

trade demand for Scotch spearmint oil has increased, and excess inventory levels have dropped dramatically. In fact, production of Scotch spearmint oil will need to increase during the 2013 season to meet the anticipated market demand.

Although the spearmint oil industry continues to have some concerns over the strength of the U.S. economy, marketing conditions for Scotch spearmint oil have improved significantly. Lower inventories, steady to increasing production, and strong projected demand are all positive indicators of improving marketing conditions for Scotch spearmint oil. Inventories, production, and market demand are now at levels that are considered healthy for the industry.

Certain factors may be contributing to the recent increase in demand for Far West Scotch spearmint oil. First, although China and India have been significant suppliers of spearmint oil for the past 15 years, they have started to replace some spearmint acreage with other mint varieties, such as *Mentha arvensis* (wild mint), and other non-mint competing crops. In addition, both countries are utilizing more of their domestically produced spearmint oil, removing oil that might otherwise have been exported. Also, the Midwest region of the U.S. is experiencing a significant reduction in Scotch spearmint oil production. This decrease in regional production is partly due to unexpected disease and weather related factors and partly the result of competition from other alternate crops, such as corn and soybeans, which are currently experiencing higher than average returns. Lastly, improving global economic conditions have led to increased consumption of spearmint flavored products.

The Committee estimates that the carry-in of Scotch spearmint oil on June 1, 2013, the primary measure of excess supply, will be approximately 16,570 pounds. This amount is down from the previous year's estimate of 149,740 pounds and is lower than the minimum carry-in quantity that the Committee considers to be favorable.

Production of Scotch spearmint oil has decreased in recent years in response to high Scotch spearmint oil inventory levels and below average market demand. Production dropped from a high of 1,050,700 pounds in 2009 to an estimated 621,480 pounds in 2012. Total industry production of Scotch spearmint oil is now below the level that the Committee views as optimum. The Committee expects production will increase during the 2013 season in response to the strong market demand currently observed in the industry and the low inventory levels of Scotch spearmint oil available to the market. The Committee considers the current trends in supply and demand to be favorable, as it marks an end to the oversupply situation in Scotch spearmint oil and the beginning of a period where supply and demand are in harmony.

Handlers indicate that increasing consumer demand for mint flavored products provide a positive expectation for long-term increases in the demand for Far West Scotch spearmint oil. Spearmint oil handlers have indicated that demand for Scotch spearmint oil has been gaining strength. Handlers who had projected the 2012–2013 trade demand for Far West Scotch Spearmint oil to be in the range of 825,000 pounds to 1,100,000 pounds now expect it to increase to between 900,000 pounds to 1,200,000 pounds during the 2013–2014 marketing year.

Given the improving economic indicators for the Far West Scotch spearmint oil industry outlined above, the Committee took a positive perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season. At the October 17, 2012, meeting, the Committee recommended the 2013–2014 Scotch spearmint oil salable quantity of 1,344,858 pounds and an allotment percentage of 65 percent. The Committee utilized sales estimates for 2013–2014 Scotch spearmint oil, as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil production and inventory statistics, to arrive at these recommendations. The volume control levels recommended by the Committee represent an increase of 566,418 pounds and 27 percentage points over the previous year's initial salable quantity and allotment percentage, reflecting a much more positive assessment of the industry's current economic conditions.

The Committee estimates that about 1,200,000 pounds of Scotch spearmint oil may be sold during the 2013–2014 marketing year. When considered in conjunction with the estimated carry-in of 16,570 pounds of Scotch spearmint oil on June 1, 2013, the recommended salable quantity of 1,344,858 pounds results in a total available supply of approximately 1,361,428 pounds of Scotch spearmint oil during the 2013–2014 marketing year. The Committee estimates that carry-in of Scotch spearmint oil into the 2014–2015 marketing year, which begins June 1, 2014, will be 161,428 pounds, an increase of 144,858 pounds from the beginning of the 2013–2014 marketing year.

The Committee's stated intent in the use of marketing order volume control regulations for Scotch spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation of Scotch spearmint oil salable quantity and allotment percentage for the 2013–2014 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2013—16,570 pounds.* This figure is the difference between the revised 2012–2013 marketing year total available supply of 986,570 pounds and the estimated 2012–2013 marketing year trade demand of 970,000 pounds.

(B) *Estimated trade demand of Scotch spearmint oil for the 2013–2014 marketing year—1,200,000 pounds.* This figure is based on input from producers at five Scotch spearmint oil production area meetings held in late September and early October 2012, as well as estimates provided by handlers and other meeting participants at the October 17, 2012, meeting. The average estimated trade demand provided at the five production area meetings is 1,120,000 pounds, which is 35,000 pounds less than the average of trade demand estimates submitted by handlers. The average of Far West Scotch spearmint oil sales over the last five years is 772,543 pounds.

(C) *Salable quantity of Scotch spearmint oil required from the 2013–2014 marketing year production—1,183,430 pounds.* This figure is the difference between the estimated 2013–2014 marketing year trade demand (1,200,000 pounds) and the estimated carry-in on June 1, 2013 (16,570 pounds). This figure represents the minimum salable quantity that may be needed to satisfy estimated demand for the coming year with no carryover.

(D) *Total estimated allotment base of Scotch spearmint oil for the 2013–2014 marketing year—2,069,012 pounds.* This figure represents a one percent increase over the revised 2012–2013 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost as a result of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed Scotch spearmint oil 2013–2014 marketing year allotment percentage—57.2 percent.* This percentage is computed by dividing the

minimum required salable quantity (1,183,430 pounds) by the total estimated allotment base (2,069,012 pounds).

(F) *Recommended Scotch spearmint oil 2013–2014 marketing year allotment percentage—65 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (57.2 percent), the average of the computed allotment percentage figures from the five production area meetings (55.8 percent), and input from producers and handlers at the October 17, 2012, meeting. The recommended allotment percentage of 65 percent is also based on the Committee's determination that the computed percentage (57.2 percent) may not adequately supply the potential 2013–2014 Scotch spearmint oil market.

(G) *Recommended Scotch spearmint oil 2013–2014 marketing year salable quantity—1,344,858 pounds.* This figure is the product of the recommended allotment percentage (65 percent) and the total estimated allotment base (2,069,012 pounds).

(H) *Estimated total available supply of Scotch spearmint oil for the 2013–2014 marketing year—1,361,428 pounds.* This figure is the sum of the 2013–2014 recommended salable quantity (1,344,858 pounds) and the estimated carry-in on June 1, 2013 (16,570 pounds).

Class 3 (Native) Spearmint Oil

The Native spearmint oil industry is experiencing market conditions similar to those observed in the Scotch spearmint oil market. Approximately 90 percent of U.S. production of Native spearmint oil is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. A minor amount of domestic Native spearmint oil is produced outside of the Far West region in the States of Indiana, Michigan, Minnesota, Montana, North Dakota, South Dakota, and Wisconsin.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India has been producing an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996 the Far West accounted for nearly 93 percent of the global sales of Native or Native quality spearmint oil. By 2008, that share had declined to only 48 percent. Since then, the percentage has been increasing again and Far West Native spearmint oil is estimated to be over 70 percent of global sales in 2012.

Despite the fact that Far West Native spearmint oil has been gaining world market share, the industry has endured challenging marketing conditions over the past five years. Overproduction, coupled with a decrease in demand during the global economic recession, created an excess inventory situation for Native spearmint oil that negatively impacted the industry. However, most recently, production of Native spearmint oil has moderated, trade demand for Native spearmint oil has increased, and excess inventory levels have dropped to levels considered optimal by the Committee.

When the Committee met on October 17, 2012, to consider volume regulations for the upcoming 2013–2014 marketing year, the general consensus within the Native spearmint oil industry was that marketing conditions had improved over recent years and are expected to keep improving into the future. The production of Far West Native spearmint oil, which declined from a high of 1,453,896 pounds in 2009 to approximately 1,210,260 pounds in 2012, is anticipated to remain steady during the 2013 season. The Committee further expects that production will be more in line with the projected demand of Native spearmint oil in upcoming years.

Excess Native spearmint oil inventory, as measured by oil held in reserve by producers and reported by the Committee, is estimated to be 379,006 pounds at the end of the 2012–2013 marketing year, down from a recent high of 606,942 pounds in 2011. Reserve Native spearmint oil is approaching the level that the Committee believes is optimum for the industry.

In addition to an improved supply situation, demand for Far West Native spearmint oil has been improving. Spearmint oil handlers, who previously projected the 2012–2013 trade demand for Far West Native spearmint oil in the range of 1,275,000 pounds to 1,450,000 pounds, with an average of 1,350,000 pounds, have projected trade demand for the 2013–2014 marketing period to be in the range of 1,200,000 pounds to 1,500,000 pounds, with an average of 1,400,000.

Given the economic indicators for the Far West Native spearmint oil industry outlined above, the Committee took an optimistic perspective into the discussion of establishing appropriate salable quantities and allotment percentages for the upcoming season.

As such, at the October 17, 2012, meeting, the Committee recommended a 2013–2014 Native spearmint oil salable quantity of 1,432,189 pounds and an allotment percentage of 61 percent. The Committee utilized Native spearmint oil sales estimates for 2013–2014, as provided by several of the industry's handlers, as well as historical and current Native spearmint oil market statistics to establish these thresholds. These volume control levels represent an increase of 268,887 pounds and 11 percentage points over the previous year's initial salable quantity and allotment percentage. Should these levels prove insufficient to adequately supply the market, the Committee has the authority to recommend an intra-seasonal increase, as it has done in the past two marketing periods, if demand rises beyond expectations.

The Committee estimates that approximately 1,425,000 pounds of Native spearmint oil may be sold during the 2013–2014 marketing year. When considered in conjunction with the estimated carry-in of 43,411 pounds of Native spearmint oil on June 1, 2013, the recommended salable quantity of 1,432,189 pounds results in an estimated total available supply of 1,475,600 pounds of Native spearmint oil during the 2013–2014 marketing year. The Committee also estimates that carry-in of Native spearmint oil at the beginning of the 2014–2015 marketing year will be approximately 50,600 pounds.

The Committee's stated intent in the use of marketing order volume control regulations for Native spearmint oil is to keep adequate supplies available to meet market needs and establish orderly marketing conditions. With that in mind, the Committee developed its recommendation of Native spearmint oil salable quantity and allotment percentage for the 2013–2014 marketing year based on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2013—43,411 pounds.* This figure is the difference between the revised 2012–2013 marketing year total available supply of 1,418,411 pounds and the estimated 2012–2013 marketing year trade demand of 1,375,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2013–2014 marketing year—1,425,000 pounds.* This estimate is established by the Committee and is based on input from producers at the six Native spearmint oil production area meetings held in late September and early October 2012, as well as estimates provided by handlers and other meeting participants at the October 17, 2012, meeting. The average

estimated trade demand provided at the six production area meetings was 1,354,167 pounds, whereas the handler estimate ranged from 1,200,000 pounds to 1,500,000 pounds, and averaged 1,400,000 pounds. The average of Far West Native spearmint oil sales over the last five years is 1,158,520 pounds.

(C) *Salable quantity of Native spearmint oil required from the 2013–2014 marketing year production—1,381,589 pounds.* This figure is the difference between the estimated 2013–2014 marketing year trade demand (1,425,000 pounds) and the estimated carry-in on June 1, 2013 (43,411 pounds). This is the minimum amount that the Committee believes is required to meet the anticipated 2013–2014 Native spearmint oil trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2013–2014 marketing year—2,347,850 pounds.* This figure represents a one percent increase over the revised 2012–2013 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost as a result of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed Native spearmint oil 2013–2014 marketing year allotment percentage—58.8 percent.* This percentage is computed by dividing the required salable quantity (1,381,589 pounds) by the total estimated allotment base (2,347,850 pounds).

(F) *Recommended Native spearmint oil 2013–2014 marketing year allotment percentage—61 percent.* This is the Committee's recommendation based on the computed allotment percentage (58.8 percent), the average of the computed allotment percentage figures from the six production area meetings (56.5 percent), and input from producers and handlers at the October 17, 2012, meeting. The recommended allotment percentage of 61 percent is also based on the Committee's determination that the computed percentage (58.8 percent) may not adequately supply the potential 2013–2014 Native spearmint oil market.

(G) *Recommended Native spearmint oil 2013–2014 marketing year salable quantity—1,432,189 pounds.* This figure is the product of the recommended allotment percentage (61 percent) and the total estimated allotment base (2,347,850 pounds).

(H) *Estimated available supply of Native spearmint oil for the 2013–2014 marketing year—1,475,600 pounds.* This figure is the sum of the 2013–2014 recommended salable quantity (1,432,189 pounds) and the estimated carry-in on June 1, 2013 (43,411 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 1,344,858 pounds and 65 percent, and 1,432,189 pounds and 61 percent, respectively, are based on the goal of establishing and maintaining market stability. The Committee anticipates that this goal will be achieved by matching the available supply of each class of Spearmint oil to the estimated demand of such, thus avoiding extreme fluctuations in inventories and prices.

The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity. The order makes the provision for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions. In addition, producers who produce more than their annual allotments during the 2013–2014 marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment, or, up until November 1, 2013, place it into the reserve pool to be released in the future in accordance with market needs.

This regulation is similar to regulations issued in prior seasons. The average allotment percentage for the five most recent marketing years for Scotch spearmint oil is 38.8 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 52.2 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this final rule, USDA has reviewed the Committee's marketing policy statement for the 2013–2014 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order.

During its discussion of potential 2013–2014 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The salable quantities and allotment percentages established by this final rule allow the anticipated market needs to be fulfilled. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2013–2014 season in order to meet anticipated market demand.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 36 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates

that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 36 Scotch spearmint oil producers and 29 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have income from other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit small producers more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle on behalf of, producers during the 2013–2014 marketing year. The Committee recommended this action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Notwithstanding the recent global recession and the overall negative impact on demand for consumer goods that utilize spearmint oil, demand for spearmint oil tends to change slowly from year to year.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of spearmint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have virtually no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of relatively high production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability of the spearmint oil market is illustrated by the fact that the coefficient of variation (a standard measure of variability; ''CV'') of Far West spearmint oil grower prices for the period 1980–2011 (when the marketing order was in effect) is 0.19 compared to 0.34 for the decade prior to the promulgation of the order (1970–79) and 0.48 for the prior 20-year period (1960–79). This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 48 percent of the 32-year average (1.897 million pounds from 1980 through 2011) and the largest crop was approximately 162 percent of the 32-year average. A key consequence is that, in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which were even more pronounced before the creation of the order, can create liquidity problems for some producers. The order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil of each applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to increase the salable quantity and allotment percentage for a class of oil and make a portion of the pool available. However, limited quantities of reserve oil are typically sold by one producer to another producer to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold

to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of these provisions need to be exercised prior to November 1 of each year.

In any given year, the total available supply of spearmint oil is composed of current production plus carryover stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year, unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks, which are increased in large production years, are drawn down in years where the crop is short.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied. This could result in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated trade demand for the 2013–2014 marketing year for both classes of oil at 2,625,000 pounds, and that the expected combined salable carry-in on June 1, 2013, will be 59,981 pounds. This results in a combined required salable quantity of 2,565,019 pounds. With volume control, sales by producers for the 2013–2014 marketing year would be limited to 2,777,047 pounds (the salable quantity for both classes of spearmint oil).

The allotment percentages, upon which 2013–2014 producer allotments are based, are 65 percent for Scotch and 61 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.35 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2013–2014 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that may occur without volume control.

After computing the initial 57.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Given the moderately improving marketing conditions, there was consensus that the Scotch spearmint oil allotment percentage for 2013–2014 should be more than the percentage established for the 2012–2013 marketing year (38 percent). After considerable discussion, the eight-member committee, on a vote of six members in favor and two members opposed, determined that 1,344,858 pounds and 65 percent would be the most effective Scotch spearmint oil salable quantity and allotment percentage, respectively, for the 2013–2014 marketing year. The two dissenting members felt that the salable quantity and allotment percentage should be set at an unidentified lower level.

The Committee was also able to reach a consensus regarding the level of volume control for Native spearmint oil. After first determining the computed allotment percentage at 58.8 percent, the Committee, in a vote of six members in favor and two members opposed, recommended 1,432,189 pounds and 61 percent for the effective Native spearmint oil salable quantity and allotment percentage, respectively, for the 2013–2014 marketing year. The two dissenting members felt that the salable quantity and allotment percentage should be set at an unidentified lower level.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee determined that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry could return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2013–2014 could decline substantially below current levels.

According to the Committee, the established salable quantities and allotment percentages are expected to facilitate the goal of establishing orderly marketing conditions for Far West spearmint oil.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Generic Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule establishes the salable quantities and allotment percentages of Class 1 (Scotch) spearmint oil and Class 3 (Native) spearmint oil produced in the Far West during the 2013–2014 marketing year. Accordingly, this final rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 17, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on April 15, 2013 (78 FR 22202). A copy of the rule was provided to Committee staff, who in turn made it available to all Far West spearmint oil producers, handlers, and interested persons. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 30, 2013, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2013–2014 marketing year starts on June 1, 2013, and handlers will need to begin purchasing the spearmint oil allotted under this rulemaking. Further, handlers are aware of this rule, which was recommended at a public meeting. Finally, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.232 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.232 Salable quantities and allotment percentages—2013–2014 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2013, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,344,858 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,432,189 pounds and an allotment percentage of 61 percent.

Dated: May 21, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12657 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2012–0308]

RIN 3150–AJ22

List of Approved Spent Fuel Storage Casks: MAGNASTOR® System

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised its spent fuel storage regulations to include Amendment No. 3 to Certificate of Compliance (CoC) No. 1031, NAC International, Inc. (NAC) Modular Advanced Generation Nuclear All-purpose Storage (MAGNASTOR®) System listing within the ''List of Approved Spent Fuel Storage Casks.'' The NRC is taking this action because it has received a significant adverse comment for the vendor of MAGNASTOR® in response to a companion proposed rule which was concurrently published with the direct final rule.

DATES: Effective May 29, 2013, the NRC withdraws the direct final rule published at 78 FR 16601 on March 18, 2013.

ADDRESSES: Please refer to Docket ID NRC–2012–0308 when contacting the NRC about the availability of information for this action. You may access information related to this action, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0308. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.
- *NRC's Agencywide Documents Access and Management System (ADAMS*): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Federal and State Materials and Environmental Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–415–6103, email: *Naiem.Tanious@nrc.gov.*

SUPPLEMENTARY INFORMATION: On March 18, 2013 (78 FR 16601), the NRC published in the **Federal Register** a direct final rule amending its regulations in part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) to include Amendment No. 3 to CoC No. 1031, MAGNASTOR® System listing within the ''List of Approved Spent Fuel Storage Casks.'' The direct final rule was to become effective on June 3, 2013. The NRC also concurrently published a companion proposed rule on March 18, 2013 (78 FR 16619).

In the March 18, 2013, proposed rule, the NRC stated that if any significant adverse comments were received, a document that withdraws the direct final rule would be published in the **Federal Register.** As a result, the direct final rule would not take effect.

The NRC received a significant adverse comment on the proposed rule that accompanied the direct final rule; therefore, the NRC is withdrawing the direct final rule. The comment was submitted by NAC International on April 17, 2013 (available at *www.regulations.gov* by searching on Docket ID NRC–2012–0308). NAC International's comment identified several corrections to the information used by the NRC to develop the proposed Technical Specifications. Specifically, the comment identified revisions to Table B2–4, Bounding PWR [Pressurized Water Reactor] Fuel Assembly Loading Criteria—Enrichment/Soluble Boron Limits, in Appendix B, Approved Contents for the MAGNASTOR® System, of the CoC. This table provides bounding pressurized water reactor fuel assembly loading criteria, in terms of enrichment limits. The comment also identified a typographical error in Table B2–4 which must be corrected in a revision to that table. The NRC considers these revisions to be a significant adverse comment as defined in Section I, Procedural Background, of the direct final rule, because these revisions require a change (other than editorial) to the Technical Specifications.

As stated in the March 18, 2013, proposed rule, the NRC will address the comment in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Dated at Rockville, Maryland, this 16th day of May, 2013.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2013–12742 Filed 5–28–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0406; Special Conditions No. 25–493–SC]

Special Conditions: Gulfstream Model G280 Airplane, Enhanced Flight Vision System (EFVS) With Head-Up Display (HUD)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream model G280 series airplanes. These airplanes, as modified by Gulfstream Aerospace Corporation, will have an advanced, enhanced-flight-vision system (EFVS). The EFVS is a novel or unusual design feature which consists of a head-up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 22, 2013. We must receive your comments by June 28, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0406 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Transport Standards Staff, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2239 fax (425) 227–1320; email: *dale.dunford@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

Note: The term ''enhanced vision system'' (EVS) in this document refers to a system comprised of a head-up display, imaging sensor(s), and avionics interfaces that display the sensor imagery on the HUD, and which overlay that imagery with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems that displayed the sensor imagery, with or without other flight information, on a head-down display. For clarity, the FAA created the term ''enhanced flight vision system'' (EFVS) to refer to certain EVS systems that meet the requirements of the new operational rules—in particular, the requirement for a HUD and specified flight information—and which can be used to determine ''enhanced flight vision.'' An EFVS can be considered a subset of a system otherwise labeled EVS.

On October 21, 2010, Gulfstream Aerospace Corporation applied to the FAA, via a G280 STC project, for approval of the installation of an Enhanced Flight Vision System (EFVS) with a head up display (HUD). The EFVS is also capable of displaying forward-looking infrared (FLIR) imagery. The original type certificate for the G280 airplanes is A61NM, revision 3, November 5, 2012.

The Gulfstream Model G280 is a two-crew-member transport business jet with a maximum ramp weight of 39,750 lbs and is certified for up to 19 passengers.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards, and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA intent is that the pilot will be able to use a combination of the information seen in the image, and the natural view of the outside scene seen through the image, as safely and effectively as a pilot compartment view without an EVS image, that is compliant with § 25.773.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, it believes that EFVSs could be certified through application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVS to provide a level of safety equivalent to that provided by the standard in § 25.773.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions No. 25–180–SC, which applied to an EVS installed on Gulfstream Model G–V airplanes. Those special conditions addressed the requirements for the pilot compartment view and limited the scope of the intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during the approach, and allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The 2004 operational rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. This rule will allow the use of an EFVS for operation below the minimum descent altitude or decision height to meet new visibility requirements of § 91.175(l). The purpose of these special conditions is not only to address the issue of the ''pilot compartment view,'' as was done by Special Conditions No. 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Gulfstream must show that the Model G280, as modified, complies with the regulations in the U.S. type-certification basis established for those airplanes. The U.S. type-certification basis for the airplanes is established in accordance with § 21.21 and 21.17, and the type certification application date. The U.S. type-certification basis for these airplane models is listed in Type Certificate Data Sheet No. A16NM, revision 3, November 5, 2012, which covers all variants of the Model G280 airplanes.

In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions. Also, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Gulfstream Model G280 airplanes, modified by the applicant, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type-certification basis in accordance with § 21.101.

Novel or Unusual Design Features

The G280 airplanes will incorporate an EFVS, which is a novel or unusual design feature. The EFVS is a novel or unusual design feature because it projects a video image derived from a FLIR camera through the HUD. The EFVS image is projected in the center of the ''pilot compartment view,'' which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify ''visual references for the intended runway'' (see § 91.175(l)(3)) to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than he or she can see them through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that

detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the naked eye are easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The EFVS image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal flight-crew duties and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that only displays stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically) which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image, but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared-sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (i.e., the ability to see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment. Therefore, safety standards are needed for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773, Pilot compartment view, specifies that ''Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew. . .'' In issuing § 25.773, the FAA did not anticipate the development of the EFVS and does not consider that § 25.773 adequately addresses the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to present an enhanced view during the landing approach. This enhanced view would help the pilot see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as described in FAA Order 6750.24D (''Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements,'' dated March 1, 2000).

Based on this approved functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—in visibility conditions much lower than those for conventional Category I.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

- Present an enhanced view that aids the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument-approach procedure.
- Display an image that the pilot can use to detect and identify the ''visual references for the intended runway'' required by 14 CFR 91.175(l)(3), to continue the approach with vertical guidance to 100 feet height above the touchdown-zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (i.e., 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

1. The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown.
2. The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.
3. An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene, seen through the image, as safely and effectively as the pilot would use a pilot compartment view without an EVS image that is compliant with § 25.773. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as §§ 25.1301 and 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image-characteristics criteria include the following:

- Resolution,
- Luminance,
- Luminance uniformity,
- Low-level luminance,
- Contrast variation,
- Display quality,
- Display dynamics (e.g., jitter, flicker, update rate, and lag), and
- Brightness controls.

Installation criteria address visibility and access to EFVS controls, and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high-intensity radiated fields (HIRF) and lightning protection.

Applicability

As discussed above, these special conditions are applicable to Gulfstream Model G280 airplanes. Should

Gulfstream apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model G280 airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Gulfstream Model G280 airplanes modified by Gulfstream Aerospace Corporation.

1. The EFVS imagery on the HUD must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot-compartment view, the EFVS device must meet the following requirements:

a. EFVS design must minimize unacceptable display characteristics or artifacts (e.g. noise, ''burlap'' overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of EFVS display brightness must be sufficiently effective, in dynamically changing background (ambient) lighting conditions, to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (e.g., low-visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, wind shear guidance, TCAS resolution advisories, and unusual-attitude recovery cues.

e. The EFVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view, and image, must be scaled and aligned (i.e., conformal) to the external scene and, when considered singly or in combination, must not be misleading, cause pilot confusion, or increase workload. Some airplane attitudes or cross-wind conditions may cause certain symbols, such as the zero-pitch line or flight-path vector, to reach field-of-view limits such that they cannot be positioned conformably with the image and external scene. In such cases, these symbols may be displayed, but with an altered appearance which makes the pilot aware that they are no longer displayed conformably (for example, ''ghosting'').

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot-compartment view must not be degraded by the display of the EFVS image. Pilot tasks that must not be degraded by the EFVS image include:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Appropriate limitations must be stated in the Operating Limitations section of the Airplane Flight Manual to prohibit the use of the EFVS for functions for which EFVS has not been found to be acceptable.

Issued in Renton, Washington, on May 22, 2013.

Jeff Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–12605 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0456; Directorate Identifier 2013–CE–011–AD; Amendment 39–17462; AD 2013–11–02]

RIN 2120–AA64

Airworthiness Directives; Aircraft Industries a.s. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Aircraft Industries a.s. Model L–420 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as in-flight engine flame out occurred at take-off with water injection after reduction of engine power. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective June 18, 2013.

We must receive comments on this AD by July 15, 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.

You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106.

For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, 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.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2013–0097, dated April 24, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Currently, the automatic switching off of the water injection system as installed on L–410 and L–420 aeroplanes stops the water injection into the engines during engine power reduction when throttle control levers pass the position corresponding to 88–92% of gas generator speed.

During a recent event, in-flight engine flame out occurred at take-off with water injection after reduction of engine power.

This condition, if not corrected, could lead to further events of uncommanded in-flight engine shut-down or power loss, possibly resulting in forced landing, with consequent damage to the aeroplane and injury to occupants.

Prompted by this occurrence, a procedure has been developed, instructing the flight crew to switch off the water injection system, prior to engine power reduction, to prevent any possible engine flame out.

For the reasons described above, this AD requires an amendment of the Aircraft Flight Manual (AFM) by implementation of a procedure to manually switch off the water injection system, prior to any engine power reduction.

FAA's Determination and Requirements of the AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there are no airplanes currently on the U.S. registry and thus, does not have any impact upon the public. Therefore, we find that notice and opportunity for prior public comment are unnecessary and 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 precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0456; Directorate Identifier 2013–CE–011–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 affect 0 products of U.S. registry. We also estimate that it will take about 1 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 the AD on U.S. operators to be $0, or $0 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

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:

2013–11–02 Aircraft Industries a.s.: Amendment 39–17462; Docket No. FAA–2013–0456; Directorate Identifier 2013–CE–011–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 18, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Aircraft Industries a.s. Model L–420 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 82: Water Injection.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated 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 in-flight engine flame out occurred at take-off with water injection after reduction of engine power. We are issuing this AD to correct this condition, which, if not corrected, could lead to further events of uncommanded in-flight engine shut-down or power loss, possibly resulting in forced landing, with consequent damage to the airplane and injury to occupants.

(f) Actions and Compliance

Unless already done, within 30 days after June 18, 2013 (the effective date of this AD), amend the applicable airplane flight manual (AFM) by inserting a copy of Appendix 1 of this AD, opposite the appropriate AFM page on which the water injection procedure is described.

(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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@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.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0097, dated April 24, 2013, for related information.

Appendix 1 to AD 2013–11–02

AIRPLANE FLIGHT MANUAL (AFM)

PROCEDURE TO CONTROL WATER INJECTION SYSTEM for Aircraft Industries a.s. Model L–420 Airplanes

Appendix 1—AFM procedure

Procedure to Control Water Injection System

WATER INJECTION circuit breakter	ON
TCL	T_Q=min. 60%
WATER INJECTION/ON push-button	Push and hold till amber WATER INJECTION signal comes on (on the front control panel)
Before throttling back power:	
WATER INJECTION/OFF push-button	Push and check amber WATER INJECTION signal extinguishes

WARNING

IF IT IS NECESSARY TO CHANGE TAKE-OFF RATING WITH WATER INJECTION TO LOWER RATING, WATER INJECTION MUST BE STOPPED PRIOR ENGINE POWER DECREASE OTHERWISE ENGINE FLAME OUT CAN OCCUR.

CAUTION

ITT RISES WHEN WATER INJECTION IS TERMINATED. THEREFORE MONITOR ITT AFTER WATER INJECTION TERMINATION AND THROTTLE BACK THE ENGINES AS REQUIRED TO AVOID EXCEEDING THE MAXIMUM PERMISSIBLE LIMIT OF ITT.

NOTE

If water injection pump was set to appropriate degree according to graph in AFM and corresponding amount of water was filled in into water injection tank, the water injection will not last longer than the permissible time for take-off rating using. After exhaustion of the water supply the injection system pressure drops, the injection pump is shut down automatically, and the WATER INJECTION signal on the CWD goes out.

Issued in Kansas City, Missouri, on May 20, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–12517 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace and Class E airspace areas at Pueblo Memorial Airport, Pueblo, CO, to accommodate aircraft using VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedures at Pueblo Memorial Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. Adjustments to the geographic coordinates of the airport also are made.

DATES: Effective date, 0901 UTC, August 22, 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 February 21, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Pueblo, CO (78 FR 11996). 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 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 71.1. The Class D and 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 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, to accommodate IFR aircraft using VOR/DME standard instrument approach procedures at the airport. The geographic coordinates of the airport for the Class D and Class E airspace areas are updated to coincide with the FAA's aeronautical database. This action is necessary for the safety and management of IFR operations.

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 only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does 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 Pueblo Memorial Airport, Pueblo, CO.

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 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 May 15, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–12621 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0852; Airspace Docket No. 12–AWP–5]

Amendment of Class E Airspace; Eureka, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Eureka Airport, Eureka, NV, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, August 22, 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 December 21, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Eureka, NV (77 FR 75594). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. The FAA's Terminal Products Group reassessed the proposal and on March 19, 2013, the FAA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) to modify the airspace 1,200 feet above the surface southeast of the Eureka Airport, Eureka, NV (78 FR 16821). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. This action modifies the airspace 1,200 feet above the surface by increasing the airspace area southeast of the Eureka Airport, Eureka, NV, to accommodate aircraft using the RNAV (GPS) standard instrument approach procedures at Eureka Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace 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 extending upward from 700/1,200 feet above the surface, at Eureka Airport, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. Additional controlled airspace extending upward from 1,200 feet above the surface is established to the northeast to contain the MINES (RNAV) ONE departure, and to the southeast for IFR operations. This action is necessary for the safety and management of IFR operations.

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 only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does 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 Eureka Airport, Eureka, NV.

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 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

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

* * * * *

AWP NV E5 Eureka, NV [Modified]

Eureka Airport, NV

(Lat. 39°36′14″ N., long. 116°00′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Eureka Airport; and within 1.5 miles either side of the 011° bearing of the airport extending from the 6.6-mile radius to 10 miles north of Eureka airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 40°35′00″ N., long. 115°57′00″ W.; to lat. 40°32′00″ N., long. 115°32′00″ W.; to lat. 40°11′24″ N., long. 115°19′00″ W.; to lat. 40°00′00″ N., long. 115°48′00″ W.; to lat. 39°31′00″ N., long. 115°49′00″ W.; to lat. 39°37′00″ N., long. 115°32′00″ W.; to lat. 40°01′00″ N., long. 115°15′00″ W.; to lat. 39°58′00″ N., long. 115°04′00″ W.; to lat. 39°37′00″ N., long. 114°53′00″ W.; to lat. 39°08′00″ N., long. 115°10′00″ W.; to lat. 39°06′00″ N., long. 115°57′00″ W.; to lat. 39°22′00″ N., long. 116°14′00″ W.; to lat. 39°43′00″ N., long. 116°08′00″ W.; to lat. 40°08′00″ N., long. 116°02′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on May 15, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–12624 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0147; Airspace Docket No. 13–AWP–1]

Establishment of Class E Airspace; Tuba City, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Tuba City VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC), Tuba City, AZ, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver, Albuquerque and Salt Lake City Air Route Traffic Control Centers (ARTCCs). This improves the safety and management of IFR operations in the vicinity of the VORTAC.

DATES: Effective date, 0901 UTC, August 22, 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 March 19, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Tuba City, AZ (78 FR 16823). 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 paragraph 6006, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace 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 establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, at the Tuba City VORTAC, Tuba City, AZ. This action aids in containing aircraft while in IFR conditions under control of Denver, Albuquerque and Salt Lake City ARTCCs by vectoring aircraft from en route airspace to terminal areas.

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 only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does 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 establishes controlled airspace at Tuba City, AZ.

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 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 6006 En Route Domestic Airspace Areas.

* * * * *

ANM AZ E6 Tuba City, AZ [New]

Tuba City VORTAC, AZ
(Lat. 36°07′17″ N., long. 111°16′11″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 39°37′44″ N., long. 111°07′28″ W.; to lat. 39°26′10″ N., long. 110°01′33″ W.; to lat. 38°36′14″ N., long. 109°28′14″ W.; to lat. 38°35′57″ N., long. 109°02′31″ W.; to lat. 38°28′30″ N., long. 109°03′18″ W.; to lat. 38°04′06″ N., long. 108°53′29″ W.; to lat. 37°48′47″ N., long. 108°54′40″ W.; to lat. 37°37′12″ N., long. 109°18′38″ W.; to lat. 37°36′54″ N., long. 109°35′55″ W.; to lat. 37°04′41″ N., long. 109°38′16″ W.; to lat. 36°57′10″ N., long. 108°55′03″ W.; to lat. 36°36′32″ N., long. 108°55′03″ W.; to lat. 36°20′35″ N., long. 108°47′12″ W.; to lat. 36°05′15″ N., long. 108°22′51″ W.; to lat. 36°14′38″ N., long. 107°40′25″ W.; to lat. 35°39′30″ N., long. 107°25′27″ W.; to lat. 35°11′08″ N., long. 110°03′48″ W.; to lat. 35°16′08″ N., long. 111°55′46″ W.; to lat. 35°24′00″ N., long. 112°00′00″ W.; to lat. 35°46′00″ N., long. 111°50′30″ W.; to lat. 36°25′15″ N., long. 111°30′15″ W.; to lat. 36°44′00″ N., long. 111°36′30″ W.; to lat. 37°24′45″ N., long. 111°52′45″ W.; to lat. 37°30′00″ N., long. 112°03′30″ W.; to lat. 37°50′39″ N., long. 112°24′51″ W.; to lat. 38°10′56″ N., long. 111°24′19″ W.; to lat. 38°28′51″ N., long. 110°38′05″ W.; to lat. 39°03′55″ N., long. 110°37′49″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on May 15, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–12623 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30901; Amdt. No. 3536]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 29, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 2013.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 10, 2013.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

EFFECTIVE UPON PUBLICATION

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
6/27/13	AK	Shishmaref	Shishmaref	3/4997	4/26/13	NDB Rwy 23, Amdt 1.
6/27/13	AK	Shishmaref	Shishmaref	3/4998	4/26/13	NDB Rwy 5, Amdt 1.
6/27/13	MT	Helena	Helena Rgnl	3/5234	4/26/13	NDB D, Amdt 3.
6/27/13	MT	Baker	Baker Muni	3/5271	4/26/13	NDB Rwy 13, Orig-A.
6/27/13	MT	Baker	Baker Muni	3/5272	4/26/13	NDB Rwy 31, Orig-A.
6/27/13	AK	Minchumina	Minchumina	3/5426	4/26/13	NDB Rwy 3, Amdt 3.
6/27/13	AK	Aniak	Aniak	3/5822	4/26/13	ILS/DME Rwy 10, Amdt 7C.
6/27/13	AK	Aniak	Aniak	3/5823	4/26/13	LOC/DME Rwy 10, Amdt 3C.
6/27/13	AK	Aniak	Aniak	3/5824	4/26/13	NDB/DME Rwy 28, Amdt 3.
6/27/13	AR	Little Rock	Bill and Hillary Clinton National/Adams Field.	3/6324	4/26/13	ILS OR LOC Rwy 22R, ILS Rwy 22R (CAT II), ILS Rwy 22R (CAT III), Amdt 2B.

[FR Doc. 2013–12315 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30900; Amdt. No. 3535]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 29, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 2013.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on May 10, 2013.

John M. Allen

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 27 JUNE 2013

Deadhorse, AK, Deadhorse, LOC/DME BC RWY 23, Amdt 11, CANCELED
Huntsville, AR, Huntsville Muni, RNAV (GPS) RWY 12, Orig
Huntsville, AR, Huntsville Muni, RNAV (GPS) RWY 30, Orig
Huntsville, AR, Huntsville Muni, Takeoff Minimums and Obstacle DP, Orig
Huntsville, AR, Huntsville Muni, VOR/DME RWY 12, Amdt 2
Springdale, AR, Springdale Muni, RNAV (GPS) RWY 18, Amdt 1C
Springdale, AR, Springdale Muni, RNAV (GPS) RWY 36, Amdt 1B
Colorado Springs, CO, City Of Colorado Springs Muni, Takeoff Minimums and Obstacle DP, Amdt 11
Pueblo, CO, Pueblo Memorial, GPS RWY 17, Orig-C, CANCELED
Pueblo, CO, Pueblo Memorial, GPS RWY 35, Orig-B, CANCELED
Pueblo, CO, Pueblo Memorial, ILS OR LOC/DME RWY 8L, Amdt 23, CANCELED
Pueblo, CO, Pueblo Memorial, ILS OR LOC/DME RWY 8R, Orig
Pueblo, CO, Pueblo Memorial, ILS OR LOC/DME RWY 26L, Orig
Pueblo, CO, Pueblo Memorial, ILS OR LOC/DME RWY 26R, Amdt 14, CANCELED
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 8L, Orig-A, CANCELED
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 8R, Orig
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 17, Orig
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 26L, Orig
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 26R, Amdt 1B, CANCELED
Pueblo, CO, Pueblo Memorial, RNAV (GPS) RWY 35, Orig
Pueblo, CO, Pueblo Memorial, Takeoff Minimums and Obstacle DP, Amdt 6
Pueblo, CO, Pueblo Memorial, VOR/DME RWY 26L, Orig
Pueblo, CO, Pueblo Memorial, VOR/DME RWY 26R, Amdt 28, CANCELED
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 8L, ILS PRM RWY 8L (SA CAT I), ILS PRM RWY 8L (CAT II), ILS PRM RWY 8L (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 1A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 8R (SIMULTANEOUS CLOSE PARALLEL), Amdt 1A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 9L (SIMULTANEOUS CLOSE PARALLEL), Amdt 1A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 9R, ILS PRM RWY 9R (SA CAT I), ILS PRM RWY 9R (CAT II), ILS PRM RWY 9R (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 1A

Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 10, ILS PRM RWY 10 (SA CAT I), ILS PRM RWY 10 (CAT II), ILS PRM RWY 10 (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 3A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 26L (SIMULTANEOUS CLOSE PARALLEL), Amdt 1A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 26R, ILS PRM RWY 26R (SA CAT I), ILS PRM RWY 26R (SA CAT II) (SIMULTANEOUS CLOSE PARALLEL), Amdt 2A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 27L, ILS PRM RWY 27L (SA CAT I), ILS PRM RWY 27L (CAT II), (SIMULTANEOUS CLOSE PARALLEL), Amdt 2A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 27R (SIMULTANEOUS CLOSE PARALLEL), Amdt 1A
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 28, ILS PRM RWY 28 (SA CAT I), ILS PRM RWY 28 (CAT II) (SIMULTANEOUS CLOSE PARALLEL), Amdt 3A
Sandersville, GA, Kaolin Field, VOR/DME–A, Amdt 6, CANCELED
Cairo, IL, Cairo Rgnl, NDB RWY 14, Amdt 2
Cairo, IL, Cairo Rgnl, RNAV (GPS) RWY 32, Orig
Cairo, IL, Cairo Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Canton, IL, Ingersoll, NDB OR GPS RWY 36, Amdt 2B, CANCELED
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 9R, Amdt 3A
Fort Wayne, IN, Fort Wayne Intl, ILS OR LOC RWY 32, Amdt 30
Fort Wayne, IN, Fort Wayne Intl, LOC BC RWY 14, Amdt 15
Hill City, KS, Hill City Muni, RNAV (GPS) RWY 18, Amdt 1
Hill City, KS, Hill City Muni, RNAV (GPS) RWY 36, Amdt 1
Hill City, KS, Hill City Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Bedford, MA, Laurence G Hanscom Fld, Takeoff Minimums and Obstacle DP, Amdt 6
South Haven, MI, South Haven Area Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Crookston, MN, Crookston Muni Kirkwood Fld, VOR/DME RWY 13, Orig
Morris, MN, Morris Muni—Charlie Schmidt Fld, RNAV (GPS) RWY 14, Amdt 1
Morris, MN, Morris Muni—Charlie Schmidt Fld, RNAV (GPS) RWY 32, Amdt 1
St Louis, MO, Spirit of St Louis, Takeoff Minimums and Obstacle DP, Amdt 2
Starkville, MS, George M Bryan, RNAV (GPS) RWY 36, Amdt 3A
Dillon, MT, Dillon, RNAV (GPS) RWY 17, Orig
Dillon, MT, Dillon, Takeoff Minimums and Obstacle DP, Amdt 3
Dillon, MT, Dillon, VOR–A, Amdt 8
Dillon, MT, Dillon, VOR/DME–B, Amdt 2
Asheville, NC, Asheville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 9
Carrington, ND, Carrington Muni, GPS RWY 31, Orig, CANCELED
Carrington, ND, Carrington Muni, RNAV (GPS) RWY 31, Orig
Carrington, ND, Carrington Muni, Takeoff Minimums and Obstacle DP, Orig
Rolla, ND, Rolla Muni, GPS RWY 32, Orig-A, CANCELED
Rolla, ND, Rolla Muni, RNAV (GPS) RWY 32, Orig
Syracuse, NY, Syracuse Hancock Intl, RNAV (GPS) Z RWY 10, Amdt 2A
Syracuse, NY, Syracuse Hancock Intl, RNAV (GPS) Z RWY 28, Amdt 2A
Syracuse, NY, Syracuse Hancock Intl, RNAV (RNP) Y RWY 10, Orig
Syracuse, NY, Syracuse Hancock Intl, RNAV (RNP) Y RWY 28, Orig
Redmond, OR, Roberts Field, ILS OR LOC/DME RWY 22, Amdt 3
Aguadilla, PR, Rafael Hernandez, RNAV (GPS) RWY 26, Orig
Aguadilla, PR, Rafael Hernandez, VOR/DME OR TACAN RWY 26, Orig
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) Y RWY 3, Amdt 2A
Charleston, SC, Charleston AFB/Intl, RNAV (GPS) Y RWY 21, Amdt 2A
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 3, Orig-A
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 15, Orig-A
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 21, Orig-A
Big Spring, TX, Big Spring Mc Mahon-Wrinkle, RNAV (GPS) RWY 6, Orig
Big Spring, TX, Big Spring Mc Mahon-Wrinkle, RNAV (GPS) RWY 24, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS OR LOC RWY 34L, ILS RWY 34L (SA CAT I), ILS RWY 34L (CAT II), ILS RWY 34L (CAT III), Amdt 3
Salt Lake City, UT, Salt Lake City Intl, ILS OR LOC RWY 34R, ILS RWY 34R (SA CAT I), ILS RWY 34R (CAT II), ILS RWY 34R (CAT III), Amdt 4
Salt Lake City, UT, Salt Lake City Intl, RNAV (GPS) RWY 34L, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, RNAV (GPS) RWY 34R, Amdt 1
Pasco, WA, Tri-Cities, Takeoff Minimums and Obstacle DP, Amdt 7
Wilbur, WA, Wilbur, RNAV (GPS)–A, Orig

Effective 25 JULY 2013

Santa Rosa, CA, Charles M. Schulz—Sonoma County, RNAV (GPS) RWY 14, Amdt 1B
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 6L, ILS RWY 6L (CAT II), ILS RWY 6L (CAT III), Amdt 2D

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 341

[Docket No. RM12–15–000; Order No. 780]

Filing, Indexing, and Service Requirements for Oil Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations under the Interstate Commerce Act to update its regulations governing the form, composition and filing of rates and charges by interstate oil pipelines for transportation in interstate commerce. This final rule is a part of the Commission's ongoing effort to review its filing and reporting requirements and reduce unnecessary burdens by eliminating the collection of data that are not necessary to the performance of the Commission's regulatory responsibilities.

DATES: This rule will become effective June 28, 2013.

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143 FERC ¶ 61,137

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

Final Rule

(Issued May 16, 2013)

I. Introduction

1. The Federal Energy Regulatory Commission (Commission or FERC) is amending part 341 of its regulations to rewrite, remove, and update its regulations governing the form, composition and filing of rates and charges by interstate oil pipelines for transportation in interstate commerce.[1] These modifications are part of the Commission's ongoing effort to review its filing and reporting requirements and reduce unnecessary burdens by eliminating the collection of data that are not necessary to the performance of the Commission's regulatory responsibilities.

II. Background

2. Section 6 of the Interstate Commerce Act (ICA) requires each interstate oil pipeline to file rates, fares, and charges for transportation on its system, and also to file copies of contracts with other common carriers for such traffic. Similarly, section 20 of the ICA requires annual or special reports from carriers subject to the ICA collected by the Commission.[2] These requirements are reflected in 18 CFR

[1] 18 CFR Part 341 (2012).

[2] *See* 49 U.S.C. app. 6 and 20 (1988).

Parts 341 and 357 of the Commission's regulations.[3]

3. In 2008, the Commission adopted Order No. 714, which required that all tariffs and tariff revisions and rate change applications for oil pipelines and other Commission-regulated entities be filed electronically according to a set of standards developed in conjunction with the North American Energy Standards Board.[4] Consequently, since April 1, 2010, all tariff filings with the Commission are made electronically.[5]

4. On October 12, 2012, consistent with the Commission's goal to streamline its procedures to eliminate unnecessary regulatory obligations, the Commission proposed modifying Part 341 of its regulations.[6]

III. NOPR Comments

5. Airlines for America (A4A),[7] the National Propane Gas Association (NPGA),[8] Valero Marketing and Supply Company (Valero), and the Association of Oil Pipelines (AOPL)[9] filed comments in response to the Commission's NOPR. AOPL filed reply comments. AOPL's reply comments will not be specifically addressed below because they relate to issues raised by other commenters that are beyond the scope of this proceeding.

6. All the commenters generally support the proposed rulemaking and the Commission's efforts to eliminate unnecessary oil pipeline filings and to update the service and posting requirements. AOPL, NPGA and Valero agree with the proposals to streamline the processing of rate and other filings. NPGA believes the changes will help improve communications between pipelines and shippers and other interested parties.

7. Nonetheless, several commenters seek clarification on various proposed regulations. Others seek to expand the scope of the proceeding to include changes outside the scope of the proposed rulemaking. The comments are addressed below.

IV. Discussion

A. Posting Requirements

1. Eliminating Paper Posting

a. NOPR

8. On October 12, 2012, consistent with the Commission's goal to streamline its procedures to eliminate unnecessary regulatory obligations, the Commission proposed eliminating the paper posting requirements of sections 341.0(a)(7), 341.3(c), and 341.7 of its regulations.[10]

9. The Commission proposed revising section 341.0(a)(7) to eliminate the requirement that oil pipelines make their tariffs ''available . . . for public inspection . . . at the carrier's principal office and other offices of the carrier where business is conducted. . . .'' Instead, consistent with the requirements for public utilities and interstate natural gas pipelines, the Commission proposed mandating that each oil pipeline post its currently effective, pending and suspended tariffs on its public Web site(s).[11] The Commission also proposed revising section 341.7 of its regulations to eliminate the requirement that ''[c]oncurrences must be maintained at carriers' offices'' in paper form. In conjunction with these changes, the Commission proposed updating section 341.3 of its regulations by removing subsection 341.3(c), which references ''loose-leaf tariffs,'' as loose-leaf tariffs would no longer exist under the proposal. The Commission concluded that its proposals would reduce the burden on interstate oil pipelines while increasing the ease of accessing oil pipeline tariffs for shippers, the public, and possibly the oil pipelines themselves.

b. Comments

10. As noted, the Commission proposed to modify section 341.0(a)(7) to require each oil pipeline to electronically post its currently effective, pending and suspended tariffs on their public Web sites and eliminate references to making the tariffs available at the carrier's place of business. The electronic posting proposal elicited the most comments with commenters suggesting modifications and additional changes.

11. AOPL recommended two modifications. First, AOPL requests the Commission eliminate the requirement to post pending or proposed tariffs on a public Web site.[12] AOPL argues that posting pending tariffs is unnecessary because oil pipelines should exclusively post current tariffs since shippers can access information on pending tariffs through eTariff or eLibrary. AOPL also complains that public utilities and interstate natural gas pipelines are not obligated to post pending or proposed tariffs.[13]

12. AOPL then requests the Commission eliminate the proposed requirement to post suspended tariff filings unless the suspended filing is subject to the maximum seven-month suspension period under the ICA. AOPL rationalizes that suspended tariff filings will be served on all interested parties in accordance with section 341.2(a) of the Commission's regulations and that posting suspended tariffs may cause confusion because tariffs are often only suspended for a nominal period.[14]

13. AOPL also asks for 30 days from the date the Commission issues an order approving or suspending a tariff for an oil pipeline to post an update of that tariff record on its public Web site. AOPL contends 30 days are necessary for an oil pipeline to coordinate with information technology staff to post a tariff, but would still allow entities to access the tariff in a timely manner.

c. Commission Decision

14. The Commission adopts, with a minor modification, the NOPR proposal to modify section 341.0(a)(7) to require each oil pipeline to electronically post its currently effective, pending and suspended tariffs on its public Web sites and eliminate references to making the tariffs available at the carrier's place of business. While the Commission will retain the requirement to post all currently effective, pending and suspended tariffs, as discussed below section 341.0(a)(7) will not require an oil pipeline to post tariffs that are suspended for a nominal period.

15. The Commission rejects AOPL's request to strike the word ''proposed'' from revised section 341.0(a)(7). The Commission does not adopt AOPL's suggestion to eliminate the requirement to post pending or suspended tariff

[3] *See also* 18 CFR parts 341 and 357 (2012) (implementing the filing and reporting requirements of sections 6 and 20 of the ICA).

[4] *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

[5] *Id.* P 104.

[6] *Filing, Indexing, and Service Requirements,* Notice of Proposed Rulemaking, 77 FR 65513 (Oct. 29, 2012), FERC Stats. & Regs. ¶ 32,694 (2012) FERC Stats. & Regs. ¶ 32,694 (2012) (NOPR).

[7] A4A is an airline trade association whose members account for more than 90 percent of the passenger and cargo traffic carried by U.S. airlines.

[8] NPGA is a trade association of the U.S. propane industry with a membership of about 3,000 companies, including 38 affiliated state and regional associations representing members in all 50 states.

[9] AOPL is a trade association that represents the interests of common carrier oil pipelines. AOPL's members transport almost 85 percent of the crude oil and refined petroleum products shipped through pipelines in the U.S.

[10] Section 341.0(a)(7) provides that pipelines must post their tariffs by making them available at offices of the carrier, or on the Internet. Section 341.3(c) lays out the requirements for ''loose-leaf tariffs,'' i.e., paper tariffs. Section 341.7 provides that pipelines must maintain their concurrences at their offices.

[11] The terms of ''effective,'' ''pending,'' and ''suspended'' are those used by Order No. 714 and eTariff, and for this document. The equivalent terms in 18 CFR 341.0(b)(4) (2012) are ''current,'' ''proposed,'' and ''suspended,'' respectively.

[12] AOPL Comments at 3.

[13] *Id.* at 4.

[14] *Id.* (citing 18 CFR 431.2(a)).

records because oil pipelines already have an obligation to post effective, pending and suspended tariffs under the Commission's current regulations.[15] The changes adopted in this final rule are not intended to modify this existing substantive requirement. Rather, they were intended to reduce the burden on interstate oil pipelines of compliance with Commission regulations while increasing the ease of accessing oil pipeline tariffs for shippers, the public, and possibly the oil pipelines themselves.

16. Although proposed tariff changes are available through eLibrary or the Commission' eTariff Public Viewer,[16] the Commission notes that proposed tariffs are not substitutes for the actual tariffs in effect and applicable to shippers on a given day. Thus, an oil pipeline must post the currently effective tariff and shippers should be able to view such posting as well as any proposed or suspended tariffs going into effect. This final rule does not change this requirement. Additionally, although proposed tariffs are available through eLibrary or eTarriff, shippers and other interested parties inexperienced with accessing information from the Commission's Web site will benefit from oil pipelines posting tariffs on their public Web sites.

17. The Commission agrees with AOPL, as a practical matter, that it could be cumbersome and uninformative to post tariff records that are suspended for only a nominal period because minimally suspended tariffs could move from a pending status to a suspended status to an effective status on the same date. Accordingly, the Commission will eliminate the posting requirements for tariffs suspended for only a nominal period. However, the Commission notes oil pipelines are still required by section 341.0(b)(4) to identify any tariff records that remain in a suspended status. To the extent that AOPL is arguing for not posting tariff records that are suspended for periods longer than a minimal period, the Commission does not agree with such a proposed change.

18. The Commission notes that a notation of ''suspended'' designation is one of many ways an oil pipeline could denote a suspended tariff record. The Commission is not mandating any specific way to mark the status of effective, pending or suspended tariff records as long as the method used is reasonably clear.

19. The Commission rejects AOPL's suggestion that oil pipelines be given 30 days from the date the Commission issues an order approving or suspending a tariff for an oil pipeline to post an update of that tariff record on its public Web site. Section 341.0(b)(4), which the Commission does not propose to change in this proceeding, does not provide any timeline for when tariffs are to be updated. Oil pipelines are required by the ICA to post and keep open for public inspection their tariffs for all transportation services they provide.[17] Shippers should reasonably expect that, when they view an oil pipeline's tariff, they will find the rates, terms and conditions applicable to the transportation service they are interested in or for which they are receiving transportation service. AOPL did not identify any reason as to why maintenance of an electronic tariff cannot meet the timing standards currently met for paper tariffs.

2. Service of Filings

a. NOPR

20. The Commission also proposed revising section 341.2(a) of its regulations to be more consistent with section 385.2010 of its regulations by eliminating an oil pipeline's option to ''serve tariff publications and justifications to each shipper and subscriber'' by paper.[18] Section 385.2010(f)(2) currently provides that, subject to certain limitations and exceptions, ''service of any document in proceedings commenced on or after March 21, 2005, must be made by electronic means. . . .'' [19] The Commission's proposed change will create a uniform service requirement for all Commission-regulated entities and eliminate any ambiguity regarding the Commission's preferred mode of service. Moreover, the Commission's proposal will reduce the burden on interstate oil pipelines while increasing the ease of tracking document filing activity and potentially reducing mailing and courier fees.

b. Comments

21. A4A asks the Commission to specify the methods of service that will be allowed under the amended section 341.2(a) of its regulations. A4A believes that section 385.2010 is confusing as it is focused on service in existing proceedings. A4A suggests citing section 385.2010(f) of the Commission's regulations instead of the more generic section 385.2010. A4A also requests that the Commission require carriers to serve all filings or orders that affect rates, terms, or conditions on shippers in accordance with the requirements of revised section 341.2(a).[20]

22. AOPL supports referencing section 385.2010(f)(2) in proposed section 341.2(a).[21] AOPL believes that reference will help clarify the service requirements for tariff filings to the benefit of oil pipelines and shippers alike.

c. Commission Decision

23. The Commission adopts the NOPR proposal to revise section 341.2(a) of its regulations to require an oil pipeline to serve tariff publications and justifications to each shipper and subscriber electronically. To do so, the Commission will revise its regulations to require that service ''shall be made in accordance with the requirements of [section] 385.2010'' of the Commission's regulations.

24. Contrary to A4A's assertion, section 385.2010 of the Commission's regulations does not only relate to existing proceedings. Rather section 385.2010 applies to both existing and new proceedings, and rulemakings. Section 385.2010 provides that service is not limited to just those on the official service list, but also includes any other person ''required to be served under Commission rule or order or under law.''

25. The Commission declines to limit the service reference to subsection 385.2010(f). Section 385.2010 addresses additional service requirements that may apply to an oil pipelines' service obligations. For these reasons, the Commission rejects A4A's and AOPL's recommendation to modify section 341.2(a) to reference 385.2010(f).

3. Index of Effective Tariffs

a. NOPR

26. As part of its efforts to eliminate unnecessary filing requirements, the Commission also proposed changing section 341.9 of its regulations, which specifies the information that an oil pipeline's tariff index must contain and how it must be organized. Section 341.9(a) of the Commission's regulations provides that each Commission-regulated ''carrier must publish as a

[15] 18 CFR 341.0(b)(4) (2012).

[16] The Commission's eTariff Public Viewer may be found via the following link: *http://etariff.ferc.gov/TariffList.aspx.*

[17] 49 U.S.C. app. 6(1).

[18] The Commission recognizes that the NOPR could be read to indicate that only service by paper is currently provided for in section 341.2(a). *See* NOPR at P 7. However, section 341.2(a) of the Commission's regulations allowed for service either electronically or by paper, so while existing section 341.2(a) provides for electronic or paper service, the proposal was to remove the option of paper service and require, consistent with Order No. 714, exclusively electronic service.

[19] 18 CFR 385.2010(f)(2) (2012).

[20] A4A Comments at 4.

[21] AOPL Comments at 6.

separate tariff publication under its FERC Tariff numbering system, a complete index of all effective tariffs to which it is a party . . . .'' [22] Section 341.9(e) further provides that the ''index must be kept current by supplements numbered consecutively'' that may be issued quarterly. At a minimum, the index must be reissued every four years.[23]

27. The Commission proposed to eliminate the requirement that each oil pipeline make a tariff filing setting forth an index of all effective tariffs to which it is a party and replace such requirement with an obligation that each oil pipeline post an index of its tariffs on its public Web site(s).[24] The Commission also proposed simplifying the information oil pipelines must include by requiring that the index of tariffs identify for each tariff: (1) the product being shipped and (2) the origin and destination points for that product.[25] The Commission further proposed that each oil pipeline update the online index of tariffs within ninety (90) days of any change.[26] The Commission stated that its proposal would eliminate the need of an oil pipeline to make the quadrennial and intermediate supplemental tariff filings.[27] The Commission also reasoned the posting of the index of tariffs on an oil pipeline's public Web site would provide shippers with more current information as the index of tariffs would be able to be updated more frequently under the proposal. Importantly, the Commission also concluded that this proposal would simplify what is required to be contained in the index of tariffs while easing access to this information for current shippers and prospective shippers.[28]

28. Many oil pipelines only have one or two tariffs on file with the Commission. Therefore, the Commission proposed to require only oil pipelines with more than two tariffs to maintain an index of tariffs on their public Web sites.[29] The Commission estimated that the proposed changes to the index of tariff requirements will eliminate approximately twenty-two unnecessary filings each year.[30] These changes will provide shippers and the public with more timely information and in a more useful manner while reducing the burden of Commission filings.

b. Comments

29. AOPL does not oppose the proposed revisions to the index of effective tariffs and finds them reasonable.[31] A4A and Valero propose to revise section 341.9(a)(5) to identify the specific origins and destination for each product or products covered by the tariff.[32] They believe such information will eliminate ambiguities regarding the tariffs that cover multiple products with multiple origins and destinations.

c. Commission Decision

30. The Commission adopts the NOPR proposal, as modified by A4A and Valero, to amend section 341.9 to require only those oil pipelines with more than two tariffs to maintain an index of tariffs on their public Web sites, simplify the information each oil pipelines must include in its index of tariffs and to eliminate the need of an oil pipeline to make the quadrennial and intermediate supplemental tariff filings. The Commission finds that the language suggested by A4A and Valero revising the Commission's proposal regarding section 341.9(a)(5) is reasonable and provides additional clarity.

31. The Commission intends for the Index of Tariffs to be a simple way for interested parties to see what products are carried under a tariff and their origin and destination points. The language as originally proposed left open the possibility that products and points of origin and delivery could be aggregated, which was not the Commission's intent. Identifying the specific origins and destination for each product or products covered by the tariff makes the Commission's intent for the Index of Tariffs clearer. Thus, the Commission will include this provision in the regulations adopted by this final rule.

B. Electronic Updates and Filing Requirements

32. The Commission pointed out in the NOPR that many of the tariff filing and tariff maintenance requirements currently set forth in Part 341 of the Commission's regulations are premised on the maintenance of paper records.[33] Since the implementation of Order No. 714, however, some oil pipeline tariff filings are now obsolete. In light of these changes, the Commission proposed removing the filing requirements for amendments to tariffs provided for under section 341.4 of the Commission's regulations, including the amendment and suspension requirements.

1. Tariff Supplements/Amended, Canceled or Reissued Tariff Supplement Data/Cancelling Tariffs

a. NOPR

33. Section 341.4(a)(1) of the Commission's regulations allows an oil pipeline's tariff to be supplemented only once.[34] In the NOPR, the Commission concluded that this provision is now outdated because it is practical for oil pipelines to modify electronic tariffs at any time. Accordingly, the Commission proposed to delete section 341.4(a)(1).

34. Section 341.4(a)(2) of the Commission's regulations sets forth the requirements for maintenance of oil pipeline tariffs that are amended, canceled, or reissued.[35] In Order No. 714, the Commission required oil pipelines to maintain Record Version Numbers for each tariff record.[36] The Commission noted that data is now maintained electronically and the provisions set forth in section 341.4(a)(2) are obsolete. Consequently, the Commission proposed to delete section 341.4(a)(2).[37]

35. The Commission also proposed to consolidate the instructions for cancellation of tariffs into section 341.5 of the Commission's regulations.[38] Section 341.4(b) of the Commission's regulations requires oil pipelines to file supplements to an amendment to a tariff ''when tariffs are canceled without reissue.'' [39] Section 341.5 of the Commission's regulations also details requirements in the event that an oil pipeline's tariff is canceled. Rather than addressing cancelation in two separate regulations, the Commission proposed to consolidate and simplify the requirements relating to oil pipeline tariff cancelations into section 341.5 of the Commission's regulations by detailing that if an oil pipeline tariff is no longer offered, then the oil pipeline

[22] 18 CFR 341.9(a)(2012).

[23] 18 CFR 341.9(e) (2012).

[24] NOPR, FERC Stats. & Regs. ¶ 32,694 at P 9.

[25] *Id.*

[26] *Id.*

[27] *Id.* P 10.

[28] *Id.*

[29] *Id.* P 11.

[30] *Id.*

[31] AOPL Comments at 6.

[32] A4A Comments at 5 and Valero Comments at 2.

[33] NOPR, FERC Stats. & Regs. ¶ 32,694 at P 12.

[34] 18 CFR 341.4(a)(1) (2012) (limiting supplements to ''one effective supplement per tariff, except for cancellation, postponement, adoption, correction, and suspension supplements.'').

[35] 18 CFR 341.4(a)(2) (2012).

[36] Record Version Number is the representation of the version of the Tariff Record. *See Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300 and 341 Tariff Filings* (*Implementation Guide*) located on the Commission Web site.

[37] NOPR, FERC Stats. & Regs. ¶ 32,694 at P 14.

[38] 18 CFR 341.5 (2012).

[39] 18 CFR 341.4(b) (2012). *See also* 18 CFR 341.3(b)(10)(ii) (2012) (detailing tariff reissuance requirements).

must cancel such tariff within thirty days of the termination of the tariff.

b. Comments

36. AOPL supports the proposed revisions to Part 341 to reflect the electronic tariff filing procedures that have been implemented pursuant to Order No. 714.[40] A4A also supports the proposed revision but asks the Commission to ''ensure that any of the [oil] pipeline's filings or supplements and/or tariff cancellations, are serviced in accordance with section 341.2(a).''[41]

c. Commission Decision

37. The Commission adopts the NOPR's proposals as to tariff supplements, amended, canceled, or reissued tariff supplement data, and canceling tariffs. The Commission declines to adopt A4A's request because the Commission's service obligations under proposed 341.2(a) and 385.2010 are self explanatory.

2. Suspension Supplements

a. NOPR

38. The Commission further proposed to eliminate the filing requirements for oil pipeline suspension supplements required by section 341.4(f) of the Commission's regulations. Section 341.4(f) currently provides that a ''suspension supplement must be filed for each suspended tariff or suspended part of a tariff within 30 days of the issuance of a suspension order.''[42] Section 341.4(f) additionally provides that the suspension supplement must be served on all subscribers.

39. The suspension supplement tariff record filing was originally premised on the maintenance of paper tariff records and the service of such paper tariff records, which is now obsolete because of the electronic filing requirements of Order No. 714.[43] Accordingly, the Commission proposed to eliminate the current filing requirements of section 341.4(f) and to replace them with an obligation for oil pipelines to serve notice of Commission suspension orders on individual oil pipeline subscriber lists. The Commission concluded that this would eliminate the tariff filing for the suspension supplement, as well as subsequent filings an oil pipeline must make to remove a suspension supplement. The Commission estimated that this will eliminate approximately twelve filings each year.

b. Comments

40. AOPL supports the elimination of suspension supplements, but asks the Commission to ''eliminate any requirement'' for oil pipelines ''to serve suspension orders on individual subscriber lists after a transition period. . . .''[44] AOPL notes that shippers may access suspension orders through the Commission's eLibrary and the Commission does not require any other Commission-jurisdictional entities to serve a Commission order on their subscriber lists.[45]

41. Valero, on the other hand, requests that oil pipelines be required to post suspension supplements on their public Web sites in addition to serving the Commission suspension orders on those included on a subscriber list.[46]

c. Commission Decision

42. The Commission adopts the NOPR proposal to eliminate the filing requirements for oil pipeline suspension supplements required by section 341.4(f) of the Commission's regulations, but declines to adopt the proposal to require oil pipelines to serve notice of Commission suspension orders on individual oil pipeline subscriber lists. However, the Commission will not adopt Valero's request that pipelines post suspension supplements.[47]

43. Valero's proposal to create and post a suspension supplement would be duplicative of the requirement for oil pipelines to post suspended tariff records. Under section 341.4(f), a suspension supplement consists of a tariff record that contains the ordering paragraphs of the Commission's suspension order. Since the issuance of Order No. 714, the status of a tariff record is now maintained as part of an electronic tariff, not a paper tariff. Shippers' and interested parties' access to this information is protected because Commission issuances are available on eLibrary and the **Federal Register**. Further, the Commission serves its issuances on those entities that have intervened in the tariff proceeding and who have eSubscribed to the tariff proceeding.[48]

44. With respect to requiring oil pipelines to serve their subscriber lists with Commission issuances, the Commission notes that it does not require regulated entities in any other tariff program to serve Commission issuances on their customers. For these reasons, the Commission will not require oil pipelines to serve their subscriber lists with Commission issuances nor require oil pipelines to post suspension supplements.

3. Amendments to Tariffs

a. NOPR

45. The Commission proposed further revisions to section 341.4 of its regulations to treat all amendments to pending tariffs, whether ministerial or substantive, in the same manner as they are treated for public utilities and natural gas companies.[49] The Commission's regulations do not allow an oil pipeline to make non-ministerial tariff changes without filing to withdraw any pending proposal and making a new tariff filing. Section 341.4(e) of the Commission's regulations only permits an oil pipeline to file no more than three ''correction supplements'' to correct ''typographical or clerical errors'' per tariff.[50]

46. In the electronic filing environment established by Order No. 714, the Commission no longer sees a reason to limit the number of times an oil pipeline may make corrections to a tariff record. Thus, the Commission proposed to revise section 341.4 of its tariff to treat all amendments to pending tariff records, the same, whether ministerial or substantive to allow an oil pipeline to file to amend or to modify a tariff record at any time during the pendency of any Commission action on such tariff record.[51] In addition, the Commission proposed to create a tariff record amendment process that parallels the existing business process for amending pending statutory tariff filings under its public utility and natural gas programs.[52] Under these proposals, an oil pipeline will be able to keep its requested effective date from its original tariff record filing, while giving interested parties a full comment period to address any issues relating to a proposed amendment. Pursuant to proposed section 341.4, an amendment to a pending tariff filing will toll the notice period as provided in section

[40] AOPL Comments at 4.

[41] *Id.*

[42] 18 CFR 341.4(f) (2012).

[43] NOPR, FERC Stats. & Regs. ¶ 32,694 at P 17.

[44] AOPL Comments at 7.

[45] *Id.* at 8.

[46] Valero Comments at 3.

[47] The Commission notes that no change to the regulations is required as the result of this finding. The NOPR did not contain a regulation to implement this proposal.

[48] The Commission notes that any person, regardless of whether they are a party to the proceeding, a shipper, a subscriber or simply an interested person, may receive an email notification from the Commission with a link to eLibrary of every document filed by the parties or the Commission in a proceeding through the Commission's free eSubscription service. The eSubscription service is located at *http://www.ferc.gov/docs-filing/esubscription.asp.*

[49] NOPR, FERC Stats. & Regs. ¶ 32,694 at P 18.

[50] 18 CFR 341.1(e) (2012).

[51] NOPR, FERC Stats. & Regs. ¶ 32,694 at P 19.

[52] 18 CFR 35.17(b) and 18 CFR 154.205(b) (2012) (respectively).

341.2(b) of the Commission's regulations for the original filing, and establish a new date for final Commission action.

b. Comments

47. A4A supports the proposed changes but seeks a service requirement.[53] AOPL supports the proposed revision but requests that the Commission modify the language in proposed section 341.4 to reflect the intent of the NOPR. Specifically, AOPL points out that ''while the NOPR explains that, under the proposed regulations, 'an oil pipeline will be able to keep its requested effective date from its original tariff record filing,' the proposed language in Section 341.4 provides that filing an amendment or modification to a tariff filing will 'establish a new date on which the entire filing will become effective in the absence of Commission action, no earlier than 31 days from the date of the filing of the amendment or modification.' '' [54] Accordingly, AOPL requests that the Commission modify the proposed language in section 341.4 to reflect the stated intent in the NOPR.[55]

c. Commission Decision

48. The Commission adopts the NOPR proposal to modify section 341.4 to treat all amendments to pending tariff records the same, whether ministerial or substantive, to allow an oil pipeline to file to amend or to modify a tariff record at any time during the pendency of the Commission acting on such tariff record, as modified as by AOPL. We believe that the language proposed by AOPL more clearly reflects the Commission's intent in proposing the modification.

4. Adoption

a. NOPR

49. Section 341.6(a) of the Commission's regulations currently provides an oil pipeline must file a tariff and ''notify the Commission when there is: (1) [a] change in the legal name of the carrier; (2) [a] transfer of all of the carrier's properties; or (3) [a] change in ownership of only a portion of the carrier's property.'' [56] This filing must be made no later than thirty days following such occurrence. This filing is commonly known as an ''adoption notice.'' Sections 341.6(c) and (d) provide the requirements for complete and partial adoptions, respectively. When a carrier changes its legal name, when ownership of all a carrier's properties is transferred, or when the ownership of a portion of a carrier's properties is transferred to another carrier, the adopting carrier ''must file and post an adoption notice. . . .'' Under either complete or partial adoption, the adopting oil pipeline must make a tariff filing within thirty days following such occurrence to bring such tariffs forward.

50. To eliminate unnecessary filings, the Commission proposed consolidating the adoption notice filing and the filing to integrate the tariff records of the adopting carrier. To implement this change, the Commission proposed to model section 341.6 on section 154.603 of the Commission's natural gas regulations. Section 154.603 provides that ''[w]henever the tariff . . . of a natural gas company on file with the Commission is to be adopted by another company or person as a result of an acquisition, or merger . . . the succeeding company must file with the Commission, and post within 30 days after such succession, a tariff filing . . . bearing the name of the successor company.'' [57] The Commission estimated that this proposal will eliminate approximately fifteen Adoption Notice filings each year.[58]

b. Comments

51. AOPL seeks clarification that the Commission will modify the proposed language in section 341.6 so that it more clearly includes partial adoptions. In addition, AOPL requests that the Commission clarify that the proposed change in the business process will not change any established practices with regard to the effective date for adoptions.[59]

52. A4A supports the proposed change to 341.6(a) but asks the Commission to retain sections 341.6(b) through (d).[60] A4A believes the Commission only meant to replace section § 341.6(a).

c. Commission Decision

53. The Commission adopts the NOPR proposal to consolidate the adoption notice filing and the filing to integrate the tariff records of the adopting carrier, with modifications. The Commission agrees with AOPL that the language proposed in the NOPR for amending section 341.6 was unclear with regard to partial adoptions. The Commission has accordingly changed the language to reflect the Commission's intent as stated in the NOPR and as suggested by AOPL.

54. The Commission clarifies that it does not intend for this final rule to change any established practices with regard to the effective date for adoptions.

55. The Commission denies A4A's request, as sections 341.6(b) through (d) are no longer necessary. By removing sections 341.6(b) through (d), the Commission is not eliminating the requirement for oil pipelines to update tariffs to reflect adoptions and/or cancellations. Those requirements have simply been consolidated in new sections 341.5 and 341.6. Section 341.6(b) currently provides the notification requirements for adoptions. This section is no longer necessary, as adoption filings will be served on each shipper and subscriber on the oil pipeline's subscription list as required by section 341.2(a) in the same manner as any other oil pipeline tariff filing.

56. Sections 341.6(c) and (d) provide instructions for version control and the submission of an adoption notice tariff records for complete and partial adoptions. Order No. 714 provides a different required method of version control (the data element Record Version Number), thus the instructions in section 341.6 are outdated and duplicative.[61]

57. As for the adoption notice tariff record, the Commission intends to eliminate this intermediate filing. Oil pipelines should simply file actual tariff records for the services that they are adopting. Therefore, the Commission finds there is no need to retain sections 341.6(b) through (d).

5. Implementation

a. NOPR

58. The Commission did not propose a specific implementation schedule.

59. The NOPR noted that if the Commission ultimately adopted the proposals and made changes to the types of filings discussed in the preceding paragraphs, the Secretary of the Commission will issue a revised list of Type of Filing Codes.[62]

[53] A4A Comments at 4.

[54] AOPL Comments at 8.

[55] *Id.*

[56] 18 CFR 341.6(a)(1) (2012) (complete adoption); 18 CFR 341.6(c) (2012) (partial adoption).

[57] 18 CFR 154.603 (2012).

[58] NOPR, FERC Stats. & Regs. ¶ 32,694 at P 21.

[59] AOPL Comments at 9.

[60] A4A Comments at 5–6.

[61] Record Version Number is a representation of the version of the tariff record in the format of x.y.z. Each version of the tariff record is required to have a unique Record Version Number, which increments by one with each filing of the tariff record. The Record Version Number must be included as part of the tariff record's meta data, and shown in the tariff text if part of a PDF tariff record. *Implementation Guide* at pp. 7–9 and 21.

[62] *See* 18 CFR 375.302(z) (2012). The *Implementation Guide* describes the Type of Filing contents. The Type of Filing Code list is posted on the Commission's Web site at *http://www.ferc.gov/docs-filing/etariff/filing_type.csv.*

b. Comments

60. AOPL proposes a 90 day implementation period from the date of issuance of the final rule for oil pipelines to set up and post their first set tariffs on their Web sites.

c. Commission Decision

61. The Commission agrees with AOPL that 90 days is a reasonable timeframe to make sure systems and software are in place to post tariffs on a public Web site. The Commission notes that this rule will become final 30 days after publication in the **Federal Register**. Therefore, the Commission establishes the date for the posting of tariff material on the oil pipelines' Web sites as 90 days after publication of this final rule in the **Federal Register**.

C. Other Issues—Requests for Additional Changes to Part 341

62. Commenters raise multiple issues related to other aspects of oil pipeline regulation. These issues and requests are beyond the scope of this proceeding which is limited to bringing Part 341 up to date in the electronic age, and is focused on eliminating unnecessary filing requirements.

63. A4A requests that the Commission require oil pipelines to post, if applicable, their grandfathered rate tariffs.[63] A4A states that it can be difficult to find records regarding the rates that were grandfathered.

64. The Commission will not require oil pipelines to post their grandfathered rate tariffs on their Web sites. The Commission finds that such a requirement goes beyond the scope of the instant rulemaking. The proposals set forth in the NOPR were designed solely to bring Part 341 up to date in the electronic age. Currently, Part 341 only requires posting of current, proposed, and suspended tariffs and the Commission does not intend to change the substance of that requirement.[64]

65. The NPGA requests the Commission amend section 341.8 to require oil pipelines to disclose and post requirements for handling transmix and the specific rates for transmix.

66. The Commission finds that oil pipelines already are required to disclose requirements for handling transmix and the rates for transmix that is part of a transportation service under section 341.8. Therefore, no modification to section 341.8[65] or the posting requirements of proposed section 341.0(a)(7) is necessary.

67. A4A and NPGA request that an oil pipeline be required to post all policies regarding prorationing and inventory, as well as all policies and manuals applicable to transportation of products on the oil pipeline on its Web site in addition to tariffs.

68. Consistent with existing policy, the Commission will not require the oil pipelines to post on their company Web site all policies and manuals applicable to transportation of products. However, if the oil pipeline references the policies and manuals in its tariff, then it must post that information on its Web site. Moreover, this request goes beyond the scope of the NOPR. In addition, A4A's and NPGA's request includes an expansive number of documents that they request be posted on the pipeline's Web site. However, they do not explain the shippers' need for this information or why the Commission's existing tariff content requirements, such as section 341.8, are inadequate.

69. A4A also requests that emails involving notification of a rate or tariff change be clearly marked with the subject ''rate or tariff change.''[66] On the subject of email, NPGA asks that the Commission require oil pipelines to notify up to three email addressees per company, and to provide links on their Web sites to allow parties to sign up for email updates on filings, and that rate change emails be clearly marked as such.[67] NPGA and A4A ask the Commission to require oil pipelines to hold pre-filing meetings with shippers and to require oil pipelines to hold regular shipper meetings. Lastly, A4A asks that the Commission revise its regulations regarding faxing protests.[68]

70. NPGA also suggests that oil pipelines be required to include current rates and the proposed ''new'' rates in a cover letter when making a tariff change and oil pipelines should provide an explanation and related work papers showing the allocation of costs for the rates and the method used to achieve the allocation.[69] Finally NPGA also requests the period to file interventions and protests be changed from 15 days to 60 days.

71. The Commission declines to adopt these suggestions as they address issues that are outside the scope of the proposed NOPR. Nonetheless, the Commission encourages shippers to speak directly with their respective oil pipeline(s) if they wish to have meetings.

72. The Commission also agrees with NPGA that any emails from oil pipelines that include notice of tariff filings should be clearly marked, as this issue goes to the adequacy of service that oil pipelines provide. However, the Commission will not mandate a specific approach.

73. Similarly, the Commission agrees that all oil pipeline tariffs should be fully supported. However, the Commission's regulations already provide that oil pipelines must support their proposals.[70] The Commission concludes that the existing procedures that permit a filing to be protested on the basis that it was unsupported are adequate. Such protests can lead to the Commission suspending the proposed Tariff and establishing additional procedures, such as a hearing and/or settlement judge, to complete the record.

V. Information Collection Statement

74. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[71] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[72] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability.[73]

[63] Under the Energy Policy Act of 1992, rates that were in effect on October 24, 1992 and not subject to a protest, investigation or complaint in the prior year, were deemed to be ''grandfathered.'' Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 3010 (Oct. 24, 1992).

[64] The Commission notes that all the superseded paper oil pipeline tariffs maintained by the Commission, including the grandfathered tariffs, are available in eLibrary. The Commission posted a guide on how to search eLibrary for these superseded tariffs at *http://www.ferc.gov/docs-filing/etariff/oil-ica.pdf.* All ICA oil pipeline tariffs that are in effect are in eTariff's electronic format.

[65] 18 CFR 341.8 (2012) provides:

Terminal and other services.

Carriers must publish in their tariffs rules governing such matters as prorationing of capacity, demurrage, odorization, carrier liability, quality bank, reconsignment, in-transit transfers, storage, loading and unloading, gathering, terminalling, batching, blending, commingling, and connection policy, *and all other charges, services,* allowances, absorptions and rules *which in any way increase or decrease the amount to be paid on any shipment* or which increase or decrease the value of service to the shipper. (Emphasis added.)

[66] A4A Comments at 6.

[67] NPGA Comments at 2.

[68] A4A Comments at 7.

[69] NPGA Comments at 2.

[70] *See, e.g.,* 18 CFR 342.3(b), 342.4 and Part 346.

[71] 5 CFR part 1320 (2012).

[72] 44 U.S.C. 3501–3520 (2012).

[73] OMB's regulations at 5 CFR 1320.3(c)(4)(i) (2012) require that ''Any recordkeeping, reporting,

75. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the PRA.

76. The Commission's estimate of the change in Public Reporting Burden and cost related to the final rule in Docket RM12–15–000 follow.

77. The revised regulations will eliminate or reduce several filing requirements as obsolete and no longer necessary. The eliminated or reduced filings include the filing of Index of Tariffs, reduced number of adoption filings, eliminated suspension supplements, and reduced number of filings necessary to amend incorrect filings. Based upon a review of the filings made by interstate oil pipelines since eTariff was implemented in April 2010, the Commission estimates a reduction of 99 tariff filings and 1,082 burden hours per year, as shown in the table below.

RM12–15, FERC–550	Reduction in filings	Est. hours per filing	Total hours	Total cost reduction [74]
Revised 341.4, Amendments to tariff filings	50	11	550	$30,250
Revised 341.6, Adoption of the tariff by a successor	15	11	165	9,075
Elimination of 341.4(f) (Suspension Supplements)	12	11	132	7,260
Revised 341.9, Index of Tariffs	22	11	242	13,310
Total	99		1,089	59,895

78. The Commission proposes to revise Part 341's tariff posting requirements for interstate oil pipelines from paper to electronic format. There is no change in burden for the oil pipelines to maintain the status of their tariffs for public inspection, as that requirement is unchanged. The Commission recognizes that there will be a one-time increased burden involved in the initial implementation associated with purchasing software and updating Web sites to post their tariff electronically. We estimate a one-time additional cost of $250 per respondent for non-labor costs. Additionally we estimate a one-time hourly burden of 20 hours per respondent for updating the Web sites for posting of the tariffs.

RM12–15, FERC–550	Number of oil pipelines with tariffs	Estimated additional one-time burden per filer (hours)	Total estimated additional one-time burden (hours)	Estimated additional one-time non-labor hours cost per filer ($)	Total estimated one-time hourly burden cost per filer ($)
Revisions to 18 CFR Part 341	167	20	3,340	$250	$1,097

Information Collection Costs:

Total additional one-time non-labor hour cost = $41,750 ($250 per respondent).[75]

Savings per year = $468 per respondent.[76]

Total additional one-time hourly burden cost = $183,199 ($1,097 per respondent).[77]

Burden hour savings per year after implementation year = 8.4 hours per respondent.

Title: FERC–550, Oil Pipeline: Tariff Filing.

Action: Revisions to the FERC–550.

OMB Control No: 1902–0089.

Respondents: Public and non-public utilities.

Frequency of Responses: Initial implementation and ongoing reduction in burden.

Necessity of the Information: The changes in this final rule increase transparency to both shippers and the public, simplify some filings, reduce the regulatory burden placed on oil pipelines, and modernize Part 341 in accordance with the Commission's electronic systems.

Internal review: The Commission has reviewed the changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0089,

or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.''

[74] The cost figure is based on management analyst work at $38.50 per hour. We adjusted the $38.50 figure to account for benefits resulting in a loaded figure of $55 per hour ($38.5/0.704). We obtained wage and benefit information from Bureau of Labor Statistics information, 2011 data, at *http://bls.gov/oes/current/naics2_22.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm.*

[75] The $250 is an aggregate number. Some respondents will incur little to no expense in order to satisfy the proposals in this rulemaking. Posting tariffs on a Web site was already an option under section 341.0(a)(7). Some pipelines already have chosen that option and post their tariffs on their Web sites and/or have software with that functionality.

[76] Based on an annual reduction of $59,895 divided by 128, the average number of respondents per year. The number of pipelines with tariffs is greater than the number of respondents because not all pipelines with tariffs make tariff filings every year.

[77] The cost figure is based on 5 hours of computer analyst work ($39.02/hour) and 15 hours of management analyst work ($38.50/hour) resulting in a total of $772.60. We adjusted the $772.60 figure to account for benefits resulting in a loaded figure of $1,097 ($772.60/0.704). We obtained wage and benefit information from the Bureau of Labor Statistics, 2011 data (at *http://bls.gov/oes/current/naics2_22.htm* and at *http://www.bls.gov/news.release/ecec.nr0.htm*).

FERC–550 and the docket number of this rulemaking in your submission.

VI. Environmental Analysis

79. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[78] The actions taken here fall within categorical exclusions in the Commission's regulations for information gathering, analysis, and dissemination.[79] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VII. Regulatory Flexibility Act

80. The Regulatory Flexibility Act of 1980 (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[80] Agencies are not required to make such an analysis if a rule would not have such an effect.

81. The Commission does not believe that this final rule will have a significant impact on small entities, nor will it impose upon them any significant costs of compliance. The Commission identified 29 small entities as respondents to the requirements in the final rule.[81] As explained above, the changes to Part 341 of the Commission's regulations will only impose a small burden in the first year ($1,347 per respondent) and will result in net savings for other years ($468 per respondent). The Commission does not estimate that there are any other regulatory burdens associated with this final rule. Thus, the Commission certifies that the final rule does not have a significant economic impact on a substantial number of small entities.

VIII. Document Availability

82. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

83. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

84. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

85. These regulations are effective June 28, 2013. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 341

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 341, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

■ 1. The authority citation for Part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

■ 2. In § 341.0, paragraph (a)(7) is revised to read as follows:

§ 341.0 Definitions; application.

* * * * *

(a) * * *

(7) *Posting* or *post* means making current and proposed and tariffs suspended for more than a nominal period available on a carriers' public Web site.

* * * * *

■ 3. Amend § 341.2 by removing the second sentence and revising the third sentence of paragraph (a)(1) to read as follows:

§ 341.2 Filing requirements.

(a) * * *

(1) * * * Such service shall be made in accordance with the requirements of § 385.2010 of this chapter.

* * * * *

■ 4. Amend § 341.3 by revising paragraph (a) and removing paragraph (c).

The revision reads as follows:

§ 341.3 Form of tariff.

(a) Tariffs may be filed either by dividing the tariff into tariff sections or as an entire document.

* * * * *

■ 5. Section 341.4 is revised to read as follows:

§ 341.4 Amendments of tariff filings.

A carrier may file to amend or modify a tariff contained in a tariff filing at any time during the pendency of the filing. Such filing will toll the notice period as provided in § 341.2(b) for the original filing, and the filing becomes provisionally effective 31 days from the original filing and, in the absence of Commission action, fully effective 31 days from the date of the filing of amendment or modification.

■ 6. Section 341.5 is revised to read as follows:

§ 341.5 Cancellation of tariffs.

Carriers must cancel tariffs when the service or transportation movement is terminated. If the service in connection with the tariff is no longer in interstate commerce, the tariff publication must so state. Carrier must file such cancellations within 30 days of the termination of service.

■ 7. Section 341.6 is revised to read as follows:

§ 341.6 Adoption of tariff by a successor.

Whenever the tariff(s), or a portion thereof, of a carrier on file with the Commission are to be adopted by another carrier as a result of an acquisition, merger, or name change, the succeeding company must file with the Commission, and post within 30 days after such succession, the tariff, or portion thereof, that has been adopted in the electronic format required by § 341.1 bearing the name of the successor company.

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[78] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[79] 18 CFR 380.4(a)(5) (2012).

[80] 5 U.S.C. 601–12 (2012).

[81] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632 (2012). The Small Business Size Standards component of the North American Industry Classification System defines a small oil pipeline company as one with less than 1,500 employees. *See* 13 CFR Parts 121, 201 (2012).

■ 8. Section 341.7 is revised to read as follows:

§ 341.7 Concurrences.

Concurrences must be shown in the carrier's tariff and maintained consistent with the requirements of Part 341 of this chapter.

■ 9. Amend § 341.9 by revising the first sentence of paragraph (a), adding paragraph (a)(5), removing paragraphs (b) through (d) and (f), and redesignating paragraph (e) as paragraph (b) and it to read as follows:

§ 341.9 Index of tariffs.

(a) * * * Each carrier with more than two tariffs or concurrences must post on its public Web site a complete index of all effective tariffs to which it is a party, either as an initial, intermediate, or delivering carrier. * * *

* * * * *

(5) *Product Shipped and Origin.* Each index must identify, for each tariff, the product or products being shipped and the origin and destination points specific to each product or products.

(b) *Updates.* The index of tariffs must be updated within 90 days of any change to an effective tariff.

§ 341.11 [Amended]

■ 10. In § 341.11(b), remove the second sentence.

§ 341.13 [Amended]

■ 11. In § 341.13(c), remove the second sentence.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 841

RIN 3206–AM17

RAILROAD RETIREMENT BOARD

20 CFR Part 350

RIN 3220–AB63

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416

RIN 0960–AH18

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 212

RIN 1505–AC20

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AN67

Garnishment of Accounts Containing Federal Benefit Payments

AGENCY: Fiscal Service (Treasury), Department of the Treasury; Social Security Administration (SSA); Department of Veterans Affairs (VA); Railroad Retirement Board (RRB); Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: Treasury, SSA, VA, RRB and OPM (Agencies) are adopting as final an interim rule to amend their regulation governing the garnishment of certain Federal benefit payments that are directly deposited to accounts at financial institutions. The rule establishes procedures that financial institutions must follow when they receive a garnishment order against an account holder who receives certain types of Federal benefit payments by direct deposit. The rule requires financial institutions that receive such a garnishment order to determine the sum of such Federal benefit payments deposited to the account during a two month period, and to ensure that the account holder has access to an amount equal to that sum or to the current balance of the account, whichever is lower.

DATES: This final rule is effective June 28, 2013.

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SUPPLEMENTARY INFORMATION:

I. Background

On April 19, 2010, the Agencies published a proposed rule to address concerns associated with the garnishment of certain exempt Federal benefit payments, including Social Security benefits, Supplemental Security Income (SSI) payments, VA benefits, Federal Railroad retirement benefits, Federal Railroad unemployment and sickness benefits, Civil Service Retirement System benefits and Federal Employees Retirement System benefits. See 75 FR 20299. The Agencies received 586 comments on the proposed rule. On February 23, 2011, the Agencies published an interim final rule and request for public comment. See 76 FR 9939. The Agencies received 39 comments on the interim final rule, including comments from individuals, consumer advocacy organizations, legal services organizations, an organization of credit and collection companies, a prepaid card association, and financial institutions and their trade associations. As described in Parts II and III of this **SUPPLEMENTARY INFORMATION**, this final rule amends certain provisions of the interim final rule to address certain issues raised by commenters.

Interim Final Rule

The interim final rule established procedures that financial institutions must follow when they receive a garnishment order for an account holder. Under the interim final rule, a financial institution that receives a garnishment order must first determine if the United States or a State child support enforcement agency is the plaintiff that obtained the order. If so, the financial institution follows its customary procedures for handling the order. If not, the financial institution must review the account history for the prior two-month period to determine whether, during this ''lookback period,'' one or more exempt benefit payments were directly deposited to the account. The financial institution may rely on the presence of certain Automated Clearing House (ACH) identifiers to determine whether a payment is an exempt benefit payment for purposes of the rule.

The financial institution must allow the account holder to have access to an amount equal to the lesser of the sum

of exempt payments directly deposited to the account during the lookback period or the balance of the account on the date of the account review (the ''protected amount''). In addition, the financial institution must notify the account holder that the financial institution has received a garnishment order. The notice must briefly explain what a garnishment is and must also include other information regarding the account holder's rights. There is no requirement to send a notice if the balance in the account is zero or negative on the date of account review. Financial institutions may choose to use a model notice contained in the rule in order to be deemed to be in compliance with the notice content requirements.

For an account containing a protected amount, the financial institution may not collect a garnishment fee from the protected amount. The financial institution may only charge a garnishment fee against funds in the account in excess of the protected amount and may not charge or collect a garnishment fee after the date of account review. Financial institutions that comply with the rule's requirements are protected from liability.

II. Comments and Analysis

Scope (§ 212.2)

Some commenters urged that the Agencies move expeditiously to cover in the rule all Federal payments protected from garnishment by statute, including military retirement payments. One commenter proposed that the rule be expanded to protect certain non-Federal payments deposited to bank accounts—specifically, payments originating from Employment Retirement Income Security Act (ERISA) retirement plan distributions. Other commenters suggested that the Agencies contact the U.S. Senate and propose legislation to make all Federal benefit payments exempt from garnishment. In contrast, a financial institution commenter argued that Federal benefit payments should not be protected from garnishment. One consumer organization recommended that the rule be revised to cover benefit payments made by check as well as payments made by direct deposit.

An organization representing credit and collection companies requested that the final rule provide a procedure under which the creditor garnishing an account be granted access to the debtor's account information, including, but not limited to, the amount held in the garnished account, documentation supporting the financial institution's application of the final rule, and any calculations supporting the financial institution's decision to not freeze certain funds. The association expressed concern that without any transparency into the deliberative process that a financial institution uses to decide which funds are protected by law, an environment could be created in which financial institutions would refuse to freeze funds in the garnished accounts without clear explanation or verified justification.

As discussed in the preamble to the interim final rule, the Agencies have structured the rule to create a framework in which payments protected by statute from garnishment can be included in the future. Federal agencies that issue such payments can, through a public notice-and-comment rulemaking process, amend their regulations to provide that their exempt payments are covered by this rule. The Agencies would then issue a rulemaking to include those payments within the scope of the rule. The Agencies do not have authority to expand the rule to include non-Federal payments, nor do the Agencies believe it is appropriate to seek a legislative change to address Federal payments that they do not issue and over which they do not have regulatory jurisdiction. For the reasons discussed when promulgating the interim final rule, the Agencies do not believe it is feasible or necessary to address checks within the final rule. See 76 FR 9939, 9941.

The Agencies are not adopting the suggestion that creditors be granted access to debtors' account information. Account information is protected under various State and Federal privacy laws. Creditors who believe that a legal basis exists to permit disclosure of a debtor's account information should seek access to that information in accordance with such laws.

Definition of Account (§ 212.3)

The interim final rule defined an account to mean ''an account, including a master account or sub account, at a financial institution and to which an electronic payment may be directly routed.'' The Agencies received various requests asking for clarification of this definition. One commenter requested that the Agencies clarify that a ''master'' account, under which multiple sub accounts may be established and held, does not require an aggregate account review as a separate and distinct ''account'' for purposes of the rule. Credit unions in particular requested clarification on whether a ''whole share account,'' as opposed to various sub accounts, is subject to the account review and lookback.

Some credit unions commented that credit unions typically assign an individual member (or ''primary'') number to each member. The member may then open multiple accounts ''under'' or ''within'' this member number with each account being designated by different ''sub accounts'' or ''suffixes.'' The member number does not denote an account per se, but rather serves as a ''prefix'' for all individual sub accounts of the member to or from which deposits and withdrawals may be made. For example, a new member might be given member number 9876. When the member opens a savings (or a share) account, that individual savings account might be noted as sub account ''S'' or ''01.'' Similarly, if the same member establishes a checking (or share draft) account, that individual checking account might be noted as sub account ''C'' or ''02.'' Both are sub accounts of the member's ''membership'' account 9876.

The requirement to perform an account review applies to the deposit account to which a Federal payment is routed and credited. In cases where a payment recipient is assigned a member number that doesn't represent an account per se, but that serves as a ''prefix'' for individual sub accounts, it is the individual sub account (and not the ''master account'') that is subject to the account review and lookback.

Definition of Benefit Payment (§ 212.3)

Immediately following publication of the interim final rule, some financial institutions requested clarification on the definition of ''benefit payment'' for purposes of identifying Federal benefit payments. The interim final rule defines a benefit payment as a Federal benefit payment ''with the character 'XX' encoded in positions 54 and 55 of the Company Entry Description field of the Batch Header Record of the direct deposit entry.'' The Agencies were asked whether financial institutions may rely solely on the presence of the ''XX,'' without regard to whether there is a ''2'' in the ''Originator Status Code'' field of the Batch Header Record for the payment. Financial institutions pointed out that it is possible that payments other than Federal payments could contain an ''XX'' encoded in positions 54 or 55.

Following the inquiry, the Agencies published guidance stating that financial institutions must verify that a payment containing an ''XX'' encoded in positions 54 or 55 is in fact a Federal benefit payment, which they may do by checking for a ''2'' in the ''Originator Status Code'' field of the Batch Header Record (Position 79) or by reviewing the

description of the payment in the ACH Batch Header Record Company Entry Description to ensure that the payment is one of the exempt Federal benefit types listed in the guidance.[1] The Agencies are codifying this guidance by amending the definition of benefit payment in the final rule to provide that both the ''XX'' and the ''2'' be present in the appropriate locations of the Batch Header Record.

Definition of Garnishment Order (§ 212.3)

The Agencies received many requests for clarification on the definition of ''garnishment order'' and some commenters indicated that confusion regarding the definition is resulting in compliance difficulties. Consumer advocacy groups, financial institutions, and banking associations recommend that the Agencies revise the definition of ''garnishment order'' so that it is clear exactly what kinds of documents are considered garnishment orders. The interim final rule includes a broad definition of ''garnishment,'' which closely tracks the definition in the Agencies' statutes. However, the rule's requirements are triggered only by the receipt of a ''garnishment order,'' which was defined more narrowly in the interim final rule as ''a writ, order, notice, summons, judgment, or similar written instruction *issued by a court or a State child support enforcement agency* . . .'' (emphasis supplied). Under this wording, levies issued directly by a State agency such as a State revenue department would not be subject to the rule.

The Agencies received many comments stating that levies are frequently issued directly by State agencies or municipalities to seize funds in bank accounts. Consumer advocacy groups expressed concern that the narrow definition of ''garnishment order'' leaves benefit payments exposed to improper garnishment and freezing. Some financial institutions commented that while they do not have a position on whether tax levies issued directly by a State agency should be included within the scope of the rule, guidance on the process of determining what sorts of orders or levies are within the scope of the rule would be helpful. One commenter suggested that the Agencies consider providing an exhaustive list and additional guidance as to exactly which garnishment orders are within the rule's scope.

Some commenters questioned whether the definition of garnishment order in the interim final rule applies to restraining orders, i.e., orders issued pursuant to judgments which restrain an account's funds pending future legal action. Several commenters asked if orders issued by an attorney acting in his or her capacity as an officer of the court are considered to be issued by a court. For example, in the State of New York, garnishment orders (commonly referred to as levies and restraints) can be issued not only by courts, but also by attorneys acting on behalf of judgment creditors.[2] One commenter asked if the rule applied to seizures in criminal actions. This commenter noted that the proposed rule had defined ''garnishment'' as ''execution, levy, attachment, garnishment, or other legal process *to enforce a money judgment''* (emphasis supplied), but that the phrase ''to enforce a money judgment'' was removed from the definition of ''garnishment'' in the interim final rule. The commenter questioned whether by removing the phrase, the Agencies intended that the rule cover not only civil money judgments, but also seizures in criminal actions.

The Agencies are revising the definition of garnishment order to include orders or levies issued by a State or State agency or municipality. To remove any doubt as to whether the rule applies to restraining orders, the Agencies are amending the definition of garnishment order to include ''an order to freeze the assets in an account.'' With regard to the question of whether a ''garnishment order'' includes an order issued by the clerk of the court or an attorney acting in his or her capacity as an officer of the court, it was not the Agencies' intention that an order ''issued by a court'' be so narrowly construed as to exclude such orders. The Agencies' view is an order issued by the clerk of the court or an attorney acting in his or her capacity as an officer of the court in accordance with State law constitutes an order issued by the court. Lastly, the Agencies did intend by removing the phrase ''to enforce a money judgment'' from the definition of ''garnishment'' in the interim final rule to ensure that the rule is not limited to civil money judgments.

Definition of Lookback Period (§ 212.3)

One commenter urged that the lookback period be extended from 2 months to 65 days, while another commenter urged that it be shortened from 2 months to 30 days. For the reasons discussed in promulgating the interim final rule, the Agencies believe that a 2 month lookback period is appropriate. See 76 FR 9939, 9942.

Definition of Protected Amount (§ 212.3)

Several financial institutions requested guidance on how the account balance should be computed when conducting an account review and establishing a protected amount. The interim final rule defined the ''protected amount'' as the lesser of: (i) The sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period and (ii) the balance in an account at the open of business on the date of the account review. Some financial institutions commented that it was not clear whether the account balance for purposes of clause (ii) refers to the ledger balance, the memo ledger balance, the Regulation CC[3] available funds balance or the memo available funds balance. Other commenters noted that the procedure for calculating the protected amount does not take into account intraday postings of credits or debits. Therefore, depending on the time of day that an account review is performed and whether items have been posted to the account during the day, establishing a protected amount without taking into account intraday debits could result in the establishment of a protected amount that exceeds the funds in the account. For example, if $1,000 in protected funds were deposited during the lookback period, and the account balance was $600 at the open of business on the date of the account review, then the protected amount would be $600. If, however, the account review is performed in the afternoon, and all $600 had been withdrawn by the time the account review was performed, then the financial institution would be in the position of establishing and providing access to a $600 protected amount for an account containing no funds.

To address this incongruity, the Agencies are amending the rule to provide that the relevant account balance is the account balance when the account review is performed, so that the balance will include intraday items such as ATM or cash withdrawals. Financial institutions should not use the Regulation CC available funds balance, but should be aware that the

[1] See *www.fms.treas.gov/greenbook/guidelines_garnish0311.pdf,* at pp. 5–6.

[2] New York CPLR5230 provides that ''at any time before a judgment is satisfied. . . . An execution may be issued from the Supreme Court. . . . By the clerk of the court . . . or the attorney for the judgment creditor as an officer of the court. . . .''

[3] Regulation CC, 12 CFR part 229, is the Federal Reserve regulation governing when funds deposited to bank accounts must be made available for withdrawal by customers.

requirement to provide access to the protected amount is subject to the usual restrictions on funds availability under Regulation CC, as discussed in the preamble to the interim final rule.[4] In addition, the Agencies do not intend that any line of credit associated with the account be considered as part of the ''account balance'' for this purpose.

One commenter questioned the calculation of the account balance in the context of accounts in which the concept of a ''ledger balance'' may be inappropriate. For instance, some accounts hold securities, alternative instruments, real estate, and other assets. For those accounts, the commenter suggested that the Agencies clarify that the account balance is the available market value of the account, which would be the opening balance on the day of account review minus intraday activity. The Agencies are not making this change because the rule applies only to deposit accounts held by a bank, savings association, credit union, or other entity chartered under Federal or State law to engage in the business of banking.[5] The rule does not apply to asset accounts or address any protection that may exist for securities or other assets purchased with Federal benefit payments.

Initial Action Upon Receipt of a Garnishment Order (§ 212.4)

The Agencies received comments noting that although the interim final rule establishes procedures that financial institutions must follow when served with a garnishment order, there will be situations where a financial institution determines that it will not act on a garnishment order. Commenters asked whether the rule's procedures must still be followed in these situations. One example provided by a commenter is when an account holder has more than one account and the first account review reveals (a) no protected amount and (b) sufficient funds to satisfy the judgment. In such situations, the financial institution's obligation to garnish ends when the bank tenders over an amount to pay the debt. By logical extension, the commenter argued, the financial institution's obligation to review the other account(s) in the account holder's name also should end. However, the commenter pointed out that a literal reading of § 212.5(f) (which requires a separate account review for each account in the name of an account holder against whom a garnishment order has been issued) arguably requires reviews of the other account(s) even when there is no remaining debt. A review of a second or third account could then lead to the presence of another ''protected amount'' (even though the garnishment has been satisfied) and thereby trigger the requirement to send another notice.

Another example cited by a commenter postulated a situation in which a financial institution receives a garnishment order directed against the beneficiary of a ''pay on death'' or ''revocable trust'' account. In this situation, the beneficiary has only a contingent interest in the account, the beneficiary's name is not likely to be included on the account and the financial institution would not normally take action against the account based on the beneficiary's contingent interest. A third example, provided by a financial institution trade group, would occur if a financial institution determines that a garnishment order cannot be given effect under State law because all of the funds in the account are protected from garnishment under State law (for example, where State law establishes a dollar amount that is protected).

The Agencies agree that it serves no useful purpose to follow the rule's procedures in situations where a financial institution has made a determination not to take any action affecting an account as the result of the receipt of a garnishment order. The first step required under the rule when a financial institution receives a garnishment order is to examine the order to determine if a Notice of Right to Garnish Federal Benefits is attached or included. The requirement to perform this first step, however, is prefaced by the words, ''Prior to taking any other action related to a garnishment order issued against a debtor . . .'' See § 212.4(a). Accordingly, if a financial institution has determined not to take action related to a garnishment order, neither this step nor any subsequent requirement of the rule is triggered. The Agencies have published a set of frequently asked questions (FAQs) on the garnishment rule that states that if a financial institution will not be freezing or removing funds from an account in response to a garnishment order, then the financial institution should not perform an account review to determine if a protected amount should be established.[6] In light of this guidance and the wording of § 212.4(a), the Agencies do not believe it is necessary to revise the rule itself on this point.

Exception for Orders Obtained by State Child Support Enforcement Agencies or the United States (§ 212.4)

One consumer advocacy organization opposed permitting any garnishment of exempt funds by the United States or a State Child Support Enforcement Agency. This commenter argued that an agency that is statutorily permitted to seize exempt Federal benefits should proceed through the Federal benefit offset program because the bank garnishment process is not well suited for such collections and should not be permitted. Several consumer advocacy organizations commented that the interim final rule's exception allowing for the processing of child support orders issued by State child support agencies illegally and inappropriately permits the seizure of SSI payments and VA payments to pay child support obligations. Some organizations argued that the garnishment of these benefits for child support obligations is prohibited by 42 U.S.C. 659, a statute that permits garnishment orders to be served on the United States. Others commented that the rule should not provide the basis for garnishment of exempt Federal funds from bank accounts that cannot legally be offset directly from the Federal paying agency. Some commenters recommended that the Agencies incorporate in the rule the limitations that apply when child support arrearages are collected by offset directly from the Federal benefit agency, and ensure that these limits are applied to the garnishment of Federal funds from bank accounts.

One commenter suggested that the Agencies establish a minimum amount to be protected in every bank account even from garnishment orders issued from State child support enforcement agencies. This commenter recommended that the final rule provide that for garnishment pursuant to child support orders, the protected amount would include the lesser of the sum of 2 months' exempt deposits or $750 (one twelfth of $9,000). The Agencies note, however, that although Federal benefit payments deposited to a bank account are protected by statute from garnishment for most debts, Federal and state law provides that this protection generally does not extend to garnishments for child support once

[4] See discussion of section 212.6(b) at 76 FR 9952 (''requirement that a financial institution ensure that the account holder has access to the protected amount would be subject to any limitation on funds availability to which the account is subject. For example, if funds on deposit are subject to a hold consistent with Regulation CC, [footnote omitted] or a limitation on withdrawal applicable to a time deposit, the proposed rule would not override or affect those limitations.'').

[5] Federal benefit payments may be delivered only to deposit accounts at financial institutions (see 31 CFR 210.5(a)).

[6] See *www.fms.treas.gov/greenbook/FAQs-May-12-trsy-ver1.pdf.*

these benefits have been deposited into a bank account, with exceptions for certain benefits.

Another commenter suggested that the Agencies protect SSI payments from seizure for child support garnishment by adopting a procedure for financial institutions to follow when they receive a garnishment order from a State child support enforcement agency. That procedure would require financial institutions to examine every order that includes a ''Notice of Right to Garnish Federal Benefits'' to determine whether the order was obtained by a child support enforcement agency. For all such orders, the financial institution would have to conduct an account review to determine whether SSI payments were deposited to the account during the lookback period. To make it possible for financial institutions to identify SSI payments without manually reviewing the account history, financial institutions would have to make the programming changes necessary to detect the identifier for SSI payments located in positions 56–63 of the Company Entry Description field of the ACH Batch Header Record.

The Agencies did not previously seek comment on imposing a process on banks to prevent the potential garnishment of SSI or VA payments by child support enforcement agencies, because they were aware of U.S. Department of Health and Human Services Office of Child Support Enforcement (DHHS OCSE) instructions that direct State child support enforcement agencies not to serve orders on financial institutions to garnish SSI payments and DHHS OCSE's public information that VA payments are generally not subject to garnishment.[7] DHHS OCSE has recently issued additional guidance to State child support enforcement agencies reiterating its policy that SSI payments are not to be garnished and urging state agencies to implement automated and manual processes to prevent improper garnishments. See Dear Colleague Letter [DCL–13–06] and Fact Sheet ''Garnishing Federal Benefits for Child Support.''

The Agencies do not have information on the difficulty or burden that would be associated with manually reviewing every order that includes a Notice. The Agencies also do not have information on the costs to financial institutions of making programming changes necessary to identify SSI or VA payments delivered to an account. However, these procedures would seem to impose an additional burden on financial institutions. In light of this potential burden, the Agencies have sought to evaluate the extent to which the garnishment of SSI or VA payments by child support enforcement agencies presents a genuine hardship for noncustodial parents.

After further consultation with DHHS OCSE, it does not appear that the garnishment of SSI or VA payments by child support enforcement agencies raises the same concerns that are raised by the garnishment of Federal benefits by commercial creditors. First, noncustodial parents receive substantial advance due process before a child support enforcement order is issued. This is in marked contrast to garnishment orders obtained by commercial creditors, where there is no advance due process and therefore no opportunity for the debtor to challenge the garnishment of benefit payments in a bank account until after the order has been executed. A noncustodial parent has the opportunity, before a child support enforcement order is issued, to notify the agency that the parent receives SSI or VA payments. Second, DHHS OCSE has instructed child support enforcement agencies not to serve orders on financial institutions to garnish SSI payments and has provided public information that VA payments generally are not subject to garnishment by child support enforcement agencies. Specifically, Federal payments subject to garnishment by child support enforcement agencies under 42 U.S.C. 659 are limited to payments based on remuneration for employment, which do not include SSI payments or VA payments other than those representing compensation for a service-connected disability paid to a former member of the Armed Forces who is in receipt of retired or retainer pay and who has waived a portion of the retired or retainer pay in order to receive such compensation.[8]

Finally, if an account containing SSI or VA payments is garnished by a state child support enforcement agency, the noncustodial parent is not required to go to court to have the funds released and therefore does not necessarily face a time-consuming, expensive, and confusing process to free the funds. Rather, a noncustodial parent whose account is garnished for child support can contact the child support enforcement agency directly (usually by phone), explain that the account being garnished contains SSI or VA payments, and provide a copy of his or her SSI or VA payments statement in order to have the benefits released.

In the notice of proposed rulemaking, the Agencies explained the need for the rule:

> Creditors and debt collectors are often able to obtain court orders garnishing funds in an individual's account at a financial institution . . . Although state laws provide account owners with an opportunity to assert any rights, exemptions, and challenges to the garnishment order, including the exemptions under applicable Federal benefits laws, the freezing of funds during the time it takes to file and adjudicate such a claim can cause significant hardship for account owners . . . If their accounts are frozen, these individuals may find themselves without access to the funds in their account unless and until they contest the garnishment order in court, a process that can be confusing, protracted and expensive. 75 FR 20300.

It was the significant hardship posed by this after-the-fact due process procedure that the rule is designed to eliminate. Because the child support enforcement process does not raise the same concerns, and in light of the burden for financial institutions that would be created by instituting a new and separate process for handling child support enforcement orders, the Agencies are not revising the exception in the rule allowing for the processing of orders from State child support enforcement agencies when the appropriate notice is attached to the order. The Agencies note that nothing in the rule restricts or prevents an individual who receives SSI payments, VA payments or any other Federal benefit payments from challenging in court the garnishment of those payments for child support obligations in the event a State child support enforcement agency does serve such a garnishment order on a financial institution. The Agencies further note that nothing in this rule restricts or prevents an individual from challenging, in court, any order of garnishment against a benefit payment.

A State child support enforcement agency commented that the requirement to attach a Notice of Right to Garnish Federal Benefits places an additional and unnecessary compliance burden on States. The commenter also noted that as more States expand their electronic processing capabilities to include the transmission of documents, including garnishment orders/notices, the mandatory notice conflicts with the rationale for the electronic transmission of documents and serves to mitigate any

[7] See Dear Colleague Letter 00–103 (Oct. 6, 2000) <*http://www.acf.hhs.gov/programs/cse/pol/DCL/2000/dcl-00-103.htm*>. DHHS OCSE also provides public information regarding garnishment of VA payments for child support. See OCSE VA, Income Withholding and Veteran's Benefits, Guides/Publications/Reports (March 1, 2012) at *http://www.acf.hhs.gov/programs/css/resource/income-withholding-and-veterans-benefits.*

[8] See 42 U.S.C. 659(h)(1)(A)(ii)(V).

associated cost benefits. The commenter recommended the requirement to attach the notice be made optional, and that the Agencies set forth the content or prescribed language for the certification of the right to garnish benefits. States could then choose to use the model notice to be deemed compliant or to ensure that their garnishment notices/orders contain the appropriate identifying language.

The Agencies believe that it is important that financial institutions be able to quickly identify whether a garnishment order was obtained by a State child support enforcement agency, without searching through the order itself to locate verbiage. Moreover, the Agencies do not believe that the inclusion of the notice precludes the electronic transmission of a garnishment order. Accordingly, the Agencies are not revising the requirement that the notice be attached to an order obtained by a State child support enforcement agency for such an order to be excluded from the rule's requirements.

Account Review (§ 212.5)

One commenter urged the Agencies not to allow 2 business days in which to examine orders for the inclusion of a Notice of Right to Garnish Federal Benefit Payment and (if not present) conduct an account review. The commenter observed that court orders generally require garnishments to be processed on the day of receipt, and that banks that delay account reviews, but then find no benefit payments, will violate court orders. Another commenter suggested that the Agencies define ''business day'' with a cross reference to an existing regulation, preferably Regulation CC.

A trade association representing prepaid card providers commented that the 2 business day deadline for conducting the account review is unrealistic for financial institutions that issue prepaid cards because of the complexity in the administration of prepaid card programs. This commenter stated that financial institutions commonly support multiple prepaid card programs affiliated with a number of different programs and data processors, making the logistics of coordination more complex and time-consuming than with a regular deposit account. According to the commenter, determining the protected funds in such cases will require communication with several third-party vendors in addition to coordination of the account review by bank personnel. The commenter suggested that 5 business days would be an appropriate deadline.

A consumer advocacy organization commented that the Agencies should not exclude funds transferred from one account to another from the account review and the establishment of the protected amount if the benefit funds are transferred to special purpose savings accounts such as 529 plans and Individual Development Accounts.

Based on the extensive comments received on the interim final rule regarding the time allowed for conducting the account review, the Agencies believe it is necessary to allow 2 business days for financial institutions to identify orders subject to the rule and conduct account reviews, if required. It should be noted that financial institutions will not violate State law by utilizing the 2-day period, because the rule preempts any State requirement that an order be processed on the day of receipt. The Agencies understand that processing garnishment orders may involve more complexity in the context of prepaid card accounts, but believe that prepaid card holders who receive benefit payments on prepaid cards should have the same protection against improper garnishment orders as individuals whose benefit payments are directly deposited to conventional bank accounts. Accordingly, the Agencies are not extending the time period permitted for the account review for prepaid card accounts.

The Agencies are retaining in § 212.5(f) of the final rule the provision that funds transferred from one account to another are excluded from the account review and the establishment of the protected amount. Although the Agencies understand that exempt funds may be transferred to a special savings or other account following the initial deposit, requiring the examination of all account transfers after a Federal benefit payment has been identified would impose a significant burden on financial institutions, since they would not be able to rely on a transaction indicator, like the ACH identifier, in searching account histories to determine whether transferred funds should be classified as exempt. Moreover, the Agencies note that nothing in the rule restricts or prevents an individual from asserting that the benefit retained its exempt character and, thus, was not subject to garnishment.

Access to Account (§ 212.6)

One commenter suggested that the Agencies ensure that the requirement to provide ''full and customary'' access to an account containing a protected amount is not abused by explicitly stating that financial institutions are prohibited from closing such accounts. Another commenter requested guidance on the ''full and customary access'' requirement in States where a continuing garnishment order is served, requiring that any deposits into the account before the date on which the garnishment order expires (the ''return date'') be garnished and any withdrawals before the return date be prevented. The commenter explained that there could be situations, in States that allow continuing garnishments, in which a protected amount is established for an account, but another account held by the account holder containing no protected amount would be subject to a continuing freeze. The commenter stated that it is customary for financial institutions to temporarily suspend the use of a debit card on all accounts connected to that debit card and that financial institutions cannot apply this suspension on an account-by-account basis. The commenter asked how a financial institution could comply with the requirement to freeze the second account while still allowing ''full and customary access'' to the account containing the protected amount.

The final rule does not address the conditions under which financial institutions may close accounts, which the Agencies believe is beyond the scope of this rule. The Agencies have conducted research into the ability of financial institutions to suspend debit card access to one account held by an account holder while enabling debit card access to another account. It appears that many financial institutions have the capability to do so. Moreover, the number of States in which this issue might arise is very small, since most States do not provide for continuing garnishments. The Agencies indicated in the preamble to the interim final rule that the requirement to provide the account holder with ''full and customary'' access to the protected amount was intended to ensure that after a garnishment order is received, the account holder continues to have the same degree of access to the protected funds that was provided prior to the receipt of the order. The Agencies' view is that where an account holder had debit card access to an account prior to the receipt of a garnishment order, the requirement to provide full and customary access to the protected amount means that the account holder should have debit card access to that amount.

Same Versus New or Different Garnishment Order (§ 212.6(f))

Some commenters requested clarification on when a garnishment order constitutes a new or different

order as opposed to the same order. In some States, financial institutions are served with recurring, short-term continuing garnishments. These garnishments are customarily re-issued after the date on which they expire (the ''return date''). The reissued garnishment pertains to the same matter and the same parties and is procedurally required to continue to pursue collection of a judgment. The garnishment would have the same case number but be filed under a different execution number. Commenters questioned whether a garnishment order that is re-issued after its return date would be considered the ''same'' or a ''new'' garnishment order.

The Agencies have published a FAQ stating that a ''new'' garnishment order means that the creditor has gone back to court and obtained a new order, as opposed to re-filing an order that was previously served.[9] The FAQ indicated that, in the case of an order from a State child support enforcement agency, a new order would be an order that is not simply the re-delivery of the same order. The Agencies' view is that a garnishment order that is re-issued after the return date, under a different execution number, would not constitute a ''new'' garnishment order.

Garnishment Fee (§ 212.6(h))

A number of financial institutions and their trade associations commented that financial institutions should be allowed to assess reasonable garnishment fees whether or not an account has excess funds beyond any protected amounts, and even if imposing the fee would create an overdraft in the account. Several commenters asserted that costs to financial institutions of processing garnishment orders will increase as a result of the rule and that in light of the fee restrictions imposed by the rule, banks may decide to close accounts. Financial institutions asserted that garnishment order processing and compliance is a very time-consuming and often complex process and that it is unreasonable for financial institutions, which are generally not a party to the dispute between the creditor and the debtor, not to be compensated for the expenses and liabilities they incur. Expenses cited by financial institutions in processing garnishment orders include salaries and benefits for staff receiving and logging garnishment orders, performing account searches, conducting account reviews, identifying and calculating available and protected funds, placing hold orders, processing remittances, mailing and filing notices and documentation, and handling inquiries from depositors and creditors, as well as legal and compliance support staff. Financial institutions argued that without the ability to charge the customer a fee each time an account review commences, the financial institution will be forced to recoup costs against all customers, creating unfairness to both the financial institution and the financial institution's other customers.

These commenters requested that the rule be revised to allow financial institutions to assess reasonable garnishment fees even in instances where the fee must be collected either partially or fully from protected amounts. They also requested that the Agencies revise the prohibition in § 212.6(g) against charging or collecting a garnishment fee after the date of the account review. In addition, a financial institution trade association requested that the final rule clarify that garnishment fee limitations do not apply to attorney's fees assessed by a court, and that such attorney's fees can be recovered from future nonprotected balances.

In contrast, a consumer advocacy group commented that the prohibition on charging a garnishment fee against a protected amount or charging a garnishment fee after the date of the account review should be extended to protect funds from any other fees triggered by the garnishment order. Another commenter proposed that the Agencies require the creditor to pay the garnishment fee charged by the financial institution upon filing the legal document and then have the creditor add this fee to the amount owed to the creditor by the debtor.

One commenter asked for clarification on whether the rule prohibits charging a garnishment fee in the following scenario: a customer has multiple separate accounts or subaccounts, only one of which receives electronic Federal benefit payments. The other accounts are not subject to the rule. The commenter asked if the financial institution could collect an agreed upon garnishment fee from accounts not subject to the rule. The commenter also asked if a financial institution could collect a garnishment fee from an account that is not subject to the regulation after the account review by taking that account balance negative.

The Agencies continue to believe that financial institutions should not be permitted to collect a fee from the protected amount and are not amending that provision of the rule. The Agencies are not expanding the prohibition on garnishment fees to encompass ''any fee that arises as a result of a garnishment,'' because such a definition would be overly broad. However, in light of the comments received, the Agencies have decided to amend the rule to provide financial institutions with an opportunity, for 5 days following the account review, to impose a garnishment fee in the event that nonprotected funds become available following the account review.

The Agencies stated in the preamble to the interim final rule that the prohibition on charging a garnishment fee after the date of account review was necessary because otherwise the rule would need to prescribe procedures that financial institutions would follow to monitor accounts in real time to track deposits and withdrawals, determine whether new deposits are exempt or not, and determine whether a garnishment fee could be imposed. In light of the comments received from financial institutions, the Agencies have decided to establish a procedure that financial institutions may follow, if they choose, for a limited time following the account review to determine whether nonprotected funds are available to support the imposition of a garnishment fee. If funds other than a benefit payment are deposited to an account during the 5 business days following the date of the account review, the financial institution may charge or collect a fee from the additional funds. In order to impose such a fee, a financial institution could choose to check the account at any time during the 5 days after the account review to determine if funds other than benefit payments were deposited.

In response to the question as to whether a garnishment fee may be collected from accounts that do not contain a protected amount, the Agencies emphasize that such accounts are not subject to any restrictions under this rule, and that a financial institution may collect an agreed upon garnishment fee from such accounts in accordance with the customer agreement and any applicable laws.

Notice to Account Holder (§ 212.7)

A number of comments were received regarding the form, contents and means of delivery of the notice that must be provided to account holders. One commenter stated that financial institutions should not be required to provide a notice to the account holder and that it would be appropriate to put this burden on the party issuing the garnishment order. Other commenters urged the Agencies to revise the rule to require a notice to an account holder

[9] See *www.fms.treas.gov/greenbook/FAQs-May-12-trsy-ver1.pdf.*

only in cases where there are funds in the account in excess of the protected amount. The interim final rule requires that a financial institution send a notice to the account holder if the balance in the account on the date of the account review is above zero dollars and the financial institution establishes a protected amount. A number of financial institutions noted that this requirement means that a financial institution must notify an account holder when a garnishment order is received for an account into which exempt benefit payments have been electronically deposited during the lookback period even in cases where no account funds are frozen. Financial institutions commented that providing a notice in this situation is of no benefit to account holders and will result in unnecessary confusion to account holders, many of whom will be unlikely to read the entire notice and will erroneously believe that their entire account balance has been frozen. These commenters stated that financial institutions will incur the expense of preparing and mailing garnishment notices for accounts in which no funds will be turned over to a creditor, as well as for responding to inquiries from account holders confused by the notices.

One commenter recommended that financial institutions be permitted to mail the notice to the customer's address according to its records. Other commenters stated that it is unclear whether a bank is prohibited from sending notice to joint account holders. Financial institutions commented that they typically send notices regarding a joint account to all the account holders and that requiring that a garnishment order be sent solely to the person named in the order would require them to change their processes and would result in information not being communicated that the account holder likely would find important. In some States, according to commenters, State law requires banks to notify all account holders of a garnishment order that has been received and to send a copy of it to the account holders. Commenters therefore requested that the Agencies add a sentence at the end of § 212.7(e) in the final rule that states that a bank may follow its normal practice of communicating with joint account holders when sending a garnishment notice. They also requested that a conforming change be made to the model notice that indicates that the recipient of the notice may be receiving it because he or she is a joint holder of an account that has been garnished.

One financial institution trade group noted that § 212.7(e), which addresses delivery of the notice to the account holder, says only that a financial institution shall ''issue'' the notice directly to the account holder. This trade group stated that electronic notices can be provided promptly and securely and help banks to avoid unnecessary compliance costs, and requested that the Agencies allow a financial institution to issue a notice, or make a notice available, electronically, through an email or a proprietary Web site in instances where an account holder has consented to electronic communication.

The same commenter requested that the Agencies permit a bank to use either the model notice or an alternative version that provides the same information but in a more streamlined way. As proposed by the commenter, the alternative notice would have a copy of the garnishment order attached and would refer back to the order in places where the model notice requires information to be added that is unique to the garnishment in question.

With regard to the requirement that contact information for the creditor be included in the notice, a commenter noted that generally garnishments served on our clients arrive with limited information about the creditor, but full contact information for the attorney for the creditor. The commenter questioned whether financial institutions should include, in lieu of limited information on the creditor, the full information to contact the attorney for the creditor. Another commenter recommended that the list of protected payments be removed from the model notice because the list must be updated continuously.

The Agencies agree that the requirement to send a notice to account holders in cases where there are no funds in excess of the protected amount may be of little benefit and is likely to result in unnecessary confusion for some account holders. Accordingly, the Agencies are revising the rule to require a notice to an account holder only in cases where there are funds in the account in excess of the protected amount. With regard to the delivery of notices, the Agencies believe it is acceptable for financial institutions to mail the notice to the address of record, and do not believe that anything in the rule suggests otherwise. In the case of joint accounts affected by a garnishment order, financial institutions may deliver the notice to both account holders, but there is no obligation to do so. The Agencies do not believe it is necessary to amend the rule to state specifically that a bank may follow its normal practice of communicating with joint account holders when sending a garnishment notice. In such a case, the financial institution may indicate in its notice that the recipient of the notice may be receiving it because he or she is a joint holder of an account that has been garnished. The rule does not specify the means of delivery of the notice, so that any method of delivery for notices agreed to between the financial institution and the account holder, including electronic delivery, would be acceptable.

The Agencies are not creating an alternative to the model notice. Financial institutions are not required to use the model notice and may create their own alternative notices. In cases where a financial institution receives a garnishment order with limited information about the creditor, but full contact information for the creditor's attorney, the Agencies' view is that the financial institution may include, in lieu of limited information on the creditor, the full information to contact the attorney for the creditor.

The Agencies are not removing the list of protected payments from the notice because this information is likely to be helpful to account holders. The payments included in the list have been protected from garnishment by Federal statutes for many years and there is no reason to anticipate a change in these statutes.

Preemption of State Law (§ 212.9)

Some financial institutions expressed confusion over the interplay of the rule with State law and questioned how the preemption of State law would work in certain situations. One commenter posed a scenario in which State law treats a joint account held by two spouses as being held in tenancy by the entirety, and protects the account from garnishment unless the garnishment order is in both spouses' names. The commenter pointed out that where a garnishment order naming just one spouse is served on the financial institution, and protected benefit payments are deposited to the account, the rule would require that an account review be performed and a protected amount established. However, under State law, the account would not be subject to garnishment at all. The commenter questioned the interplay between the rule and State law in this scenario. Another commenter questioned whether, when protected benefit payments are deposited to an account, the rule is to be applied exclusively, or whether the rule is to be applied to determine a protected amount followed by the application of

a more protective State law to funds exceeding the protected amount in the same account.

A financial institution trade group suggested that the Agencies provide guidance on how the rule operates in the context of a specific State law by maintaining an ''evergreen'' set of FAQs that are updated as issues are raised.

One credit union association commented that it conceptually opposes the rule in its entirety with specific note to the ''continuing garnishment'' provision at § 212.6(g) and argued that § 212.6(g) is both a logically unpermitted exercise of authority and unconstitutional.

As discussed above (See *Initial action upon receipt of a garnishment order* (§ 212.4)), the rule's requirements presuppose that a financial institution would give effect to a garnishment order. It serves no useful purpose to follow the rule's procedures in situations where a financial institution has made a determination not to take any action against an account on the basis of a garnishment order. Accordingly, if a financial institution will not act on a garnishment order due to the operation of State law, the financial institution need not examine the order to determine if a Notice of Right to Garnish Federal Benefits is attached or included or take any of the additional steps required under the rule.

The Agencies intend to maintain the FAQs that have been published as an ''evergreen'' document, meaning that they will be updated as appropriate. However, the Agencies do not intend to routinely address preemption questions within the FAQs.

The Agencies do not agree that the ''continuing garnishment'' provision at § 212.6(g) is an unconstitutional exercise of authority. As discussed in the preamble to the interim final rule, the rule's treatment of continuing garnishments is necessary to give proper effect to the anti-garnishment statutes that the rule is implementing, since it is not possible to implement both a protected amount and give effect to continuing actions related to a garnishment order. See 76 FR 9946.

Record Keeping (§ 212.11)

A State banker's association commented that some banks would like more specificity as to what the record keeping requirement encompasses. This commenter suggested that the Agencies create a ''job aid'' for financial institutions that would make it clear what documentation a financial institution is required to maintain for 2 years. The Agencies believe that it is up to financial institutions to decide what documentation to retain, and that the appropriate documentation may vary depending on the circumstances of each situation.

Other Comments

Garnishment of Fraudulently Obtained Benefit Payments

A banking trade group commented that benefit payments should not be protected from garnishment where the garnishment order is for the purpose of recouping fraudulently obtained benefits. This commenter suggested that the Agencies address this scenario in the rule by creating an exception in the rule that would require financial institutions to give effect to an order that states on its face that benefit payments were obtained fraudulently, without regard to the protection from garnishment that otherwise would apply to properly-obtained benefit payments.

The Agencies do not believe that financial institutions should be required to read and make judgments on the basis for, and merits of, garnishment orders, and have structured the rule accordingly. In the case of garnishment orders to recover fraudulently issued Federal benefits, such benefits will typically be recovered in an action by the United States, which can attach a Notice of Right to Garnish Federal Benefits, if applicable.

Effective Date

A bank trade association recommended that the effective date of the final rule be delayed for 6 to 12 months following its publication, stating that it would take that long for most community banks to be able to implement the necessary systems programming and testing required to automate the detection of the unique ACH identifiers. A financial institution questioned whether the rule applies to continuing court orders already in place prior to May 1, 2011 or whether a Notice of Right to Garnish Federal Benefits must be provided in order for the financial institution to continue to honor such orders.

The interim final rule has been in effect since May 1, 2011, and the Agencies understand that financial institutions generally began implementing the rule's requirements as of that date. The amendments to the interim final rule in this rulemaking should not change or complicate compliance, and the Agencies therefore are not delaying the effective date of the final rule beyond the 30 days prescribed by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule does not, however, apply retroactively to orders, including continuing orders, that were in place prior to the May 1, 2011 effective date.

FAQs

One commenter requested that the FAQs either be incorporated directly into the rule or attached as an appendix. The Agencies believe it would be cumbersome, and unnecessary, to amend the regulation to codify the informal interpretive guidance included in the FAQs. The Agencies anticipate that they may modify or add to the FAQs to clarify issues that may be raised in the future. Codifying the FAQs in the rule would preclude the Agencies from amending the FAQs without going through a notice-and-comment rulemaking process.

III. Section-by-Section Analysis

Section 212.3

The definition of ''benefit payment'' is revised to mean a direct deposit payment that includes not only an ''XX'' in positions 54 and 55 of the Company Entry Description field, but also the number ''2'' encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.

The definition of ''garnishment order'' and ''order'' is revised to include a levy, and also to include orders issued by States and municipalities, as well as orders to freeze assets.

The definition of ''protected amount'' is revised to refer to the balance in an account when the account review is performed.

Section 212.6

Section 212.6(h) is revised to provide an exception to the prohibition against charging or collecting a garnishment fee after the date of account review, i.e., retroactively. Under the exception, if funds other than a benefit payment are deposited to the account at any time within 5 business days following the date of the account review, the financial institution may charge or collect a fee from the additional funds.

Section 212.7

Section 212.7 is revised to require that the financial institution send a notice to an account holder only where financial institution has established a protected amount and there are funds in the account in excess of the protected amount.

Appendix C to Part 212

The examples demonstrating how the protected amount is calculated have been revised to reflect the use of the account balance when the account review is performed rather than the

opening balance in the account on the day of the account review.

IV. Regulatory Analysis

A. Executive Order 12866, and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

In the proposed rule, the Agencies prepared a joint Initial Regulatory Flexibility Analysis and requested comment on the proposed rule's impact on small entities. Based on the Agencies' analysis of the comments on the proposed rule and based on a survey of small credit unions conducted by the Treasury, the Agencies certified that the interim final rule would not have a significant economic impact on a substantial number of small entities. One credit union, one bank and one credit union association commented that in their opinion the interim final rule does impose a burden, that the burden on financial institutions will likely be more significant than the Agencies believe, and that the burden will be more significant for small institutions. One of these commenters stated that it will take hours of manpower and some system reprogramming to meet the rule's requirements. Another commenter stated that smaller credit unions may not find it cost effective to upgrade their systems in order to automate the measurement of the lookback period and the performance of the account review in light of the small number of garnishment orders they receive. This commenter stated that although the time required to conduct an account review may be minimal, time spent reviewing the account is necessarily time the employee cannot spend working on his or her day-to-day responsibilities. None of the commenters provided any estimates of costs.

Some of the changes that the Agencies are adopting in the final rule will reduce the costs and burden of complying with the rule's requirements. Financial institutions will have an additional opportunity to charge a garnishment fee, and thereby recoup some costs, because the rule allows a fee to be charged against any nonprotected amounts deposited to an account within 5 business days following the account review. In addition, financial institutions will not be required to send a notice to an account holder unless there are funds in the account in excess of the protected amount. In light of these changes and for the reasons discussed in the interim final rulemaking, the Agencies certify that this final rule will not have a significant economic impact on a substantial number of small entities, in accordance with 5 U.S.C. 605(b).

C. Executive Order 13132 Determination

Executive Order 13132 outlines fundamental principles of Federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these Federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the regulation.

In the Agencies' view, nothing in this final rule affects the Federalism implications already considered in the promulgation of the interim final rule. The Agencies stated, when promulgating the interim final rule, that the rule may have Federalism implications, because it has direct, although not substantial, effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. The provision in the rule (§ 212.5) that establishes a process for financial institutions' treatment of accounts upon the receipt of a garnishment order could potentially conflict with State garnishment laws prescribing a formula for financial institutions to pay such claims.

The rule's central provision requiring a financial institution to establish a protected amount will affect only a very small percentage of all garnishment orders issued by State courts, since in the vast majority of cases an account will not contain an exempt Federal benefit payment. Moreover, States may choose to provide stronger protections against garnishment, and the regulation will only override State law to the minimum extent necessary to protect Federal benefits payments from garnishment.

Under 42 U.S.C. 407(a) and 42 U.S.C. 1383(d)(1), Federal Old-Age, Survivors, and Disability Insurance benefits and Supplemental Security Income payments are generally exempt from garnishment. 42 U.S.C. 405(a) provides the Commissioner of Social Security with the authority to make rules and regulations concerning Federal Old-Age, Survivors, and Disability Insurance benefits. The Social Security Act does not require State law to apply in the event of conflict between State and Federal law.

Under 38 U.S.C. 5301(a), benefits administered by VA are generally exempt from garnishment. 38 U.S.C. 501(a) provides the Secretary of Veterans Affairs with the authority to make rules and regulations concerning VA benefits. The statutes governing VA benefits do not require State law to apply in the event of conflict between State and Federal law.

Under 45 U.S.C. 231m(a), Federal railroad retirement benefits are generally exempt from garnishment. 45 U.S.C. 231f(b)(5) provides the RRB with rulemaking authority over issues rising from the administration of Federal Railroad retirement benefits. The Railroad Retirement Act of 1974 does not require State law to apply in the event of conflict between State and Federal law.

Under 45 U.S.C. 352(e), Federal railroad unemployment and sickness benefits are generally exempt from garnishment. 45 U.S.C. 362(1) provides the RRB with rulemaking authority over issues rising from the administration of Federal railroad unemployment and sickness benefits. The Railroad Unemployment Insurance Act does not require State law to apply in the event of a conflict between State and Federal law.

Under 5 U.S.C. 8346, for the Civil Service Retirement System (CSRS) and under 5 U.S.C. 8470, for the Federal Employees Retirement Systems (FERS), Federal retirement benefits are generally exempt from garnishment. 5 U.S.C. 8347 and 5 U.S.C. 8461, respectively, provide the Director of OPM with the authority to make rules and regulations concerning CSRS and FERS benefits.

OPM benefits statutes do not require State law to apply in the event of conflict between State and Federal law.

In accordance with the principles of Federalism outlined in Executive Order 13132, the Agencies consulted with State officials on issues addressed in the interim final rule. Specifically, the Agencies sought perspective on those matters where Federalism implications could potentially conflict with State garnishment laws. The final rule does not present new Federalism implications that have not already been considered during the promulgation of the interim final rule.

D. Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The Agencies have determined that this rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, the Agencies have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 31 CFR Part 212

Benefit payments, Exempt payments, Financial institutions, Garnishment, Preemption, Recordkeeping.

Department of the Treasury, Fiscal Service (Treasury)

Authority and Issuance

Accordingly, the interim final rule which was published at 76 FR 9939 on February 23, 2011, is adopted as a final rule with the following changes:

PART 212—GARNISHMENT OF ACCOUNTS CONTAINING FEDERAL BENEFIT PAYMENTS

■ 1. The authority citation for part 212 continues to read as follows:

Authority: 5 U.S.C. 8346; 5 U.S.C. 8470; 5 U.S.C. 1103; 31 U.S.C. 321; 31 U.S.C. 3321; 31 U.S.C. 3332; 38 U.S.C. 5301(a); 38 U.S.C. 501(a); 42 U.S.C. 405(a); 42 U.S.C. 407; 42 U.S.C. 659; 42 U.S.C. 1383(d)(1); 45 U.S.C. 231f(b); 45 U.S.C. 231m; 45 U.S.C. 352(e); 45 U.S.C. 362(1).

■ 2. In § 212.3, revise the definitions of *Benefit payment, Garnishment order* or *order,* and *Protected amount* to read as follows:

§ 212.3 Definitions.

* * * * *

Benefit payment means a Federal benefit payment referred to in § 212.2(b) paid by direct deposit to an account with the character ''XX'' encoded in positions 54 and 55 of the Company Entry Description field and the number ''2'' encoded in the Originator Status Code field of the Batch Header Record of the direct deposit entry.

* * * * *

Garnishment order or *order* means a writ, order, notice, summons, judgment, levy or similar written instruction issued by a court, a State or State agency, a municipality or municipal corporation, or a State child support enforcement agency, including a lien arising by operation of law for overdue child support or an order to freeze the assets in an account, to effect a garnishment against a debtor.

* * * * *

Protected amount means the lesser of the sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, or the balance in an account when the account review is performed. Examples illustrating the application of this definition are included in Appendix C to this part.

* * * * *

■ 3. Revise § 212.6(h), to read as follows:

§ 212.6 Rules and procedures to protect benefits.

* * * * *

(h) *Impermissible garnishment fee.* The financial institution may not charge or collect a garnishment fee against a protected amount. The financial institution may charge or collect a garnishment fee up to five business days after the account review if funds other than a benefit payment are deposited to the account within this period, provided that the fee may not exceed the amount of the non-benefit deposited funds.

■ 4. In § 212.7, revise the introductory text and paragraph (a), to read as follows:

§ 212.7 Notice to the account holder.

A financial institution shall issue the notice required by § 212.6(e) in accordance with the following provisions.

(a) *Notice requirement.* The financial institution shall send the notice in cases where:

(1) A benefit agency deposited a benefit payment into an account during the lookback period;

(2) The balance in the account on the date of account review was above zero dollars and the financial institution established a protected amount; and

(3) There are funds in the account in excess of the protected amount.

* * * * *

■ 5. In Appendix C to part 212, revise the examples of the definition of *protected amount* to read as follows:

Appendix C to Part 212—Examples of the Lookback Period and Protected Amount

* * * * *

The following examples illustrate the definition of *protected amount.*

Example 1: Account balance less than sum of benefit payments.

A financial institution receives a garnishment order against an account holder for $2,000 on May 20. The date of account review is the same day, May 20, and the balance in the account when the review is performed is $1,000. The lookback period begins on May 19, the date preceding the date of account review, and ends on March 19, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling $2,500, one for $1,250 on Friday, April 30 and one for $1,250 on Tuesday, April 1. Since the $1,000 balance in the account when the account review is performed is less than the $2,500 sum of benefit payments posted to the account during the lookback period, the financial institution establishes the protected amount at $1,000. The financial institution is not required to send a notice to the account holder.

Example 2: Three benefit payments during lookback period.

A financial institution receives a garnishment order against an account holder for $8,000 on December 2. The date of account review is the same day, December 2, and the balance in the account when the account review is performed is $5,000. The lookback period begins on December 1, the date preceding the date of account review, and ends on October 1, the corresponding date two months earlier. The account review shows that three Federal benefit payments were deposited to the account during the lookback period totaling $4,500, one for $1,500 on December 1, another for $1,500 on November 1, and a third for $1,500 on October 1. Since the $4,500 sum of the three benefit payments posted to the account during the lookback period is less than the $5,000 balance in the account when the account review is performed, the financial institution establishes the protected amount

at $4,500 and seizes the remaining $500 in the account consistent with State law. The financial institution is required to send a notice to the account holder.

Example 3: Intraday transactions.

A financial institution receives a garnishment order against an account holder for $4,000 on Friday, September 10. The date of account review is Monday, September 13, when the opening balance in the account is $6,000. A cash withdrawal for $1,000 is processed after the open of business on September 13, but before the financial institution has performed the account review, so that the balance in the account is $5,000 when the financial institution initiates an automated program to conduct the account review. The lookback period begins on Sunday, September 12, the date preceding the date of account review, and ends on Monday, July 12, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling $3,000, one for $1,500 on Wednesday, July 21, and the other for $1,500 on Wednesday, August 18. Since the $3,000 sum of the two benefit payments posted to the account during the lookback period is less than the $5,000 balance in the account when the account review is performed, the financial institution establishes the protected amount at $3,000 and, consistent with State law, freezes the $2,000 remaining in the account after the cash withdrawal. The financial institution is required to send a notice to the account holder.

Example 4: Benefit payment on date of account review.

A financial institution receives a garnishment order against an account holder for $5,000 on Thursday, July 1. The date of account review is the same day, July 1, when the opening balance in the account is $3,000, and reflects a Federal benefit payment of $1,000 posted that day. The lookback period begins on Wednesday, June 30, the date preceding the date of account review, and ends on Friday, April 30, the corresponding date two months earlier. The account review shows that two Federal benefit payments were deposited to the account during the lookback period totaling $2,000, one for $1,000 on Friday, April 30 and one for $1,000 on Tuesday, June 1. Since the $2,000 sum of the two benefit payments posted to the account during the lookback period is less than the $3,000 balance in the account when the account review is performed, the financial institution establishes the protected amount at $2,000 and places a hold on the remaining $1,000 in the account in accordance with State law. The financial institution is required to send a notice to the account holder.

Example 5: Account co-owners with benefit payments.

A financial institution receives a garnishment order against an account holder for $3,800 on March 22. The date of account review is the same day, March 22, and the balance in the account is $7,000. The lookback period begins on March 21, the date preceding the date of account review, and ends on January 21, the corresponding date two months earlier. The account review shows that four Federal benefit payments were deposited to the account during the lookback period totaling $7,000. Two of these benefit payments, totaling $3,000, were made to the account holder against whom the garnishment order was issued. The other two payments, totaling $4,000, were made to a co-owner of the account. Since the financial institution must perform the account review based only on the presence of benefit payments, without regard to the existence of co-owners on the account or payments to multiple beneficiaries or under multiple programs, the financial institution establishes the protected amount at $7,000, equal to the sum of the four benefit payments posted to the account during the lookback period. Since $7,000 is also the balance in the account at the time of the account review, there are no additional funds in the account which can be frozen. The financial institution is not required to send a notice to the account holder.

By the Department of the Treasury.

Richard L. Gregg,

Fiscal Assistant Secretary.

Dated: May 9, 2013.

By the Social Security Administration.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

Dated: May 1, 2013.

By the Department of Veterans Affairs.

Jose D. Riojas,

Interim Chief of Staff .

Dated: April 25, 2013.

By the Railroad Retirement Board.

Martha P. Rico,

Secretary to the Board.

By the Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–12567 Filed 5–28–13; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA–2012–0025]

RIN 1218–AC75

Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA published a direct final rule and a companion notice of proposed rulemaking on November 9, 2012, to broaden the exemption for digger derricks in its construction standard for cranes and derricks. OSHA received a significant adverse comment on the direct final rule during the comment period, and as a result, OSHA withdrew the direct final rule on February 7, 2013. After considering this comment, OSHA is issuing this final rule based on the notice of proposed rulemaking.

DATES: This final rule is effective on June 28, 2013.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the final rule. Contact Joseph M. Woodward, Associate Solicitor, at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–5445.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Frank Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical inquiries: Mr. Garvin Branch, Directorate of Construction, Room N–3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; fax: (202) 693–1689.

Copies of this Federal Register notice and news releases: This **Federal Register** notice, as well as news releases and other relevant information, are available at OSHA's Web page at *http://www.osha.gov.*

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I. Discussion of the Digger-Derrick Exemption in 29 CFR 1926 Subpart CC

A. Background

A digger derrick (also called a ''radial boom derrick'') is a specialized type of equipment designed to install utility poles. A digger derrick typically comes equipped with augers to drill holes for the poles, and with a hydraulic boom to lift the poles and set them in the holes. Employers also use the booms to lift objects other than poles; accordingly, electric utilities, telecommunication companies, and their contractors use booms both to place objects on utility poles and for general lifting purposes at worksites (Docket ID: OSHA–2007–0066–0139.1).

OSHA's current standard for Cranes and Derricks in Construction, promulgated in 2010 as 29 CFR part 1926 subpart CC, covers digger derricks, but includes a limited exemption for all pole work in the electric-utility and telecommunications industries, including placing utility poles in the ground and attaching transformers and other equipment to the poles (see 29 CFR 1400(c)(4); 75 FR 47906, 47924–47926, and 48136 (Aug. 9, 2010)). As explained in more detail in the preamble to the proposed rule, OSHA developed its 2010 standard through a negotiated rulemaking involving stakeholders from many affected sectors. In its proposed rule based on the draft standard from the stakeholders, OSHA included only a narrow exemption for digger derricks used to dig holes. OSHA later expanded the exemption in the 2010 final rule in response to commenters who complained that the proposed narrow exemption did not include customary uses of the digger derrick that involve placing a pole in the hole and attaching transformers and other items to the pole (see 75 FR 47906, 47924–47926, and 48136 (Aug. 9, 2010)).

In the current digger-derrick exemption to subpart CC, OSHA clarifies that employers engaged in exempted digger-derrick construction activities must still comply with the applicable worker protections in the OSHA standards governing electric-utility and telecommunications work at § 1910.268, Telecommunications, and § 1910.269, Electric power generation, transmission, and distribution. Accordingly, exempt digger-derrick work subject to 29 CFR part 1926 subpart V—Power Transmission and Distribution, must comply with 29 CFR 1910.269, while digger derricks used in construction work for telecommunication service (as defined at 29 CFR 1910.268(s)(40)) must comply with 29 CFR 1910.268. When digger-derrick activities are exempt from subpart CC of 29 CFR part 1926, employers also must comply with all other applicable construction standards, such as 29 CFR part 1926 subpart O—Motor Vehicles, Mechanized Equipment, and Marine Operations, and subpart V.[1]

On October 6, 2010, Edison Electrical Institute (EEI) petitioned for review of the Cranes and Derricks in Construction standard in the U.S. Court of Appeals for the District of Columbia. During subsequent discussions with OSHA, EEI provided new information to OSHA regarding the use of digger derricks in the electric-utility industry, and the impact on utilities' operations of the current digger-derrick exemption in subpart CC. According to EEI, the exemption from subpart CC covers roughly 95 percent of work conducted by digger derricks in the electric-utility industry (see OSHA–2012–0025–0004: EEI Dec. 7, 2010, letter, page 2). The majority of work under the remaining 5 percent is work closely related to the exempted work (*Id.*). For example, when electric utilities use digger derricks to perform construction work involving pole installations, the same digger-derrick crew that performs the pole work typically installs pad-mount transformers on the ground as part of the same power system as the poles. While the pole work is exempt under 29 CFR 1926.1400(c)(4), the placement of the pad-mount transformers on the ground is not.

On November 9, 2012, OSHA published a direct final rule and a companion proposed rule to broaden the digger-derrick exemption in subpart CC to exempt the placement of pad-mount transformers (77 FR 67313 and 67270 (Nov. 9, 2012)). In these documents, OSHA concluded that, compared to currently exempted pole work, most (if not all) of the remaining 5 percent of work is at least as safe (77 FR 67315 and 67272). Weight measurements provided by EEI demonstrate that transformers placed on a pad on the ground are roughly the same weight as, or in some cases lighter than, the weight of the transformers lifted onto the poles or the poles themselves (see OSHA–2012–0025–0003: EEI handout, ''Typical Weights'' chart).[2] In addition, OSHA explained that electric utilities typically place distribution transformers in a right of way along front property lines, close to a roadway, or along rear property lines, irrespective of whether the transformers are pole mounted or pad mounted (77 FR 67315 and 67272). In these cases, the lifting radius of a digger derrick placing a transformer on a pad is similar to the lifting radius of a digger derrick placing a transformer on a pole (*Id.*). Consequently, the lifting forces on a digger derrick should be approximately the same regardless of whether the transformer is pole mounted or pad mounted (see, e.g., OSHA–2012–0025–0003). Finally, OSHA noted that the approximate height of the transformer relative to the employee installing the transformer is the same for the two types of transformers (*Id.*). An employee installing a pad-mounted transformer is on the ground, near the pad, whereas an employee installing a pole-mounted transformer is either on the pole, or in an aerial lift, near the mounting point for the transformer. In either case, the transformer would be near the same height as the employee. OSHA received no comments challenging these statements.

OSHA also noted EEI's concerns about how the limited exemption failed to produce a significant economic savings for the electric-utility industry. Because the same workers generally perform both types of work, utility employers would, when the standard becomes fully effective in November 2014, incur the cost of meeting all of the

[1] For telecommunications work, compliance with the provisions of § 1910.268 is a condition of the exemption in § 1926.400(c)(4). The scope limitations in § 1910.268(a) (such as the language stating that it does not apply to construction) are irrelevant to application of the exemption. When an employer uses a digger derrick for telecommunications construction work and does not comply with the provisions in § 1910.268, then that employer fails to qualify for the exemption in § 1926.400(c)(4). As a result, that employer must comply with all of the requirements in subpart CC of 29 CFR part 1926, including the operator-certification requirements in § 1926.1427. When the employer fails to comply with subpart CC, and cannot demonstrate that it complied with § 1910.268 for telecommunications work, or § 1910.269 for electric-utility work, then OSHA will cite the employer under subpart CC (not §§ 1910.268 or 1910.269). When the employer demonstrates that it is complying with the exemption in subpart CC, but is not complying with the separate requirements in 29 CFR part 1926 subpart O, applicable to all motorized vehicles in construction, then OSHA will cite the employer under subpart O. Note that this explanation does not mean that OSHA is restricting its enforcement discretion on whether to issue citations at all.

[2] OSHA noted that EEI's chart does not show weights for concrete and plastic transformer pads, and EEI did not indicate that utilities use digger derricks to place these pads (77 FR 67315 and 67272). When utilities use digger derricks to lift these pads, EEI's presentation indicates that the digger derricks lift the transformers separately. Because the surface area of these pads is comparable to the transformers on them, and because these pads are generally only a few hundred millimeters thick, OSHA stated its belief that the pads did not weigh any more than transformers or poles (*Id.*). OSHA received no comments indicating that these assumptions were invalid.

other requirements in subpart CC, including the operator-certification requirements, for those workers who perform the 5 percent of work not currently exempted from subpart CC. OSHA noted that compliance with the entire standard could result in a sizable cost to the electric-utility industry (about $21.6 million annually) for an activity that does not appear significantly more dangerous than the type of activity that OSHA already exempts, and that OSHA did not consider this result when it promulgated the 2010 standard (77 FR 67315 and 67272) (see Section IV.B. in this preamble for a summary of these costs). OSHA did not receive any comments disputing this economic impact.

OSHA also notes that the largest labor organization for workers in the electric-utility industry, the International Brotherhood of Electrical Workers, participated in the settlement discussions and corroborated the general validity of the information provided by EEI, actively supported EEI's request for an expanded digger-derrick exemption, and did not submit any objections to the proposed expansion of the digger-derrick exemption.

B. Comment on the Proposed Rule and Withdrawal of the Direct Final Rule

OSHA received only one comment on the direct final rule published on November 9, 2012 ; the comment was from a ''safety professional and certified industrial hygienist in safety management'' (see Docket ID: OSHA–2012–0025–0008). OSHA previously explained in the direct final rule and the companion proposed rule for this rulemaking that it would treat a comment on either the direct final rule or the notice of proposed rulemaking as comment on both documents. The Agency stated further that it would withdraw the direct final rule and determine whether it should proceed with the proposed rule if it received a significant adverse comment (77 FR 67314 and 67271).

OSHA explained that a ''significant adverse comment'' is one that ''explains why the amendments to OSHA's digger-derrick exemption would be inappropriate,'' and that withdrawal of the direct final rule would be necessary if the comment ''raises an issue serious enough to warrant a substantive response in a notice-and-comment process'' (*Id.*). OSHA determined that the comment met that test. As a result, OSHA published a withdrawal of the direct final rule on February 7, 2013 (78 FR 8985). In the withdrawal notice, OSHA stated that it would address the comment in a follow-on final rule based on the companion notice of proposed rulemaking. OSHA hereby addresses the significant adverse comment received as a comment on the proposed rule, and issues this final rule based on the November 9, 2012 notice of proposed rulemaking.

The comment addresses a single issue in the proposed rule. The commenter expressed concern that the exemption for digger derricks decreased worker safety by exempting riggers and signal persons working with digger derricks from the specific qualification, training, and testing requirements contained in subpart CC. Accordingly, the commenter urged OSHA to further revise its proposed amendments to ''include the elements of rigger and signal person qualification, training and testing requirements for excluded workers'' (see Docket ID: OSHA–2012–0025–0008). Specifically, the commenter requested that OSHA amend its proposed conforming amendments to 29 CFR 1926.952, which establish the protections that apply to all electric-utility digger-derrick activities exempted from subpart CC, to include the requirements for rigger and signal person qualification, training, and testing found currently in subpart CC.

The comment does not persuade OSHA that a revision to the proposed rule is necessary or appropriate. OSHA notes that the commenter did not acknowledge that the majority of digger derrick activity in the electric-utility industry already is exempt from the subpart CC requirements he addresses. The commenter did not distinguish the 5 percent of digger-derrick activity proposed for exemption by this rulemaking from the 95 percent of work performed by digger derricks currently exempted from the rigger and signal person qualifications in subpart CC. Therefore, the commenter appears to be requesting action outside the scope of this rulemaking (i.e., addressing all digger-derrick work, not just the 5 percent of work proposed for exemption by this rulemaking). Additionally, the commenter did not indicate that EEI was mistaken in its estimate that 95 percent of the digger-derrick work in its industry was already exempt from subpart CC; the commenter also did not assert that the dangers posed by the 5 percent of work within the scope of this rulemaking are greater than the dangers present in the 95 percent of digger-derrick work already exempted. Moreover, the commenter did not indicate whether a rigger or signal person would typically be necessary to perform the 5 percent of work addressed in this rulemaking.

In addressing his recommended revisions, the commenter discussed data he assembled on seven digger-derrick incidents between 2001 and 2011. The commenter asserted broadly that the presence of signal persons and riggers would have prevented these incidents, but did not support this assertion with respect to any of the specific incidents. When OSHA examined these incidents, it determined that none of them involved placing pad-mount transformers on the ground or any other type of work exempted by this rulemaking.

If OSHA retained the qualification, training, and testing requirements from subpart CC for the 5 percent of utility work subject to this rulemaking, it would be imposing unwarranted costs on employers and perpetuating the problem that EEI identified when it requested the expanded exemption. Under this approach, 95 percent of utility work would remain exempt from these requirements, while 5 percent of this work would not be exempt; nevertheless, utility employers would incur the full cost of meeting all of the qualification, training, and testing requirements in subpart CC for signal persons and riggers to assist with 5 percent of the work. More importantly, employers would incur these costs even though there is no evidence that the dangers present in the 5 percent of the work are greater than those presented in the 95 percent of digger-derrick work already exempted.

In addition, although the commenter expressed concern about the absence of subpart CC qualification, training, and testing requirements for exempt digger-derrick activities, OSHA notes that any digger-derrick activity exempted from subpart CC will still be subject to the training requirements and other requirements in subpart V. Subpart V addresses the hazards present in electric-utility work, particularly the hazards of electrocution raised by the commenter. In at least several of the incidents cited by the commenter, it appears that compliance with existing OSHA standards would have prevented the injury.

In summary, OSHA finds that there is no evidence that the dangers present in the 5 percent of the work are greater than the hazards present in the 95 percent of digger-derrick work already exempted from subpart CC. Moreover, OSHA's analysis indicates that the incidents cited by the commenter did not involve work exempted by this final rule. In addition, there is no evidence that the subpart CC training and

qualification requirements recommended by the commenter would have prevented those incidents.

C. Agency Decision To Issue a Final Rule

Based on the rulemaking record as a whole, OSHA concludes that it is appropriate to proceed with the proposed rule and remove the burdens imposed on employers by the remaining 5 percent of non-exempt work. Therefore, OSHA is expanding the digger-derrick exemption to include all digger derricks used in construction work subject to 29 CFR part 1926 subpart V. Based on its estimates in the Final Economic Analysis provided in the 2010 final rule, the Agency determines that expanding the exemption for digger derricks will enable employers in NAICS 221120 (Electric Power Generation) to avoid compliance costs of about $15.9 million per year, while employers in NAICS 221110 (Electric Power Transmission, Control, and Distribution) will avoid compliance costs of about $5.7 million per year, for a total cost savings of about $21.6 million annually.

When the Agency promulgated the final Cranes and Derricks in Construction rule, OSHA's primary concern about extending the digger-derrick exemption beyond pole work was that such action would provide employers with an incentive to use digger derricks on construction sites to perform construction tasks normally handled by cranes—tasks that are beyond the original design capabilities of a digger derrick. In discussing this concern, OSHA stated, ''[T]he general lifting work done at those other worksites would be subject to this standard if done by other types of lifting equipment, and the same standards should apply as apply to that equipment . . . .'' (75 FR 47925). OSHA acknowledges that revising the exemption would extend the digger-derrick exemption to include some work at substations. However, EEI indicated that employers in the electric-utility industry limit such uses to assembly or arrangement of substation components, and that these employers use other types of cranes instead of digger derricks to perform lifting and installation work at substations (see OSHA–2012–0025–0005: Jan. 2011 EEI letter). If OSHA finds that employers are using digger derricks increasingly for other tasks, the Agency may revisit this issue and adjust the exemption accordingly.

D. Revisions to the Text of the Exemption in 29 CFR 1926.1400(c)(4)

OSHA is revising the exemption in existing 29 CFR 1926.1400(c)(4) to include within the exemption the phrase ''any other work subject to subpart V of 29 CFR part 1926'' as proposed. This revision expands the exemption to remove from coverage under subpart CC of 29 CFR part 1926 the types of non-pole, digger-derrick work described by EEI. The Agency also is making several minor clarifications to the text of the exemption. First, OSHA is replacing ''and'' with ''or'' in the phrase ''poles carrying electric *or* telecommunication lines'' (emphasis added). This revision will ensure that the regulated community does not misconstrue the exemption as limited to poles that carry both electric and telecommunications lines. This clarification is consistent with OSHA's explanation in the preamble of the final Cranes and Derricks in Construction rule (see 75 FR 47925).

Second, OSHA is adding the phrase ''to be eligible for this exclusion'' at the beginning of the sentence requiring compliance with subpart V of 29 CFR part 1926 and § 1910.268. This revision limits the exemption to the use of digger derricks that comply with the requirements in subpart V or § 1910.268. If an employer uses a digger derrick for subpart V or telecommunications work without complying with all of the requirements in subpart V or § 1910.268, then the work is not exempt and the employer must comply with all of the requirements of subpart CC of 29 CFR part 1926. This clarification is consistent with OSHA's explanation of the exemption in the preamble of the final rule (see 75 FR 47925–47926).

Third, in § 1926.1400(c)(4) of this final rule, OSHA is replacing the reference to § 1910.269 with a reference to subpart V. This revision is not substantive in that electric-utility employers having activities that fall within the digger-derrick exemption currently must comply with subpart V because the exempt activity is subpart V work, and they also must comply currently with § 1910.269 because subpart V requires them to do so (see 29 CFR 1926.952(c)(2)). By replacing the reference to § 1910.269 in the § 1926.1400(c)(4) exemption with a reference to subpart V, OSHA is removing any implication that these employers need only comply with § 1910.269 and not with all subpart V requirements, including subpart O requirements for motorized vehicles.

E. Discussion of Conforming Revisions to 29 CFR 1926 Subpart V

As part of the harmonizing process mentioned in the previous section, OSHA in this final rule also is revising § 1926.952(c)(2) in subpart V, which requires compliance with § 1910.269 for all digger-derrick work exempted from subpart CC, including compliance with §§ 1910.269(p), Mechanical equipment, 1910.269(a)(2), Training, and 1910.269(l), Working on or near exposed energized parts. When OSHA promulgated subpart CC of 29 CFR 1926 in 2010, the Agency also revised § 1926.952(c)(2) (75 FR 48135). This revision mirrored the terminology in the digger-derrick exemption at § 1926.1400(c)(4), and required employers using digger derricks so exempted to comply with § 1910.269. In making this revision, the Agency explained that it revised § 1926.952(c) to require digger derricks to comply with § 1910.269 to provide ''comparable safety requirements'' (*Id.*).

OSHA is revising § 1926.952(c)(2) in this final rule so that it continues to mirror the updated terminology in the digger-derrick exemption at § 1926.1400(c)(4). As part of the revision to § 1926.952(c)(2), OSHA is clarifying that the requirement to comply with § 1910.269 is in addition to, not in place of, the general requirement in § 1926.952(c) that all equipment (including digger derricks) must comply with subpart O of 29 CFR part 1926.

II. Agency Determinations

A. Significant Risk

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et al.*) is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards (29 U.S.C. 654(b), 655(b)). An occupational safety or health standard is a standard that ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment'' (29 U.S.C. 652(8)). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when it substantially reduces or eliminates significant risk (see *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980)).

This final rule does not impose any additional requirements on employers. It, therefore, does not require an additional significant risk finding (*see Edison Electric Institute* v. *OSHA,* 849 F.2d 611, 620 (DC Cir. 1988)). Moreover, for the reasons explained above, OSHA believes that adopting the proposed rule will not adversely affect safety.

B. Final Economic Analysis and Final Regulatory Flexibility Act Analysis

When it issued the final rule for Cranes and Derricks in Construction in 2010, OSHA prepared a Final Economic Analysis (FEA) as required by the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 651 *et seq.*) and Executive Orders 12866 (58 FR 51735 (Sept. 30, 1993) and 13563 (76 FR 3821 (Jan. 21, 2011)). OSHA also published a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601–612).

In the FEA for the 2010 final rule (OSHA–2007–0066–0422), the Agency estimated that there were about 10,000 crane operators in NAICS 221110 (Electric Power Generation), and about 20,000 crane operators in NAICS 221120 (Electric Power Transmission, Control, and Distribution). OSHA based these figures on estimates of the number of construction work crews in these industries from its subpart V Preliminary Economic Analysis, with an allowance (to assure maximum flexibility) that there be three trained crane operators for every work crew (see 75 FR 48084). Based on submissions to the record, OSHA estimated that 85 percent of these 30,000 operators (25,500) worked on digger derricks, while 15 percent of the operators operated truck-mounted cranes, or boom trucks; therefore, a total of 25,500 digger-derrick operators would require operator certification (*Id.*).

In its FEA for the 2010 final rule, OSHA estimated that the annual total costs for NAICS 221110 would be $6.7 million ($4 million for operator certification), and the annual total costs for NAICS 221120 would be $18.7 million ($8.7 million for operator certification) (see FEA Table B–9 at 77 FR 48103). Fully exempting digger derricks from the scope of the standard also eliminates costs for other activities besides operator certification, such as inspections and power-line safety. In the 2010 FEA, the two main cost components for an industry were the number of crane operators and the number of jobs involving cranes. That FEA estimated that digger derricks represented 85 percent of operators, and 85 percent of jobs involving cranes. OSHA, therefore, estimates that digger derricks account for 85 percent of the costs attributed to NAICS 221110 and NAICS 221120. Applying this 85 percent factor to the total costs for the industries yields costs for digger derricks of $5.7 million per year in NAICS 221110 and $15.9 million per year in NAICS 221120, for a total of $21.6 million per year.[3]

This final rule will eliminate nearly all of the estimated $21.6 million per year in costs associated with digger derricks. These estimated cost savings may be slightly overstated because OSHA noted in its 2010 FEA that the cost assumptions might not represent the most efficient way to meet the requirements of the rule. However, OSHA wanted to assure the regulated community that, even with somewhat overstated cost estimates, the rule would still be economically feasible.

At the same time, it does not appear that there will be any significant reduction in benefits from the subpart CC rule. In its 2010 FEA (OSHA–2007–0066–0422), OSHA reported an average of 0.5 crane-related fatalities per year in SIC codes NAICS 221110 and NAICS 221120. However, the 2010 FEA did not indicate that any of these fatalities involved digger derricks or other equipment covered by the standard. Moreover, in light of the information provided by EEI, there is no indication that the additional 5 percent of digger-derrick activity exempted through this rulemaking poses any hazard greater than the hazard posed by the digger-derrick activities already exempted in the 2010 final rule.

Because this rule estimates cost savings of $21.6 million per year, this rule is not economically significant within the meaning of Executive Order 12866. The rule does not impose additional costs on any private-sector or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by Executive Order 12866 and the relevant statutes. This rule is not a ''major rule'' under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*).

OSHA developed this rule consistent with the provisions of Executive Orders 12866 and 13563. Accordingly, this rule follows closely the principle of EO 13563 that agencies should use new data developed after completion of a rulemaking (retrospective analysis) to determine if a regulation ''should be modified, streamlined, expanded, or repealed.'' In this case, review of data submitted after completion of the initial rulemaking provided OSHA with the opportunity to streamline a rule by dropping its application to all digger derricks used in the electric-utility industry, thereby saving the industry an estimated $21.6 million per year. As described previously, this action removes duties and costs for the electric-utility industry, and does not impose any new duties on any employer. Because this final rule will reduce costs for small entities, the Agency certifies that the final standard will not impose significant economic costs on a substantial number of small entities.

OSHA included a similar economic analysis and certification in the preamble of the proposed rule and did not receive any comments challenging that analysis or the certification. The one comment that OSHA received, described earlier in this preamble, suggested that there might be additional net savings if OSHA revised the exemption to retain qualification, training, and testing requirements for signal persons and riggers, but the comment did not dispute OSHA's analysis of the cost reductions associated with the exemption as proposed. For the reasons explained previously, OSHA determined that it would not revise the exemption as requested by the commenter.

C. Technological Feasibility

A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop (see *American Textile Mfrs. Institute* v. *OSHA,* 452 U.S. 490, 513 (1981); *American Iron and Steel Institute* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991)). This rule does not require any additional protective measures. In the 2010 FEA, OSHA found the standard to be technologically feasible (75 FR 48079). OSHA concludes that this revision is feasible as well because it

[3] Based on the size of digger derricks and EEI's descriptions of digger-derrick activities, OSHA understands that the vast majority of digger-derrick use for construction activity in the electric-utility industry will involve transmission and distribution work subject to subpart V of 29 CFR part 1926. Employers categorized under NAICS 221120 generally conduct electric-transmission and electric-distribution work. However, OSHA is including digger derricks under NAICS 221110, which is the SIC code for power generation, because some employers may be under that SIC code when their primary work is in that area, but those employers also may engage in transmission work covered by subpart V. Because the record does not indicate that employers use digger derricks for power-generation construction activities, OSHA assumes that the use of digger derricks under NAICS 221110 is for subpart V work. OSHA included this identical explanation in the preamble to the proposed rule, and received no comments challenging this assumption.

reduces or removes current requirements on employers. OSHA also reiterated that finding in the preamble of the proposed rule for this rulemaking, and did not receive any comment on that finding.

D. Paperwork Reduction Act of 1995

When OSHA issued the final rule on August 9, 2010, the Agency submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) titled *Cranes and Derricks in Construction (29 CFR Part 1926 Subpart CC).* On November 1, 2010, OMB approved the ICR under OMB Control Number 1218–0261, with an expiration date of November 30, 2013. Subsequently, in December 2010, OSHA discontinued the *Cranes and Derricks Standard for Construction (29 CFR 1926.550)* ICR (OMB Control Number 1218–0113) because the new ICR superseded that ICR. In addition, OSHA retitled the new ICR to *Cranes and Derricks in Construction (29 CFR Part 1926, Subpart CC and Subpart DD).*

This rule, which expands the digger-derrick exemption, does not require any additional collection of information or alter the substantive requirements detailed in the 2010 ICR. The only impact on the collection of information will be a reduction in the number of entities collecting information. OMB did not require OSHA to submit a new proposed ICR when OSHA issued the proposed rule, and OSHA does not believe it is necessary to submit a new ICR to OMB now. OSHA will identify any reduction in burden hours when it renews the ICR. OSHA requested comment on this approach in the proposed rulemaking describing the digger-derrick exemption, but received none.

OSHA notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* and the agency also displays a currently valid OMB control number for the collection of information; the public need not respond to a collection of information requirement unless the agency displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to a penalty for failing to comply with a collection of information requirement if the requirement does not display a currently valid OMB control number.

E. Federalism

OSHA reviewed this final rule in accordance with the Executive Order on Federalism (Executive Order 13132 (64 FR 43255 (Aug. 10, 1999))), which requires that federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act (29 U.S.C. 667), Congress expressly provides that states may adopt, with federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to states that obtain federal approval for such a plan as ''State Plan States.'' Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the federal standards. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA concluded in 2010 that its promulgation of subpart CC complies with Executive Order 13132 (75 FR 48128 and 48129). Because the current rulemaking does not impose any additional burdens, that analysis applies to this revision of the digger-derrick exemption. Therefore, this final rule complies with Executive Order 13132. In states without OSHA-approved state plans, any standard developed from this rule will impact state policy options in the same manner as every standard promulgated by OSHA. In State Plan States, this rulemaking does not limit state policy options.

F. State Plan States

When federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, the 27 states and U.S. territories with their own OSHA-approved occupational safety and health plans must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, e.g., because an existing state standard covering this area is at least as effective in protecting employees as the new federal standard or amendment (29 CFR 1953.5(a)). The state standard must be at least as effective in protecting employees as the final federal rule. State Plan States must issue the standard within six months of the promulgation date of the final federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plan States need not amend their standards, although OSHA may encourage them to do so. The 27 states and U.S. territories with OSHA-approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

The amendments made in this rule do not impose any new requirements on employers. Accordingly, State Plan States need not amend their standards to incorporate the expanded exemption specified in this rule, but they may do so if they so choose.

G. Unfunded Mandates Reform Act

When OSHA issued the 2010 final rule for Cranes and Derricks in Construction, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 13132. OSHA concluded that the final rule did not meet the definition of a ''Federal intergovernmental mandate'' under the UMRA (75 FR 48130). OSHA's standards do not apply to state or local governments except in states that have voluntarily adopted state plans. OSHA further noted that the rule imposed costs of over $100 million per year on the private sector and, therefore, required review under the UMRA for those costs; the Agency determined that its Final Economic Analysis met that requirement (*Id*).

As discussed above in Section II.B. of this preamble, this rule reduces expenditures by private-sector employers. For the purposes of the UMRA, OSHA certifies that this rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year. OSHA included an identical certification in the preamble of the proposed rule, and received no comment challenging that certification.

H. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this rule in accordance with Executive Order 13175

(65 FR 67249 (Nov. 9, 2000)), and determined that it does not have ''tribal implications'' as defined in that order. This rule does not 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.

List of Subjects in 29 CFR Part 1926

Cranes and derricks, Construction industry, Electric power, Occupational safety and health.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, authorized the preparation of this notice. OSHA is issuing this final rule under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3701 *et seq.;* 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012); and 29 CFR part 1911.

Signed at Washington, DC, on May 22, 2013.

David Michaels

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble of this rule, OSHA amends 29 CFR part 1926 as follows:

PART 1926—[AMENDED]

Subpart V—Power Transmission and Distribution

■ 1. Revise the authority citation for subpart V to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Nos. 12–71 (36 FR 8754); 8–76 (41 FR 25059); 9–83 (48 FR 35736), 1–90 (55 FR 9033), 5–2007 (72 FR 31159), or 1–2012 (77 FR 3912), as applicable. Section 1926.951 also is issued under 29 CFR part 1911.

■ 2. Amend § 1926.952 by revising paragraph (c)(2) to read as follows:

§ 1926.952 Mechanical equipment.

* * * * *

(c) * * *

(2) Use of digger derricks must comply with § 1910.269 (in addition to 29 CFR part 1926, subpart O) whenever 29 CFR part 1926, subpart CC, excludes such use in accordance with § 1926.1400(c)(4).

* * * * *

Subpart CC—Cranes and Derricks in Construction

■ 3. Revise the authority citation for subpart CC to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 5–2007 (72 FR 31159) or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 4. Amend § 1926.1400 by revising paragraph (c)(4) to read as follows:

§ 1926.1400 Scope.

* * * * *

(c) * * *

(4) Digger derricks when used for augering holes for poles carrying electric or telecommunication lines, placing and removing the poles, and for handling associated materials for installation on, or removal from, the poles, or when used for any other work subject to subpart V of this part. To be eligible for this exclusion, digger-derrick use in work subject to subpart V of this part must comply with all of the provisions of that subpart, and digger-derrick use in construction work for telecommunication service (as defined at § 1910.268(s)(40)) must comply with all of the provisions of § 1910.268.

* * * * *

[FR Doc. 2013–12665 Filed 5–28–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AB48

[Docket ID: DOD–2011–HA–0029]

TRICARE Young Adult

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 702 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (NDAA for FY11). It establishes the TRICARE Young Adult (TYA) program to provide an extended TRICARE Program coverage opportunity to most unmarried children under the age of 26 of uniformed services sponsors. The TYA program is a premium-based program.

DATES: This rule is effective June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Ellis, TRICARE Management Activity, TRICARE Policy and Operations Directorate, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Overview

An interim final rule was published in the **Federal Register** on April 27, 2011 (76 FR 23479–23485) that established the TYA program by implementing Section 702 of the Ike Skelton NDAA for FY 2011 (Pub. L. 111–383). The TYA program provides TRICARE Program coverage to unmarried children under the age of 26 of TRICARE-eligible sponsors who no longer meet the age requirements for TRICARE eligibility (age 21, or 23 if enrolled in a full-time course of study at an approved institution of higher learning, and the sponsor provides more than 50 percent of the student's financial support), and who are not eligible for medical coverage from an eligible employer-sponsored plan based on their individual employment status (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986). If qualified, they can purchase TRICARE Standard/Extra or TRICARE Prime benefits coverage. The particular TRICARE option available depends on the uniformed service sponsor's eligibility and the availability of the TRICARE option in the dependent's geographic location.

B. Public Comments

The interim final rule was published in the **Federal Register** on April 27, 2011. One online comment was received via *www.regulations.gov.* We thank the commenter for the comments. Specific matters raised by those comments are summarized below.

II. Provisions of the Rule Regarding the TYA Program

A. Establishment of the TYA Program (§ 199.26(a))

1. Provisions of Interim Final Rule. This paragraph describes the nature, purpose, statutory basis, scope, and major features of TYA, a full cost, premium-based TRICARE Program coverage made available for purchase worldwide. TYA is similar to young adult coverage under the Patient Protection and Affordable Care Act, but reflects a number of differences between TRICARE, a statutorily-created DoD health benefits program and typical civilian health care plans. Among these is that TYA is a full cost premium based program; it is limited to unmarried dependent children of TRICARE-eligible sponsors; and the dependent child must not be eligible for medical coverage from an eligible employer-sponsored plan based on their individual

employment status (an exclusion that does not expire on January 1, 2014, but is permanent). TYA is codified in Title 10, United States Code, Section 1110b.

The major features of the program include making TYA coverage available for purchase at a premium which will represent the full cost, including reasonable administrative costs, as determined on an appropriate actuarial basis for coverage. There will be various premiums depending on whether the dependent's sponsor is active duty, retired, or eligible under another option such as TRICARE Reserve Select (TRS) or TRICARE Retired Reserve (TRR), and the adult dependent's desired health coverage—TRICARE Standard/Extra or, for those eligible and where available, TRICARE Prime. The rules and procedures otherwise outlined in Part 199 of 32 CFR which implements Chapter 55 of Title 10, U.S. Code, relating to the operation and administration of the TRICARE program based on the sponsor's status and health coverage plan will apply for cost-shares, deductibles, and catastrophic caps upon purchasing TYA coverage. Young adult dependents of members on active duty orders written, or otherwise continuous, for more than 30 days are eligible for benefits under the TRICARE Extended Care Health Option (ECHO) program under § 199.5 of this Part. The TRICARE Dental Program (§ 199.13 of this Part) and the TRICARE Retiree Dental Program (§ 199.22 of this Part) are not included as part of TYA.

Under TYA, qualified young adult dependents may purchase individual TRICARE Program coverage by submitting a completed request in the appropriate format along with an initial payment of the applicable premium at the time of enrollment. When TRICARE Program coverage becomes effective, a TYA purchaser receives the TRICARE benefits according to the rules governing the TRICARE Program that the dependent qualified for and selected based on the uniformed services sponsor's status (active duty, retired, Selected Reserve, or Retired Reserve) and the availability of a desired TYA option in his or her geographic location. The rules and procedures otherwise outlined in the TRICARE Regulation (Part 199) relating to the operation and administration of the TRICARE programs will apply for cost-shares, deductibles, and catastrophic caps upon purchasing TYA coverage. The young adult dependent's cost-shares, deductibles, and catastrophic caps will be based on the sponsor's status (active duty, retired, Selected Reserve, or Retired Reserve) and whether the dependent has purchased TRICARE Standard/Extra or Prime coverage. TYA dependents are provided access priority for care in military treatment facilities based on their uniformed services sponsor's status and the selection of a TYA option.

The Continued Health Care Benefits Program (CHCBP) (see § 199.20) shall be made available to all young adult dependents after aging out of the TYA program or who otherwise lose their eligibility for the TYA program, whether due to a change in the status of the young adult and/or the status of their sponsor. CHCBP participants are not eligible for military treatment facility (MTF) care other than in emergencies.

2. *Analysis of Major Public Comments:* One comment noted support for the TYA program because it will undoubtedly increase health insurance coverage for those who may have gone uninsured.

Response: We acknowledge the commenter's statement as consistent with the purposes of the TYA program.

3. Provisions of the Final Rule.

In § 199.26(a), we clarified that the uniformed service sponsors must be TRICARE eligible to qualify their eligible dependents to purchase TYA coverage. We also clarified the criteria for TRICARE eligibility up to the age of 23.

In § 199.26(a)(4)(i)(D), we deleted a potentially misleading reference to § 199.3 of this Part. Eligibility and qualifications for the TYA program as defined in § 199.3 of this Part will be clarified in § 199.26(b).

We clarified in § 199.26(a)(4)(i)(D)(*2*) that TRICARE Prime coverage may be available for purchase by dependents of sponsors who are retired members if otherwise qualified, but not dependents of sponsors who are in the Retired Reserve if their sponsor participates in TRR. Dependents of retired members in the Retired Reserve are only eligible to purchase TRICARE Standard/Extra coverage. Also, it was an error to state that the retired member must be eligible for a TRICARE Prime plan as a qualification for the young adult dependent to be eligible to purchase TRICARE Prime coverage. Dependents of retired members other than members of the Retired Reserve may purchase TRICARE Prime coverage if otherwise qualified even if the retired sponsor is not eligible for or enrolled in TRICARE Prime.

B. Qualifications for TYA coverage (§ 199.26(b))

1. *Provisions of the Interim Final Rule.* This paragraph defines the statutory conditions under which unmarried children of TRICARE-eligible sponsors qualify as young adult dependents under the TYA program. To qualify as a young adult dependent, the dependent must be under the age of 26, not be otherwise eligible for another TRICARE Program, and not be eligible for medical coverage from an eligible employer-sponsored plan based on their individual employment status (as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986). The dependents' sponsor is responsible for keeping the Defense Enrollment Eligibility Reporting System (DEERS) current with eligibility data through the sponsor's Service personnel office. Using information from the DEERS, TRICARE contractors have the responsibility to validate a dependent's qualifications to purchase TYA coverage.

2. *Analysis of Major Public Comments.* No public comments were received relating to this section of the rule.

3. *Provisions of the Final Rule.* In § 199.26(b)(1)(i), we clarified that former dependents under the Transitional Compensation Program (TCP) under 10 U.S.C 1059 as defined in § 199.3(b)(2)(iii) of this Part are not eligible to purchase TYA coverage because TRICARE coverage for these former dependents under the TCP is not authorized by chapter 55 of title 10 United States Code (U.S.C.), nor by section 1145a of 10 U.S.C, but rather by section 1059 of 10 U.S.C.

In that same paragraph, we clarify that dependents of North Atlantic Treaty Organization (NATO) sponsors as defined in § 199.3(a) of this Part are not eligible to purchase TYA coverage because NATO treaties do not specifically address young adult coverage.

C. TYA premiums (§ 199.26(c))

1. *Provisions of Interim Final Rule.* Qualified young adult dependents are charged premiums for coverage under TYA that represent the full cost of providing TRICARE benefits under this program, including the reasonable costs of administration of the program. The total annual premium amounts shall be determined by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) using an appropriate actuarial basis and are established and updated annually, on a calendar year basis, by the ASD(HA) for qualified young adult dependents. A premium shall be charged for each individual qualified young adult dependent regardless of whether a sponsoring member has more than one young adult dependent child who qualifies or purchases coverage under the TYA program. The cost shares

for TRICARE Standard/Extra or Prime programs in which the adult child is enrolled shall be based on the status of the dependent's sponsor. Because of the differences in cost-shares among the programs and status of the sponsor, there will be a different premium for TRICARE Standard/Extra and TRICARE Prime, including the Uniformed Services Family Health Plan. Premiums are to be paid monthly. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

The appropriate actuarial basis used for calculating premium rates shall be one that most closely approximates the actual cost of providing care to the same demographic population as those enrolled in TYA as determined by the ASD(HA). TYA premiums shall be based on the actual costs of providing benefits to TYA dependents during the preceding years if the population of young adult dependents enrolled in TYA is large enough during those preceding years to be considered actuarially appropriate. Until such time that actual costs from those preceding years become available, TYA premiums shall be based on the actual costs during the preceding calendar years for providing benefits to the population of dependents over the age 21 until reaching age 26 in order to make the underlying group actuarially appropriate. An adjustment may be applied to cover overhead costs for administration of the program by the government. Additionally, premium adjustments may be made to cover the prospective costs of any significant program changes.

2. *Analysis of Major Public Comments.* No public comments were received relating to this section of the rule.

3. *Provisions of the Final Rule.* The final rule is consistent with the interim final rule.

D. Procedures (§ 199.26(d))

1. *Provisions of Interim Final Rule.* The Director, TRICARE Management Activity (TMA) will establish procedures for administration of TYA. These will include procedures to purchase individual coverage, such as a request in an approved format, along with an initial payment of the applicable premium. Applicants must also certify that they meet the statutory qualifications to purchase coverage under this program. Additional procedures will be established for a qualified young adult dependent to purchase TYA coverage with an effective date immediately following the last effective date of coverage under which they previously qualified in another TRICARE option.

There will be open enrollment so that a qualified young adult dependent may purchase TYA coverage at any time. The effective date of coverage for TRICARE Standard/Extra will coincide with the first day of a month after the date the application and required payment is received. The effective date of coverage for TRICARE Prime will be the first day of the second month after the month in which application and required payment is received. There will be a limited period for retroactive coverage. A qualified young adult dependent may elect to start coverage under the TRICARE Standard/Extra plan effective with the statutory start date of January 1, 2011, if the dependent was eligible as of that date. If retroactive coverage is elected then retroactive premiums must be paid back to the statutory start date of January 1, 2011. If no retroactive coverage is elected or the retroactive premiums are not paid within the time prescribed, then coverage will not be retroactive and coverage will apply only prospectively beginning on the first day of the month after the date of the application. There shall be no retroactive coverage offered under any TRICARE Prime plan. No purchase of retroactive coverage may take place after September 30, 2011.

With respect to termination of coverage, a loss of eligibility or entitlement for medical benefits of the sponsor will result in termination of coverage for the dependent's TYA coverage on the same date as the sponsor, unless otherwise authorized. Upon the death of an active duty sponsor, young adult dependents may purchase TYA coverage until reaching age 26. If a Selected Reserve (Sel Res) or Retired Reserve member ends TRS or TRR coverage, respectively, eligibility for the young adult dependent to purchase coverage under TYA also ends. If a Sel Res sponsor dies while enrolled in TRS, the otherwise eligible young adult dependent can purchase TYA coverage up to 6 months after the death of the sponsor. If a Retired Reserve sponsor dies while enrolled in TRR, the otherwise eligible young adult dependent may continue to purchase TYA coverage until the date on which the deceased sponsor would have turned age 60. If the Retired Reserve sponsor was not enrolled in TRR at the time of death, there is no eligibility to purchase TYA coverage until the sponsor would have turned age 60. As of the date on which the deceased retired sponsor would have turned age 60, the young adult dependent qualifies as a survivor of a deceased retired sponsor and can purchase TYA coverage until reaching age 26. Coverage will terminate whenever a dependent ceases to meet the qualifications for the program. Claims will be denied effective with the termination date. In addition, covered dependents may terminate coverage at any time by submitting a completed request in the appropriate format. Dependents whose coverage under TYA terminates for failure to pay premiums in accordance with program requirements will not be allowed to purchase coverage again under TYA for a period of one year following the date of their coverage termination. This ineligibility period shall be known as a ''lockout'' period. A request for a waiver of the ''lockout'' period may be granted by the Director, TRICARE Management Activity, based on extraordinary circumstances beyond the control of the young adult dependent which resulted in inability to make payments in accordance with program requirements. The Director may allow a 90-day grace period for payment to be made. However, if payment is not made by the 90th day, then coverage will be deemed to have terminated as of the last day of the month in which an appropriate payment was made and no claims may be paid for care rendered after the date of termination. Upon termination of eligibility to purchase TYA coverage, qualified dependents may purchase coverage under the CHCBP for up to 36 months except if locked out of TYA. Upon application and payment of appropriate premiums, a young adult dependent who has already purchased coverage under any of the options offered under TYA may change to another TRICARE option for which the dependent is eligible. Eligibility is based on the sponsor's status and the dependent's geographic location.

2. *Analysis of Major Public Comments.* No public comments were received relating to this section of the rule.

3. *Provisions of the Final Rule.* In § 199.26(d)(2)(i)(A), we deleted eligibility to purchase TYA coverage by former dependents in the Transitional Compensation Program under 10 U.S.C 1059 and under § 199.3(b)(2)(iii) of this Part. We added eligibility to purchase TYA coverage for dependents of former active duty members covered under the Transitional Assistance Management Program (TAMP) who are otherwise qualified.

We added a new § 199.26(d)(2)(iii) to add that young adult dependents currently enrolled in TYA may have their TRICARE coverage terminated when the sponsor's status changes (for example, from active duty to retired

status). Young adult dependents have 30 thirty days to re-establish their TYA coverage without a break in coverage and must re-qualify for TYA coverage for which they are then eligible.

In § 199.26(d)(2) and subordinate paragraphs, we clarified the rule that procedures may be established for TYA coverage to be suspended up to one year followed by final termination for young adult dependents if they fail to make premium payments in accordance with established procedures or otherwise request suspension/termination of coverage. Procedures may be established for the suspension to be lifted upon request before final termination is applied. Procedures may also be established for the suspension to be lifted upon request for undue hardship as defined by § 199.26(g) before final termination is applied.

In § 199.26(d)(5), we added that upon a change in sponsor status, young adult dependents currently enrolled in TYA coverage may have their coverage automatically transferred to another TRICARE option consistent with the sponsor's new status. Recurring TYA premiums may be automatically adjusted by the servicing contractor.

E. Preemption of State Laws (§ 199.26(e))

1. *Provisions of Interim Final Rule.* This paragraph provides that the preemptions of State and local laws established for the TRICARE program also apply to TYA. Any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TYA.

2. *Analysis of Major Public Comments.* No public comments were received relating to this section of the rule.

3. *Provisions of the Final Rule.* The final rule is consistent with the interim final rule.

F. Administration (§ 199.26(f))

1. *Provisions of Interim Final Rule.* This paragraph provides that the Director, TRICARE Management Activity, may establish other administrative processes and procedures necessary for the effective administration of TYA.

2. *Analysis of Major Public Comments.* No public comments were received relating to this section of the rule.

3. *Provisions of the Final Rule.* The final rule is consistent with the interim final rule.

G. Terminology (§ 199.26(g))

1. *Provisions of Interim Final Rule.* New paragraph.

2. *Analysis of Major Public Comments.* No public comments were received relating to this section of the rule.

3. *Provisions of the Final Rule.* Added definition of undue hardship as it relates to suspension and termination of TYA coverage.

III. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 12866 and 13563 require certain regulatory assessments for any significant regulatory action that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. This rule will not. This final rule will not have an impact on the economy greater than $100 million annually.

Congressional Review Act

The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. This final rule will not have a major impact as that term is used under the Congressional Review Act.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local, and tribunal governments, in aggregate, or by the private section, of $100 million in any one year.

Public Law 96–354, "Regulatory Flexibility Act"

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

This rule will impose additional information collection requirements on the public under the under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) in the form of a TYA application form. Comments were solicited via the interim final rule published on April 27, 2011 (76 FR 23479–23485). No comments were received. OMB approved the TYA application form and assigned the collection of information OMB Control Number 0720–0049.

Executive Order 13132, "Federalism"

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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. The preemption provisions in the rule conform to law and long-established TRICARE policy. Therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.26 is revised to read as follows:

§ 199.26 TRICARE Young Adult.

(a) *Establishment.* The TRICARE Young Adult (TYA) program offers the medical benefits provided under the TRICARE Program to qualified unmarried adult children of TRICARE-eligible uniformed service sponsors who do not otherwise have eligibility for medical coverage under a TRICARE Program at age 21 (23 if enrolled in a full-time course of study at an approved institution of higher learning, and the sponsor provides over 50 percent of the student's financial support), and are under age 26.

(1) *Purpose.* As specified in paragraph (c) of this section, TYA is a premium-based health option that is available for purchase by any qualified adult child as that term is defined in paragraph (b) of this section. The TYA program allows a qualified adult child to purchase TRICARE coverage.

(2) *Statutory authority.* TYA is authorized by 10 U.S.C. 1110b.

(3) *Scope of the program.* TYA is geographically applicable to the same extent as specified in § 199.1(b)(1).

(4) *Major features of TYA.* (i) *TRICARE rules applicable.*

(A) Unless specified in this section or otherwise prescribed by the Assistant Secretary of Defense (Health Affairs)

(ASD (HA)), provisions of this part apply to TYA.

(B) The TRICARE Dental Program (§ 199.13) and the TRICARE Retiree Dental Program (§ 199.22) are not covered under TYA.

(C) TRICARE Standard is available to all TYA-eligible young adult dependents. TYA enrollees in TRICARE Standard may use TRICARE Extra (under § 199.17(e)).

(D) TRICARE Prime is available to TYA-eligible young adult dependents, provided that TRICARE Prime (including the Uniformed Services Family Health Plan) is available in the geographic location where the TYA enrollee resides. This applies to TYA-eligible:

(*1*) Dependents of sponsors on active duty orders written, or otherwise continuously, for more than 30 days or covered by TAMP (under § 199.3(e));

(*2*) Dependents of sponsors who are retired members other than retired members of the Retired Reserve; and

(*3*) Survivors of members who died while on active duty for more than 30 days or while receiving retired or retainer pay.

(ii) *Premiums.* TYA coverage is a premium based program that an eligible young adult dependent may purchase. There is only individual coverage, and a premium shall be charged for each dependent even if there is more than one qualified dependent in the uniformed service sponsor's family that qualifies for TYA coverage. Dependents qualifying for TYA status can purchase individual TRICARE Standard/Extra or TRICARE Prime coverage (as applicable) according to the rules governing the TRICARE option for which they are qualified on the basis of their uniformed service sponsor's TRICARE-eligible status (active duty, retired, Selected Reserve, or Retired Reserve) and the availability of a desired option in their geographic location. Premiums shall be determined in accordance with paragraph (c) of this section.

(iii) *Procedures.* Under TYA, qualified dependents under paragraph (b) of this section may purchase individual TYA coverage by submitting a completed request in the appropriate format along with an initial payment of the applicable premium. Procedures for purchasing coverage and paying applicable premiums are prescribed in paragraph (d) of this section.

(iv) *Benefits.* When their TYA coverage becomes effective, qualified beneficiaries receive the benefit of the TRICARE option that they selected, including, if applicable, access to military treatment facilities and pharmacies. TYA coverage features the per service cost share, deductible and catastrophic cap provisions based on program selected, i.e., the TRICARE Standard/Extra program or the TRICARE Prime program, as well as the status of their military sponsor. Access to military treatment facilities under the system of access priorities in § 199.17(d)(1) is also based on the program selected as well as the status of the military sponsor. Premiums are not credited to deductibles or catastrophic caps.

(v) *Transition period.* During fiscal year 2011, the TYA program will include only TRICARE Standard program coverage.

(b) *Eligibility for TRICARE Young Adult coverage.*—(1) *Young Adult Dependent.* A young adult dependent qualifies to purchase TYA coverage if the dependent meets the following criteria:

(i) Would be a dependent child under 10 U.S.C. 1072, but for exceeding the age limit under that section (abused dependents and NATO dependents are not eligible for TYA coverage); and

(ii) Is a dependent under the age of 26; and

(iii) Is not enrolled, or eligible to enroll, for medical coverage in an eligible employer-sponsored health plan as defined in section 5000A(f)(2) of the Internal Revenue Code of 1986; and

(iv) Is not otherwise eligible under § 199.3; and

(v) Is not a member of the uniformed services.

(2) The dependents' sponsor is responsible for keeping the Defense Enrollment Eligibility Reporting System (DEERS) current with eligibility data through the sponsor's Service personnel office. Using information from the DEERS, the TRICARE regional contractors have the responsibility to validate a dependent's qualifications to purchase TYA coverage.

(c) *TRICARE Young Adult premiums.* Qualified young adult dependents are charged premiums for coverage under TYA that represent the full cost of the program, including reasonable administrative costs, as determined by the ASD(HA) utilizing an appropriate actuarial basis for the provision of TRICARE benefits for the TYA-eligible beneficiary population. Separate premiums shall be established for TRICARE Standard and Prime plans. There may also be separate premiums based on the uniformed services sponsor's status. Premiums are to be paid monthly. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year.

(1) *Annual establishment of rates.*—(i) Monthly premium rates shall be established and updated annually on a calendar year basis by the ASD(HA) for TYA individual coverage.

(ii) The appropriate actuarial basis used for calculating premium rates shall be one that most closely approximates the actual cost of providing care to a similar demographic population (based on age and health plans) as those enrolled in TYA, as determined by the ASD(HA). TYA premiums shall be based on the actual costs of providing benefits to TYA dependents during the preceding years if the population of TYA enrollees is large enough during those preceding years to be considered actuarially appropriate. Until such time that actual costs from those preceding years become available, TYA premiums shall be based on the actual costs during the preceding calendar years for providing benefits to the population of similarly aged dependents to make the underlying group actuarially appropriate. An adjustment may be applied to cover overhead costs for administration of the program.

(2) *Premium adjustments.* In addition to the determinations described in paragraph (c)(1) of this section, premium adjustments may be made prospectively for any calendar year to reflect any significant program changes mandated by legislative enactment, including but not limited to significant new programs or benefits.

(d) *Procedures.* The Director, TRICARE Management Activity may establish procedures for the following.

(1) *Purchasing coverage.* Procedures may be established for a qualified dependent to purchase individual coverage. To purchase TYA coverage for effective dates of coverage described below, qualified dependents must submit a request in the appropriate format, along with an initial payment of the applicable premium required by paragraph (c) of this section in accordance with established procedures.

(i) *Continuation coverage.* Procedures may be established for a qualified dependent to purchase TYA coverage with an effective date immediately following the date of termination of coverage under another TRICARE program. Application for continuation coverage must be made within 30 days of the date of termination of coverage under another TRICARE program.

(ii) *Open enrollment.* Procedures may be established for a qualified dependent to purchase TYA coverage at any time. The effective date of coverage will coincide with the first day of a month.

(iii) *Retroactive coverage.* A qualified young adult dependent may elect retroactive TRICARE Standard coverage effective as of January 1, 2011, if

dependent was eligible as of that date. If retroactive coverage is elected, retroactive premiums must be paid for the time period between January 1, 2011, and the date of the election. If no retroactive coverage is elected or the retroactive premiums are not paid within the time prescribed, coverage will not be retroactive and coverage will apply only prospectively under the procedures set forth for open enrollment. No purchase of retroactive coverage may take place after September 30, 2011. Coverage under TRICARE Prime may not be made retroactively.

(2) *Suspension and termination.* Procedures may be established for TYA coverage to be suspended and/or terminated as follows.

(i) Loss of eligibility or entitlement for coverage by the sponsor will result in termination of the dependent's TYA coverage unless otherwise specified. The effective date of the sponsor's loss of eligibility for care will also be the effective date of termination of benefits under the TYA program unless specified otherwise.

(A) *Active duty military sponsor.* TYA coverage ends effective the date of military sponsor's separation from military service, unless the dependent would be eligible under section 199.3(e) of this Part but for the dependent's age, for the duration of the Transitional Assistance Management Program (TAMP) eligibility or until reaching age 26, whichever comes first. Upon the death of an active duty sponsor, dependents eligible for Transitional Survivor coverage may purchase TYA coverage if otherwise qualified.

(B) *Selected Reserve (Sel Res) Sponsor.* Sel Res sponsors must be currently enrolled in TRICARE Reserve Select (TRS) before a young adult dependent is eligible to purchase TYA. If TRS coverage is terminated by the sponsor, TYA coverage ends effective the same termination date as the sponsor. If the Sel Res sponsor dies while enrolled in TRS, the young adult dependent is eligible to purchase TYA coverage for six months after the date of death of the Sel Res sponsor, if otherwise qualified.

(C) *Retired Reserve Sponsor.* Retired Reserve members not yet eligible for retired or retainer pay must be enrolled in TRICARE Retired Reserve (TRR) to establish TYA eligibility for their young adult dependents. If TRR coverage is terminated by the sponsor, the TYA coverage for the young adult dependent ends effective the same date as the sponsor's termination of coverage under TRR. If the retired reserve sponsor dies while enrolled in TRR, the young adult dependent may continue to purchase TYA coverage until the date on which the deceased member would have attained age 60, if otherwise qualified. If the Retired Reserve member dies and is not enrolled in TRR, there is no eligibility for TYA coverage until the sponsor would have reached age 60. On the date the Retired Reserve member would have reached 60, a young adult dependent who otherwise qualifies for TYA qualifies as a dependent of a deceased retired sponsor and can purchase TYA coverage.

(ii) Failure of a young adult dependent to maintain the eligibility qualifications in paragraph (b) of this section shall result in the termination of coverage under the TYA program. The effective date of termination shall be the date upon which the adult young dependent failed to meet any of the prerequisite qualifications. If a subsequent change in circumstances re-establishes eligibility (such as losing eligibility for an eligible employer-sponsored plan), the young adult dependent may re-enroll for coverage under the TYA program.

(iii) Coverage may also be terminated due to a change in the sponsor's status, and the young adult dependent must re-qualify and reapply for TYA coverage within 30 days of termination to preclude a gap in coverage.

(iv) Termination of coverage results in denial of claims for services with a date of service after the effective date of termination.

(v) Coverage may be suspended and finally terminated for young adult dependents upon request at any time by submitting a completed request in the appropriate format in accordance with established procedures.

(vi) Coverage may be suspended and finally terminated for young adult dependents who fail to make premium payments within established procedures.

(vii) Under paragraph (d)(2)(v) or (d)(2)(vi) of this section, TYA coverage may be first suspended for a period up to one year followed by final termination. Procedures may be established for the suspension to be lifted upon request before final termination is applied. Procedures may also be established for the suspension to be lifted before final termination is applied upon request for undue hardship as defined by § 199.26(g).

(3) *Eligibility for the Continued Health Care Benefit Program.* Upon termination of eligibility to purchase TYA coverage, dependents may purchase coverage for up to 36 months through the Continued Health Care Benefit Program under § 199.20 unless locked out of TYA.

(4) *Changing coverage.* Upon application and payment of appropriate premiums, qualified dependents already enrolled in and who are current in their premium payments may elect to change to another TRICARE program for which the qualified dependent is eligible based on the sponsor's eligibility and the geographic location of the qualified young adult dependent. Upon change in sponsor status (for example, active duty to retired status), TYA coverage may be automatically transferred to the appropriate TRICARE option consistent with the sponsor's new status. Recurring TYA premiums may be adjusted accordingly. Administrative processes may be established for changes in program enrollment; however, no change shall be effective until the applicable premium has been paid.

(e) *Preemption of State laws.*—The preemption provisions of § 199.17(a)(7) are applicable to the TYA program.

(f) *Administration.* The Director, TRICARE Management Activity may establish other processes, policies and procedures for the effective administration of the TYA Program and may authorize exceptions to requirements of this section, if permitted by law.

(g) *Terminology.* The following term applies to the TYA program:

Undue hardship. This term involves a situation that the TYA dependent could neither have prevented nor avoided by taking reasonable and timely action. The ASD(HA) may provide further guidelines regarding use of this term.

Dated: May 10, 2013.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–12412 Filed 5–28–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0276]

RIN 1625–AA00

When Pigs Fly Fireworks Display; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the San Diego Bay in support of the When Pigs Fly Fireworks Display on June 11, 2013

from 8:30 p.m. to 9:30 p.m. The safety zone will include all navigable waters within 600 feet of the nearest point of the fireworks barge located in the vicinity of the USS MIDWAY. The zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:30 p.m. to 9:30 p.m. on June 11, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0276]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email d11marineeventssandiego@uscg.mil If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. The Coast Guard did not receive necessary information from the event sponsor in time to publish a notice of proposed rulemaking. The event is scheduled to take place, and as such, immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be impracticable for the reasons cited above.

B. Basis and Purpose

The legal basis for this temporary rule is the Ports and Waterways Safety Act which authorizes the Coast Guard to establish safety zones (33 U.S.C sections 1221 et seq.).

Pyro Spectaculars is sponsoring the When Pigs Fly Fireworks Display, which will be conducted from a barge located in the vicinity of the USS MIDWAY in San Diego Bay. A safety zone is needed for the navigable waters around the barge, which will be located in the following approximate position: 32 42′46.71″ N 117 10′39.44″ W. A safety zone is necessary to provide for the safety of the crew, spectators, and other vessels and users of the waterway. The sponsor will provide a chase boat to patrol the safety zone and inform vessels of the safety zone.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 8:30 p.m. to 9:30 p.m. on June 11, 2013. The limits of the safety zone will include all the navigable waters within 600 feet of the nearest point of the fireworks barge in approximate position 32 42′46.71″ N 117 10′39.44″ W.

The safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The safety zone is of a limited duration, one hour, and is limited to a relatively small geographic area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portion of the San Diego Bay on June 11, 2013 between 8:30 p.m. and 9:30 p.m.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will be in effect for a short duration, one hour, late at night when vessel traffic is low. Additionally, vessel traffic can pass around the safety zone.

3. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–561 to read as follows:

§ 165.T11–561 Safety zone; When Pigs Fly Fireworks Display; San Diego, CA.

(a) *Location.* The limits of the safety zone will include all the navigable waters within 600 feet of the nearest point of the fireworks barge in approximate position 32 42′46.71″ N 117 10′39.44″ W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 9:30 p.m. on June 11, 2013.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, a flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 1, 2013.

S.M. Mahoney,

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

[FR Doc. 2013–12652 Filed 5–28–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO62

Community Residential Care

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations concerning approval of non-VA community residential care facilities to allow VA to waive such facilities' compliance with standards that do not jeopardize the health or safety of residents. Waiver would be authorized in those limited circumstances where the deficiency cannot be corrected to meet a standard provided for in VA regulation. Authorizing this waiver will prevent veterans from needlessly choosing to move out of established and appropriate living situations due to minor deficiencies in standards that cannot be corrected, and into more restrictive and/or costly care. In addition, we make a technical edit to correct a reference to the section addressing requests for a hearing.

DATES: *Effective Date:* This interim final rule is effective on May 29, 2013. *Comment Date:* Comments must be received on or before July 29, 2013.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO62, Community Residential Care.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Quest, Director, Home and Community Based Services (10P4G), Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6064. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Community Residential Care (CRC) program is an important component in VA's continuum of care. It operates under the authority of 38 U.S.C. 1730, which, at subsection (a), provides that VA may refer a veteran for placement in a CRC facility if VA is furnishing outpatient medical services or hospital, domiciliary, or nursing home care to the veteran or has furnished the veteran with such care in the preceding 12 months, and placement in a CRC facility is appropriate. Under 38 U.S.C. 1730(b), VA cannot refer a veteran to a CRC facility unless VA approves the facility.

CRC facilities provide room, board, limited personal care, and supervision to veterans who do not require hospital or nursing home care but are unable to live independently because of medical or mental health conditions, and who have insufficient family resources to provide care. The veteran pays for the cost of this living arrangement. VA's contribution is limited to approving CRCs for inclusion on VA's list of approved CRC facilities. As part of the approval process, VA inspects the facility utilizing the criteria listed in 38 CFR 17.63 and conducts post-inspection monitoring. VA provides clinical services, including medical care provided by VA health care professionals, to veterans residing in CRC facilities. A CRC facility may be referred to by different names in various states and settings, such as: Medical Foster Homes, Assisted Living, Personal Care Homes, Family Care Homes, and psychiatric CRC Homes. The CRC program currently approves 826 CRC facilities serving more than 6,100 veterans, accounting for more than 398,000 bed days of care per calendar quarter.

VA's regulations governing the CRC program appear at 38 CFR 17.61 through 17.72. Decisions regarding approval of CRC facilities are made by an approving official at a local VA medical center level. The term ''approving official'' is defined at § 17.62(e) as a Director of a VA Medical Center or Outpatient Clinic which has jurisdiction to approve the CRC facility, or other medical center officials listed in that section who may be designated by the Director. As provided in § 17.65(a), the approving official may approve a CRC facility, based on the report of a VA inspection and any findings of necessary interim monitoring of the facility, if the facility meets the standards listed in § 17.63. The standards found in § 17.63 cover a wide variety of issues related to health and safety as well as quality of life, environment, and administrative requirements. For example, § 17.63 provides standards for fire safety, heating and air conditioning, interior building plans, laundry service, size and furnishing requirements for the residents' bedrooms, nutrition, activities, residents' rights, and staffing and administrative requirements. The current regulation requires CRCs to meet all of these standards before an approving official may grant approval of a CRC facility.

Under § 17.65(b), if there is an identified deficiency that does not jeopardize the health or safety of the residents, the CRC facility may obtain provisional approval if the deficiency can be corrected and VA and the facility agree on a plan to correct the deficiency. If the deficiency is not corrected per the agreement, the provisional approval is terminated, as provided in §§ 17.66 through 17.71. Upon revocation of VA approval for a CRC facility, VA is required to cease referring veterans to the CRC facility, notify any veteran residing in the facility that VA has disapproved the facility, and request permission to assist in the veteran's removal if the veteran chooses to leave.

There currently is no provision whereby VA may waive a standard delineated in § 17.63. However, VA has determined that there may be instances in which a CRC facility may have a minor deficiency that cannot be corrected but which does not jeopardize the health or safety of resident veterans. We find that it is appropriate to provide a mechanism to waive the standard applicable to that minor deficiency and authorize approval of the CRC facility under § 17.65(a) or (b). An example of an instance in which a waiver would be appropriate would involve a CRC facility that would qualify for full approval but for the fact that a single-resident room measures slightly less than 100 square feet (as required under § 17.63(e)(2)), and the deficiency cannot be corrected without compromising the structural integrity of the facility. Waiver would be appropriate in this instance in order to ensure that a veteran is not discouraged from using an appropriate CRC facility located near his or her home, or to otherwise avoid more restrictive and/or costly care.

This interim final rule amends § 17.65 by adding a new paragraph (d) providing that VA may waive a standard found in § 17.63 for the approval of a

particular CRC facility if the deficiency does not jeopardize the health or safety of the residents, and the deficiency cannot be corrected as provided for in § 17.65(b). VA may grant a waiver of a standard applicable to the facility if the VA safety expert certifies that the deficiency does not endanger the life or safety of the residents; the deficiency cannot be corrected; and it is in the best interests of the veteran and VA's CRC program. The first two criteria in a waiver determination are objective; however, it is important for VA to retain some discretion in rare cases where waiving a particular standard would not be in the best interests of a particular veteran in the facility or the overall interests of VA's CRC program. We believe that this last criterion would be used to deny a waiver only in rare circumstances. For example, if a newly purchased CRC facility has a window defect that cannot be corrected due to the effect of the correction on the rest of the structure, but the facility should have been aware of the deficiency when it purchased the structure, it might be against the interests of the CRC program to authorize a waiver. Or, if a facility cannot meet a standard related to the quality of life for its residents but waiving that standard will have a negative impact on a veteran, VA might not authorize the waiver. Again, we believe that waivers will be appropriate in the majority of cases when the deficiency does not endanger the life or safety of residents and do not envision using this last criterion to deny waivers in many cases. Additionally, we note that, if needed to make a waiver eligibility determination, the VA safety expert may request supporting documentation from the CRC facility.

Under paragraph (d)(2), the subject standard is deemed to have been met once the waiver is granted. During the period the waiver is valid and in place, VA will document the existence of the waiver as well as the date it was issued on the facility's annual survey. Under paragraph (d)(3), the waiver remains valid so long as the CRC facility remains in the program continuously without a break. However, VA may, on the recommendation of an approving official, rescind a waiver issued under this section if a VA inspector determines that there has been a change in circumstances and that the deficiency can now be corrected, or a VA safety expert finds that the deficiency jeopardizes the health and safety of residents.

Finally, we make a technical edit to § 17.66. This section details notice requirements if the hearing official determines that a CRC facility is not compliant with VA standards. Current paragraph (c) of § 17.66 cross-references § 17.51n for community residential care facilities to request oral or paper hearings before VA approval is revoked. On May 13, 1996, 61 FR 21965, VA redesignated § 17.51n as § 17.67. We are removing the reference to § 17.51n and adding, in its place, § 17.67.

Effect of Rulemaking

Title 38, Code of Federal Regulations, as revised by this interim final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures on this subject are authorized. All VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B), the Secretary of Veterans Affairs has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest, and is accordingly issuing this rule as an interim final rule. This interim final rule is necessary to address an immediate need to provide a mechanism that will allow VA to grant a waiver to a CRC facility that cannot obtain full approval because of a minor deviation from regulatory standards that cannot be corrected and does not endanger the lives or safety of the veteran residents. Although approval would be rescinded because of a minor and uncorrectable deviation from standards unrelated to health or safety, veterans may be dissuaded from maintaining their residence in such facility. Providing a waiver in that circumstance will preclude the need to terminate a CRC facility's approval based on an uncorrectable minor deviation from non-safety related standards. This eliminates the potential that resident veterans will needlessly choose to leave an otherwise healthy, safe, and suitable living arrangement. Current regulations do not provide for any waiver of standards. An example of where a waiver may be appropriate is a CRC facility with a resident bedroom that is slightly smaller than the required 100 square feet of floor area for a single-resident room. Resident bedroom size is a quality of life rather than a health or safety standard. It is in the public interest for a veteran not to be removed from a stable living situation based solely on a minor deviation from standards that does not threaten life or safety.

To prevent veterans from needlessly choosing to leave affected CRC facilities because the facilities are no longer on the approved list, and in order to ensure timely implementation of the program established by this rule, and for the reasons stated above, the Secretary also finds, in accordance with 5 U.S.C. 553(d)(3), good cause for this interim final rule to be effective on the date of publication.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). Documentation that a VA safety expert may request from a community residential care facility to support a waiver determination, as provided under 38 CFR 17.65(d)(1), would not qualify as ''information'' under the PRA because collection of this information would be conducted on an individual case-by-case basis and would require individualized information pertaining to the specific deficiency identified by the VA safety expert. We believe that this collection is therefore exempt from the PRA requirements, as provided under 5 CFR 1320.3(h)(6) (excluding from PRA requirements a ''request for facts or opinions addressed to a single person'').

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will have little, if any, economic impact on a few small entities. VA may waive a standard under this rulemaking provided a VA safety expert certifies that the deficiency does not endanger the life or safety of the residents, the deficiency cannot be corrected, and granting the waiver is in the best interests of the veteran in the

facility and VA's CRC program. In order to reach the above determinations, the VA safety expert may request supporting documentation from the CRC facility. VA believes supplying this information will constitute an inconsequential amount of the operational cost for those CRC facilities. VA believes that, at most, only a few CRC facilities would qualify for a waiver. On this basis, the Secretary certifies that the adoption of this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, 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 set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, approved this document on May 8, 2013, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: May 22, 2013.

William F. Russo,

Deputy Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Section 17.65 is amended by adding paragraph (d) to read as follows:

§ 17.65 Approvals and provisional approvals of community residential care facilities.

* * * * *

(d)(1) VA may waive one or more of the standards in 38 CFR 17.63 for the approval of a particular community residential care facility, provided that a VA safety expert certifies that the deficiency does not endanger the life or safety of the residents; the deficiency cannot be corrected as provided in paragraph (b) of this section for provisional approval of the community residential care facility; and granting the waiver is in the best interests of the veteran in the facility and VA's community residential care program. In order to reach the above determinations, the VA safety expert may request supporting documentation from the community residential care facility.

(2) In those instances where a waiver is granted, the subject standard is deemed to have been met for purposes of approval of the community residential care facility under paragraphs (a) or (b) of this section. The waiver and date of issuance will be noted on each annual survey of the facility as long as the waiver remains valid and in place.

(3) A waiver issued under this section remains valid so long as the community residential care facility operates continuously under this program without a break. VA may, on the recommendation of an approving official, rescind a waiver issued under this section if a VA inspector determines that there has been a change in circumstances and that the deficiency can now be corrected, or a VA safety expert finds that the deficiency jeopardizes the health and safety of residents.

* * * * *

■ 3. Section 17.66, paragraph (c) is amended by removing ''§ 17.51n'' and adding, in its place, ''§ 17.67''.

[FR Doc. 2013–12641 Filed 5–28–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN99

VA Dental Insurance Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations to establish rules and procedures for the VA Dental Insurance Program (VADIP), a pilot program that offers premium-based dental insurance to enrolled veterans and certain survivors and dependents of veterans. Under the pilot program, VA will contract with a private insurer, through the Federal contracting

process, to offer dental insurance to eligible individuals. The private insurer will be responsible for the administration of the dental insurance plan. VA will form the contract and verify the eligibility of individuals who apply for the private dental insurance.

DATES: This rule is effective June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 1, 2012, VA published in the **Federal Register** (77 FR 12517) a proposed rule to amend VA regulations to establish VADIP, a pilot program that would offer premium-based dental insurance to enrolled veterans and certain survivors and dependents of veterans. Section 510 of title V of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111–163 (2010), requires VA to carry out a pilot program to assess the feasibility and advisability of providing a dental insurance plan to veterans and survivors and dependents of veterans. To comply with section 510(a), VA will contract with a private dental insurer to offer dental insurance coverage to the individuals identified in section 510(b), specifically veterans enrolled in VA's system of annual enrollment under 38 U.S.C. 1705, and survivors and dependents of veterans who are eligible for medical care under 38 U.S.C. 1781. This final rule establishes rules and procedures for VADIP, in accordance with section 510(k), which requires VA to prescribe regulations.

Interested persons were invited to submit comments to the proposed rule on or before April 30, 2012, and we received 28 comments. Many of the comments were supportive of VADIP, and did not suggest changes to the proposed rule. For the remaining comments, we have organized the discussion below accordingly.

Comments That Compared VADIP Insurance With VA Dental Benefits

Certain commenters who expressed support for VADIP also seemed to advocate that VADIP is necessary because, by comparison, they believe that VA dental care under 38 U.S.C. 1712 (referred to in this preamble as ''VA dental benefits'') are not adequately administered to veterans. Specifically, these commenters contended that VADIP was necessary because only limited groups of veterans are eligible to receive VA dental benefits, or because VA staff do not understand or properly communicate the eligibility requirements for VA dental benefits. Generally, we respond that comments regarding veteran eligibility for VA dental benefits or the adequacy of VA dental benefits are beyond the scope of this rulemaking, because section 510 clearly distinguishes between VA dental benefits and VADIP insurance by requiring VA to contract with a private insurer to administer VADIP, and by requiring that VA maintain its statutory responsibility to furnish VA dental benefits to certain veterans even if those veterans also participate in VADIP. See Public Law 111–163, sections 510(e), 510(j). Therefore, we do not specifically respond to these comments because these issues are outside the scope of this rulemaking.

However, we do respond to a few commenters who based their support for VADIP on misinterpretations of eligibility for VA dental benefits, because these misinterpretations seemed to also create confusion for the commenters regarding VADIP eligibility. For instance, multiple commenters misstated that only veterans with a service-connected disability rated at 100 percent are eligible to receive VA dental benefits, and consequently advocated that the rule should permit veterans with less than a 100 percent service-connection rating to enroll in VADIP. We do not make any changes to the rule based on these comments because § 17.169(b)(1) makes clear that any veteran who is enrolled in the VA health care system in accordance with 38 CFR 17.36 is eligible to enroll in VADIP, and enrollment under § 17.36 is not solely based upon a veteran's service-connection rating, at any level. Additionally, we clarify that there are categories of eligibility for VA dental benefits that are based on dental conditions that are service-connected and compensable in degree, but not requiring an overall rating of 100 percent, as well as categories of eligibility that are based on criteria that are unrelated to any level of service-connection. See 38 U.S.C. 1712, 2062; see also 38 CFR 17.160–17.166.

Comments Related to Veteran Family Member Eligibility for VADIP

Some commenters who expressed support for VADIP also advocated that family members of veterans should be eligible to enroll in VADIP. We do not make any changes to this rule based on these comments. Section 510(b)(2) limits VADIP eligibility for veteran family members to only those survivors and dependents of veterans who are eligible for medical care under 38 U.S.C. 1781, implemented as VA's Civilian Health and Medical Program (CHAMPVA). See 38 CFR 17.270–17.278. Consequently, § 17.169(b)(2) limits VADIP eligibility for veteran family members who are eligible for medical care under 38 U.S.C. 1781 and 38 CFR 17.271.

One commenter asserted more specifically that VADIP insurance should be available to family members of veterans with a 100 percent service-connection rating before it is provided to family members of veterans with lower service-connection ratings, because VA dental benefits are only provided to 100 percent service-connected veterans. We reiterate that VADIP insurance is not VA dental benefits and is not comparable to VA dental benefits, and that VA dental benefits are not limited to only 100 percent service-connected veterans. With regard to the eligibility of family members of veterans for VADIP, we do not make any changes based on this comment. Only survivors and dependents of veterans who are eligible for CHAMPVA may be enrolled in VADIP. Although certain eligibility criteria for CHAMPVA benefits do consider whether a veteran has a service-connected disability or condition, CHAMPVA eligibility is not solely based on a veteran's service-connection rating. See, e.g., 38 CFR 17.271(a)(3).

Although this rule may not expand eligibility for VADIP to veteran family members beyond section 510(b)(2), we do not interpret any part of section 510 as preventing a private insurer, participating in VADIP, from providing a different type of dental insurance plan to veteran family members who may not be eligible for VADIP under section 510(b)(2). Consequently, nothing in this rule prohibits a VADIP-participating private insurer from forming non-VADIP contractual relationships with anyone. However, a VADIP-participating private insurer may not use any VA health information to which it is privy, by virtue of participating in VADIP, to solicit or market directly to any person who is not eligible to enroll in VADIP under section 510(b).

Comments Related to Geographic Areas in Which VADIP Will Be Offered

Multiple commenters who expressed support for the rule additionally advocated that VADIP should be broadly available geographically. One commenter specifically stated that VADIP should be offered in all VA Integrated Service Networks (VISN),

instead of select VISNs. It is unclear why the commenter believed VADIP would be administered only in select VISNs; the proposed rule did not implement regional restrictions, and we do not intend that VADIP be administered only in certain VISNs. Therefore, we do not make any changes to the rule based on this comment. Although section 510(d) does state that the VADIP pilot program ''shall be carried out in such [VISNs] as the Secretary considers appropriate,'' we reiterate, from the proposed rule, that the intent is that VADIP insurance be provided as broadly as possible, given the insurer's coverage capabilities as determined during the Federal contracting process. See 77 FR 12518. Although VA cannot predict the breadth of geographic coverage, limitations will only be due to what insurers ultimately are able to provide. To this end, VA will attempt, via the Federal contracting process, to ensure that VADIP geographic coverage is broad.

Some commenters advocated making VADIP available in the Philippines and Guam. We do not make any changes to the rule based on these comments. As noted above, the rule does not limit VADIP insurance from being provided in any particular VISN; both the Philippines and Guam are located in VISN 21. We note that the provision of VADIP insurance in areas outside the United States is controlled by section 510 and not by any other VA authorities to provide VA care outside of the United States, because VADIP insurance is not VA care and is not administered by VA as a medical benefit. We are not guaranteeing or advocating coverage in any specific geographic area, because coverage may be limited by multiple factors that are beyond VA's control. For example, insurers may be limited to providing VADIP coverage only in areas where they are licensed to provide insurance.

Comments Related to VADIP Costs for Enrollees

As mandated by section 510(h)(3), § 17.169(c)(1) requires that VADIP premiums and any copayments will be paid by the insured. Multiple commenters advocated that VA should ensure that these costs are affordable for VADIP enrollees, without specifically requesting changes to the rule except as noted below. First, we address the general concerns as expressed by commenters related to cost. Under section 510(h)(1) and (h)(2), VA must establish VADIP premium amounts and adjust those amounts annually. Section 510 is silent about VA establishing copayment amounts, although section 510(h)(3) states that VADIP enrollees will be responsible for the full cost of any copayment amounts.

Under § 17.169(c)(1), both premium and copayment amounts will be determined through the Federal contracting process. To the extent that commenters may wish for VA to actually establish the costs of VADIP premiums and copayments in the rule, and further ensure that such costs are affordable, we will not know such costs until contracts with insurers are negotiated. We expect, through the Federal contracting process, to negotiate with insurers to establish multiple tiers of coverage within the comprehensive listing of dental care services in § 17.169(c)(2). This will help ensure that VADIP enrollees have a choice to pay premium and copayment amounts proportionate to the services they want covered.

Multiple tiers of coverage will prevent all VADIP enrollees from being required to pay higher premium amounts or copayments that would typically be associated with covering the full range of services listed in § 17.169(c)(2). Establishing tiers of coverage in this manner is standard practice in the dental insurance industry, and will assist in keeping premium and copayment costs manageable for VADIP enrollees. Multiple tiers of coverage with varying premium and copayment amounts are also supported by section 510. See Public Law 111–163, sections 510(h)(1), (h)(3) (indicating that multiple ''[p]remiums'' will be established and adjusted by VA, and that each individual covered by VADIP will be responsible to pay the full cost of any ''copayments''). We do not make any changes to the rule to set forth specific tiers of coverage, however, because such determinations are better suited to the contract negotiations that VA will conduct with insurers.

We additionally note that for purposes of analyzing insurer risk, typically a large number of enrollees can assist with keeping premiums, copayments, and other administrative costs low. As reported in the proposed rule, VA anticipates that between 101,000 and 201,000 individuals will apply to enroll in VADIP each year, based on the sizable groups of individuals eligible to enroll under section 510(b). See 77 FR 12520. We will conduct the Federal contracting process anticipating this large number of expected enrollees and attempt to secure reasonable premium and copayment pricing for VADIP plans.

In relation to the scope of VADIP coverage and pricing, one commenter stated that veterans and their family members need coverage for ''all dental preventive and corrective care that is more affordable [than] the current Delta Dental Plan.'' This commenter further criticized ''the current Delta Dental Plan'' for instituting waiting periods for certain dental services, such that these services are not considered covered until after an insured is enrolled for a specific period of time. We are unsure of the specific plan to which the commenter intended to refer, but we interpret this comment to advocate that VA should ensure that VADIP provides more dental services at a less expensive price, and with fewer restrictions, than typically provided in an insurance plan that is offered by a large dental insurer like Delta Dental. We do not make any changes based on this comment.

VA must contract with a private dental insurer to administer VADIP, and therefore the administration of VADIP will be subject to standard practices and market factors that are present in the dental insurance industry. For example, VA may not be able to negotiate a contract with a private insurer that does not institute waiting periods for certain services or procedures, if the standard practice in the dental insurance industry is to institute such waiting periods. VA must ensure that an insurer offers the coverage VA prescribes, that premiums are established and adjusted annually, and that certain other requirements, as mandated by section 510, are met. VA must also contract with dental insurers within the framework of the dental insurance industry to implement these requirements, and as such these dental insurers may administer VADIP according to certain standard industry practices that commenters expressed were objectionable. Consequently, VADIP coverage may not be priced less expensively than other comparable coverage typically offered in the dental insurance industry, and coverage may be subject to restrictions that typically exist in comparable dental insurance plans. We further note that dental benefits that must be offered under § 17.169(c)(2) are comprehensive, and reiterate, as stated above, that VA will attempt to secure reasonable premium and copayment pricing through multiple tier options to allow enrollees to choose coverage that is appropriate and affordable for them.

One commenter from the dental insurance industry recommended multiple options to include in VADIP plans that, in the commenter's opinion, would keep costs lower for VADIP enrollees. These options included instituting waiting periods for certain specific benefits; establishing fixed fees

that VA may charge for internal administrative needs related to the VADIP contracts; and instituting lock-out periods, a provision for those insureds who opt to leave VADIP, so that such individuals would be prevented from re-enrolling in VADIP before a specific period of time had passed. This commenter did not request that the rule should enact such options as mandatory provisions, but only that these options should be considered in the insurance plans themselves, which would be formed when VA contracts with private insurers to administer VADIP. VA will consider contract options with insurers to reduce costs for VADIP enrollees as part of the negotiation process, which may include some or all of the above suggestions.

Although we interpret the cost-saving suggestions made by this commenter to relate to the contracting process rather than to the regulation, the suggestion to make re-enrollment subject to lock-out periods is a contract option that would be prevented if the regulation text is not changed. Section 17.169(d)(2), as proposed, alerted the public to a month-to-month enrollment option, after the 12-month initial enrollment period. This could be interpreted to mean that an insured may re-enroll at any time on a month-to-month basis regardless of any lock-out period in a VADIP contract. Lock-out periods are standard in most dental insurance contracts to discourage individuals from enrolling on an intermittent basis, only as services are needed. Continuous enrollment is thus incentivized, which helps ensure lower premiums for all insureds by increasing predictability of the insured group's size, and allowing for sufficient premiums to be collected to cover anticipated treatments costs. Therefore, we amend the language of § 17.169(d)(2) from the proposed rule to make the month-to-month enrollment subject to a new paragraph (e)(5) in the rule. Paragraph (e)(5) will read ''[m]onth-to-month enrollment, as described in paragraph (d)(2) of this section, may be subject to conditions in insurance contracts, whereby upon voluntarily disenrolling, an enrollee may be prevented from re-enrolling for a certain period of time as specified in the insurance contract.'' This change reflects our original intent to consider cost-saving contract options.

One additional option advanced by this industry commenter was to enable enrollees to use pre-tax dollars for premiums and copayments. We interpret this as a request that VA permit enrollees to treat premium payments and certain other VADIP costs as a pre-tax deduction, for purposes of reducing an enrollee's overall taxable income. Although not stated by the commenter, we interpret this suggestion as referring to ''cafeteria'' insurance plans, which allow employers to offer or sponsor insurance plans that may provide tax savings to both employees and employers. See 26 U.S.C. 125. Enrollment in a ''cafeteria'' plan can create tax savings for an employee, typically because the employee will contribute a portion of his or her salary on a pre-tax basis to pay for the qualified insurance benefits. These contributions are usually made pursuant to salary reduction agreements between the employer and the employee. Because these contributions are reductions in salary and are not received by the employee, they are not considered wages for income tax purposes.

VA is not offering VADIP plans as an employer, and therefore may not offer or sponsor VADIP as a ''cafeteria'' plan under 25 U.S.C. 125 for the purposes of pre-tax treatment of insurance premiums. VA will not participate in the collection of premiums or otherwise establish automatic deduction mechanisms for the payment of premiums. Instead, under § 17.169(c)(1), VADIP insureds will make premium and copayments in accordance with the terms of their VADIP insurance plan. We, therefore, do not make any changes to the rule based on this comment.

Comments Related to Federal Preemption of State Insurance Law

A commenter from the dental insurance industry stated that ''[i]t is important that VA exercise Federal preemption similar to that of the [Department of Defense TRICARE Retiree Dental Program (TRDP)] and the Federal Employee Dental and Vision Insurance Program (FEDVIP).'' The commenter asserted that Federal preemption of State insurance law or regulation was necessary for VADIP to be successful, because such preemption would allow for the implementation of uniform benefits in all States and would reduce the overall cost of VADIP. We agree with the commenter that uniformity of benefits provided at a reasonable cost are important interests for VA to consider in implementing VADIP. Although we interpret that Congress intended to legislate about the business of insurance in several subsections of section 510, and in turn that certain provisions of this rule could have preemptive effect, we make no changes to the rule based on this comment. We intend to publish a separate direct final rule to address preemption in VADIP to ensure that all affected parties have notice of VA's intent to assert the preemptive effect of certain subsections of section 510, and to provide VA an opportunity to consult with States and State officials in compliance with Executive Order 13132, Federalism.

Comment Related to the Duration of VADIP as a Pilot Program

Lastly, a commenter advocated that the duration of the VADIP pilot program should be extended from 3 years to 5 years, because this longer time frame would help ensure higher enrollment, would help spread initial administrative costs over a longer time, and would provide VA with more time to collect data on the administration of VADIP to determine if VADIP is feasible. Section 510(c) is clear that the duration of VADIP is to be no more than 3 years. Therefore, we do not make any changes to the rule based on this comment.

Nonsubstantive Changes Not Requested by Commenters

Two nonsubstantive changes are being made that were not requested by commenters, to ensure consistency in VADIP administration. The first nonsubstantive change is to the headings of § 17.169 and to § 17.169(a)(1), to remove the word ''Plan,'' so that VADIP is consistently known as the ''VA Dental Insurance Program,'' and not the ''VA Dental Insurance Plan Program.'' The second nonsubstantive change is a renumbering of the paragraphs under § 17.169(e), to properly distinguish between involuntary and voluntary disenrollment. Specifically, § 17.169(e)(1) as proposed referred to both involuntary and voluntary disenrollment within one paragraph, and sought to set forth the various bases for voluntary disenrollment under § 17.169(e)(1)(i) through (e)(1)(v). To ensure there is no confusion, we removed language related to voluntary disenrollment from § 17.169(e)(1) as proposed and placed this language in the new § 17.169(e)(2), and renumbered § 17.169(e)(2) and (e)(3) as proposed to § 17.169(e)(3) and (e)(4), respectively. We also corrected the reference to voluntary disenrollment procedures in renumbered § 17.169(e)(3), to refer to paragraphs (e)(2)(i) through (e)(2)(v).

Based on the rationale set forth in the proposed rule and in this document, VA is adopting the provisions of the proposed rule as final with changes to § 17.169(a)(1), (d)(2) and (e).

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final

rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following new information collection requirement: Applications are needed so that individuals can voluntarily participate in VADIP. Procedures for voluntary disenrollment, as well as appeals of disenrollment decisions, are needed to ensure that enrollment remains voluntary, and that disenrollment determinations are timely. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted this information collection to OMB for its review. OMB approved the new information collection requirement associated with the final rule and assigned OMB control number 2900–0789.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only dental insurers, certain veterans and their survivors and dependents, which are not small entities, will be affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, 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 set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009 Veterans Medical Care Benefits and 64.011 Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, approved this document on May 13, 2013, for publication.

List of Subjects in 38 CFR Part 17

Dental health, Government contracts, Health care, Health professions, Health records, Veterans.

Dated: May 22, 2013.

William F. Russo,

Deputy Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Add § 17.169 after § 17.166 to read as follows:

§ 17.169 VA Dental Insurance Program for veterans and survivors and dependents of veterans (VADIP).

(a) *General.* (1) The VA Dental Insurance Program (VADIP) provides premium-based dental insurance coverage through which individuals eligible under paragraph (b) of this section may choose to obtain dental insurance from a participating insurer. Enrollment in VADIP does not affect the insured's eligibility for outpatient dental services and treatment, and related dental appliances, under 38 U.S.C. 1712.

(2) The following definitions apply to this section:

Insured means an individual, identified in paragraph (b) of this section, who has enrolled in an insurance plan through VADIP.

Participating insurer means an insurance company that has contracted with VA to offer a premium-based dental insurance plan to veterans, survivors, and dependents through VADIP. There may be more than one participating insurer.

(b) *Covered veterans and survivors and dependents.* A participating insurer must offer coverage to the following persons:

(1) Any veteran who is enrolled under 38 U.S.C. 1705 in accordance with 38 CFR 17.36.

(2) Any survivor or dependent of a veteran who is eligible for medical care under 38 U.S.C. 1781 and 38 CFR 17.271.

(c) *Premiums, coverage, and selection of participating insurer.* (1) *Premiums.*

Premiums and copayments will be paid by the insured in accordance with the terms of the insurance plan. Premiums and copayments will be determined by VA through the contracting process, and will be adjusted on an annual basis. The participating insurer will notify all insureds in writing of the amount and effective date of such adjustment.

(2) *Benefits.* Participating insurers must offer, at a minimum, coverage for the following dental care and services:

(i) *Diagnostic services.*

(A) Clinical oral examinations.

(B) Radiographs and diagnostic imaging.

(C) Tests and laboratory examinations.

(ii) *Preventive services.*

(A) Dental prophylaxis.

(B) Topical fluoride treatment (office procedure).

(C) Sealants.

(D) Space maintenance.

(iii) *Restorative services.*

(A) Amalgam restorations.

(B) Resin-based composite restorations.

(iv) *Endodontic services.*

(A) Pulp capping.

(B) Pulpotomy and pulpectomy.

(C) Root canal therapy.

(D) Apexification and recalcification procedures.

(E) Apicoectomy and periradicular services.

(v) *Periodontic services.*

(A) Surgical services.

(B) Periodontal services.

(vi) *Oral surgery.*

(A) Extractions.

(B) Surgical extractions.

(C) Alveoloplasty.

(D) Biopsy.

(vii) *Other services.*

(A) Palliative (emergency) treatment of dental pain.

(B) Therapeutic drug injection.

(C) Other drugs and/or medications.

(D) Treatment of postsurgical complications.

(E) Crowns.

(F) Bridges.

(G) Dentures.

(3) *Selection of participating insurer.* VA will use the Federal competitive contracting process to select a participating insurer, and the insurer will be responsible for the administration of VADIP.

(d) *Enrollment.* (1) VA, in connection with the participating insurer, will market VADIP through existing VA communication channels to notify all eligible persons of their right to voluntarily enroll in VADIP. The participating insurer will prescribe all further enrollment procedures, and VA will be responsible for confirming that a person is eligible under paragraph (b) of this section.

(2) The initial period of enrollment will be for a period of 12 calendar months, followed by month-to-month enrollment, subject to paragraph (e)(5) of this section, as long as the insured remains eligible for coverage under paragraph (b) of this section and chooses to continue enrollment, so long as VA continues to authorize VADIP.

(3) The participating insurer will agree to continue to provide coverage to an insured who ceases to be eligible under paragraphs (b)(1) through (2) of this section for at least 30 calendar days after eligibility ceased. The insured must pay any premiums due during this 30-day period. This 30-day coverage does not apply to an insured who is disenrolled under paragraph (e) of this section.

(e) *Disenrollment.* (1) Insureds may be involuntarily disenrolled at any time for failure to make premium payments.

(2) Insureds must be permitted to voluntarily disenroll, and will not be required to continue to pay any copayments or premiums, under any of the following circumstances:

(i) For any reason, during the first 30 days that the beneficiary is covered by the plan, if no claims for dental services or benefits were filed by the insured.

(ii) If the insured relocates to an area outside the jurisdiction of the plan that prevents the use of the benefits under the plan.

(iii) If the insured is prevented by serious medical condition from being able to obtain benefits under the plan.

(iv) If the insured would suffer severe financial hardship by continuing in VADIP.

(v) For any reason during the month-to-month coverage period, after the initial 12-month enrollment period.

(3) All insured requests for voluntary disenrollment must be submitted to the insurer for determination of whether the insured qualifies for disenrollment under the criteria in paragraphs (e)(2)(i) through (v) of this section. Requests for disenrollment due to a serious medical condition or financial hardship must include submission of written documentation that verifies the existence of a serious medical condition or financial hardship. The written documentation submitted to the insurer must show that circumstances leading to a serious medical condition or financial hardship originated after the effective date coverage began, and will prevent the insured from maintaining the insurance benefits.

(4) If the participating insurer denies a request for voluntary disenrollment because the insured does not meet any criterion under paragraphs (e)(2)(i) through (v) of this section, the participating insurer must issue a written decision and notify the insured of the basis for the denial and how to appeal. The participating insurer will establish the form of such appeals whether orally, in writing, or both. The decision and notification of appellate rights must be issued to the insured no later than 30 days after the request for voluntary disenrollment is received by the participating insurer. The appeal will be decided and that decision issued in writing to the insured no later than 30 days after the appeal is received by the participating insurer. An insurer's decision of an appeal is final.

(5) Month-to-month enrollment, as described in paragraph (d)(2) of this section, may be subject to conditions in insurance contracts, whereby upon voluntarily disenrolling, an enrollee may be prevented from re-enrolling for a certain period of time as specified in the insurance contract.

(f) Other appeals procedures. Participating insurers will establish and be responsible for determination and appeal procedures for all issues other than voluntary disenrollment.

(Authority: Sec. 510, Pub. L. 111–163)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0789.)

[FR Doc. 2013–12642 Filed 5–28–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0712; FRL–9817–1]

Revision to the Washington State Implementation Plan; Tacoma-Pierce County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted by the Washington Department of Ecology (Ecology) dated November 28, 2012. The EPA's final rulemaking approves two revisions to the SIP. First, the EPA is approving the ''2008 Baseline Emissions Inventory and Documentation'' included as Appendix A to the SIP revision. The emissions inventory was submitted to meet Clean Air Act (CAA) requirements related to the Tacoma-Pierce County nonattainment area for the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard

(NAAQS). Second, the EPA is approving updated rules submitted by Ecology on behalf of the Puget Sound Clean Air Agency (PSCAA), contained in Appendix B, ''SIP Strengthening Rules.'' The updated PSCAA rules help implement the recommendations of the Tacoma-Pierce County Clean Air Task Force, an advisory committee of community leaders, citizen representatives, public health advocates, and other affected parties, formed to develop $PM_{2.5}$ reduction strategies.

DATES: This final rule is effective June 28, 2013.

ADDRESSES: EPA has established a docket for this Action under Docket ID No. EPA–R10–OAR–2012–0712. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Programs Unit, Office of Air Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at telephone number: (206) 553–0256, email address: *hunt.jeff@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Definitions

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

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

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

(iii) The initials ''SIP'' mean or refer to State Implementation Plan.

(iv) The words ''Washington'' and ''State'' mean the State of Washington.

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I. Background Information

Detailed information on the history of the $PM_{2.5}$ NAAQS as it relates to the Tacoma-Pierce County nonattainment area is included in the EPA's proposal for this action (78 FR 4804, January 23, 2013). As discussed in the proposal, on September 4, 2012, the EPA published a final ''clean data'' determination of attainment, based upon complete certified ambient air monitoring data showing that the Tacoma-Pierce County nonattainment area met the 2006 $PM_{2.5}$ NAAQS for the 2009–2011 monitoring period (77 FR 53772). Since the determination, monitored $PM_{2.5}$ levels continue to decline in the Tacoma-Pierce County nonattainment area. Monitoring data for 2010–2012 show a preliminary design value of 28 $\mu g/m^3$.[1]

The clean data determination suspended the obligation for the State of Washington to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 2006 $PM_{2.5}$ NAAQS. However, a clean data determination does not suspend the obligation under CAA section 172(c)(3) for submission and approval of a comprehensive, accurate, and current inventory of actual emissions. Accordingly, Ecology submitted Appendix A, titled ''2008 Baseline Emissions Inventory and Documentation,'' of its November 28, 2012, SIP revision to meet the emissions inventory obligation under CAA section 172(c)(3). Ecology also submitted Appendix B of the SIP revision, titled ''SIP Strengthening Rules,'' which contained the most recent version of *Regulation 1—Article 13: Solid Fuel Burning Device Standards,* adopted by the Puget Sound Clean Air Agency Board on October 25, 2012, imposing more stringent standards to control $PM_{2.5}$ emissions from wood smoke. The EPA proposed to approve both Appendix A and Appendix B of Washington's November 28, 2012, SIP revision consistent with sections 110 and 172 of the CAA.

II. Response to Comments

The EPA received no comment on its proposed approval of Appendix B. On February 22, 2013, EPA received one comment on its proposed approval of Appendix A. This comment, submitted by Mr. Robert Ukeiley on behalf of Sierra Club, focused on the potential impact of coal export terminals proposed for the Pacific Northwest. The commenter wrote that Ecology's 2008 Baseline Emissions Inventory does not sufficiently address potential impacts as they relate to current or future shipments of coal via rail through the Tacoma-Pierce County nonattainment area. The EPA is responding to this comment in two parts: (1) Comment on Fugitive Coal Dust Emissions; and (2) Comment on Railroad Emission Calculations.

A. Comment on Fugitive Coal Dust Emissions

Comment: The commenter wrote that Ecology's 2008 Baseline Emissions Inventory does not meet the CAA section 172(c)(3) requirement which states that, ''[s]uch plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure the requirements of this part are met.'' Specifically, the commenter wrote that the 2008 Baseline Emissions Inventory is not comprehensive because it did not account for fugitive coal dust emissions from coal trains that may have transited through the nonattainment area. The commenter also requests that ''[i]f the current fugitive coal dust emissions are zero because there are no coal trains traveling through the Tacoma nonattainment area, then the inventory should say that.''

Response: As noted in the proposal for this action, the EPA referred to the August 2005 ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations'' (hereafter ''emissions inventory guidance'' or ''guidance''), to assess the adequacy of Washington's submission. The guidance covers several elements related to this comment. First, the mobile source section in the guidance contains no discussion or requirement for calculating fugitive dust from locomotive payloads. Instead, fugitive dust emissions from all source categories are discussed in section 5.4 of the guidance addressing nonpoint sources. The guidance states, ''[n]onpoint sources are generally described as those sources that are too small, numerous, or difficult to be inventoried individually. Potential nonpoint sources of emissions are given

[1] A design value is a three year average used to determine compliance with the 2006 $PM_{2.5}$ 24-hour NAAQS of 35 $\mu g/m^3$. Final design values generally are certified in June or July after a complete quality assurance and quality control process.

in Table 5.4–1 and potential crustal (dust) sources of PM emissions are in Table 5.4–2. These tables are presented as guides to assist State, local and Tribal agencies in focusing their nonpoint source emission inventory efforts.'' The guidance goes on to state, ''[t]he State, local and Tribal agencies may want to concentrate their efforts on the most significant source categories.'' The guidance acknowledges that States cannot individually inventory all nonpoint source emissions, but should use the best available data to inform which nonpoint source categories to focus on in creating a comprehensive and accurate inventory of actual emissions.

As part of the effort to focus on the most significant source categories, Ecology conducted extensive speciation analysis included in the docket for the EPA's proposed action, see *Sources of Fine Particles in the Wapato Hills-Puyallup River Valley* $PM_{2.5}$ *Nonattainment Area* (the name formerly used for the Tacoma-Pierce County nonattainment area), April 2010. Speciation analysis, also called receptor modeling or source apportionment, is a method of using chemical signatures from monitoring samples to determine both the types of emission sources impacting a monitor and the magnitude of those source impacts. The study examined monitoring samples from 2006 to 2009 and used chemical signature information to identify the relevant emission sources. Ecology determined that 4% of $PM_{2.5}$ annually in the Tacoma-Pierce County nonattainment area originated from the combination of all fugitive dust sources. To put this number in perspective, the contribution from fugitive dust was only slightly greater than the $PM_{2.5}$ contribution from sea salt. The percent contribution from fugitive dust was also found to be the lowest during winter months when violations of the 2006 $PM_{2.5}$ standard occur. From an analysis of fugitive dust impacts and wind direction, Ecology concluded that the majority of the $PM_{2.5}$ related fugitive dust was likely re-suspended dust from on-road motor vehicle traffic and fugitive emissions from a gravel operation near the monitoring site. Ecology's speciation analysis for the one violating Tacoma monitor on South L Street concluded by stating, ''[f]ugitive dust was poorly correlated with total $PM_{2.5}$ mass (r2 = 0.19) indicating that its influence on the measured total mass was not significant.''

As described above, the 2005 emissions inventory guidance recognizes that agencies may need to concentrate their efforts on the most significant source categories, and the closely related regulations at 40 CFR 51.20 for reporting under the National Emissions Inventory (NEI) also state, ''[n]onpoint source categories or emission events reasonably estimated by the State to represent a de minimis percentage of total county and State emissions of a given pollutant may be omitted.'' Based on Ecology's analysis of fugitive dust impacts on 2006 $PM_{2.5}$ concentrations in the area, the EPA agrees with Ecology that fugitive dust emissions from railroad transport of coal do not constitute a significant source category for the 2008 Baseline Emissions Inventory. To the extent that the commenter raises issues related to coal export proposals that may impact the Tacoma-Pierce County nonattainment area in the future, or to the calculation of changes to the emission sources after 2008, the EPA has determined that these questions are beyond the scope of the 2008 Baseline Emissions Inventory. The inventory required under section 172(c)(3) does not require submission or assessment of future emissions.

The EPA also concludes that the 2008 Baseline Emissions Inventory accurately represents the emission sources that led to the EPA's nonattainment designation for Tacoma-Pierce County in 2009. In particular, the inventory informed and helped support development of the residential wood smoke control measures approved in this action. In 2008, residential wood combustion represented 74% of all emissions during the critical winter season, well above all other emission sources. To the extent that the mix of emission sources may change over time from the 2008 Baseline Emissions Inventory, the EPA believes these changes are best addressed as part of the maintenance plan inventory process to ensure continued compliance with the NAAQS, or as part of the attainment planning requirements that would become applicable should the area not continue in attainment. In response to the concerns raised by the commenter, the EPA independently analyzed publicly available data from the speciation monitor and found no evidence of increasing fugitive dust trends from 2008 to 2011. See *Tacoma PMF Soil Results,* included in the docket for this action. As noted previously, monitored $PM_{2.5}$ levels in the nonattainment area continue to decline below the level of the NAAQS. For the reasons stated above, the EPA has determined that Ecology's 2008 Baseline Emissions Inventory is consistent with applicable guidance and satisfies the requirement of CAA section 172(c)(3).

B. Comment on Railroad Emission Calculations

Comment: The commenter notes that Ecology's 2008 Baseline Emissions Inventory submission includes only a summary of emissions from railroad locomotive diesel consumption, without the corresponding background information used to calculate the estimates. The commenter states that the background information is necessary for both public understanding and for future conformity obligations under the CAA.

Response: Since emission control measures for railroad locomotive traffic are generally formulated and managed at the federal level, it is understandable that the State SIP submission would include summary data rather than a more elaborate discussion of underlying data. Ecology did include an extensive explanation of the underlying data for the predominant source categories, such as residential wood combustion, which comprises 74% of the winter time inventory. By contrast, emissions from all nonroad vehicles and engines, including railroad locomotives, account for only 5% of wintertime inventory. Moreover, although Ecology included only summary results for railroad emissions, it clearly referenced the documentation used in calculating the final railroad diesel emissions, listed as endnotes 26, 27, and 28 in the 2008 Baseline Emissions Inventory SIP submission. These documents were available from Ecology and the EPA during the comment period, and remain available for public review. Neither the EPA nor Ecology has received a request for these documents. For the convenience of the reader these background documents have been added to the docket for this action.

The comment only questions the level of detail in the discussion of the locomotive emission calculations and states that a comprehensive and accurate emissions inventory must provide figures of gallons of diesel consumed and emission factors or other calculations used in the emissions estimates. The availability of the additional detail requested by the comment is described above. Specifically, the emission factors were based on standard EPA emission factors for locomotives and fuel consumption data was provided by the rail freight carriers operating in the area. As the comment notes, these data are part of the comprehensive and accurate emissions inventory required by section 172(c)(3), and were appropriately relied upon by Ecology to calculate diesel emissions from locomotives. The EPA

independently calculated the locomotive emissions estimates based on the information referenced in endnotes 26, 27, and 28 of the State's emissions inventory SIP submission, and obtained results that were consistent with the State's (see *EPA review of emission calculations.xlsx*).

To the extent that the commenter raises issues related to future conformity determinations or potential coal export proposals that may impact the Tacoma-Pierce County nonattainment area in the future, or to the calculation of changes to the emission sources after 2008, the EPA has determined that these questions are beyond the scope of the 2008 Baseline Emissions Inventory and the requirements of section 172(c)(3).

III. Final Action

The EPA has determined that Washington's SIP revisions, dated November 28, 2012, are consistent with sections 110 and 172 of the CAA. Therefore, we are approving the SIP revisions, specifically Appendix A, ''2008 Baseline Emissions Inventory and Documentation'' and Appendix B, ''SIP Strengthening Rules.''

IV. Statutory and Executive Orders Review

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, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the rule neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated December 11, 2012. The EPA did not receive a request for consultation.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 13, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. Section 52.2470 is amended:

■ a. In paragraph (c) Table 4 by revising entries 13.01 through 13.05, adding in numerical order entry 13.06, and revising entry 13.07.

■ b. In paragraph (e) by adding a heading for ''Recently Approved Plans'' and a new entry for ''Particulate Matter ($PM_{2.5}$) 2008 Baseline Emissions Inventory and SIP Strengthening Rules'' at the end of the table.

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

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TABLE 4—PUGET SOUND CLEAN AIR AGENCY REGULATIONS

State citation	Title/subject	State adopted date	EPA approval date	Explanations
* * *	*	*	*	*
Regulation 1—Article 13: Solid Fuel Burning Device Standards				
13.01	Policy and Purpose	10/25/12	5/29/13 [Insert page number where the document begins].	
13.02	Definitions	10/25/12	5/29/13 [Insert page number where the document begins].	
13.03	Opacity Standards	10/25/12	5/29/13 [Insert page number where the document begins].	
13.04	Allowed and Prohibited Fuel Types.	10/25/12	5/29/13 [Insert page number where the document begins].	
13.05	Restrictions on Operation of Solid Fuel Burning Devices.	10/25/12	5/29/13 [Insert page number where the document begins].	
13.06	Emission Performance Standards.	10/25/12	5/29/13 [Insert page number where the document begins].	
13.07	Prohibitions on Wood Stoves that are not Certified Wood Stoves.	10/25/12	5/29/13 [Insert page number where the document begins].	
* * *	*	*	*	*

* * * * * (e) * * *

STATE OF WASHINGTON NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * *	*	*	*	*
Recently Approved Plans				
Particulate Matter ($PM_{2.5}$) 2008 Baseline Emissions Inventory and SIP Strengthening Rules.	Tacoma, Pierce County	11/28/12	5/29/13 [Insert page number where the document begins].	

[FR Doc. 2013–12514 Filed 5–28–13; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0147; FRL–9816–6]

Approval and Promulgation of Implementation Plans; Atlanta, Georgia 1997 8-Hour Ozone Nonattainment Area; Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a state implementation plan (SIP) revision, submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), on October 21, 2009, to address the reasonable further progress (RFP) plan requirements for the Atlanta, Georgia 1997 8-hour ozone national ambient air quality standards (NAAQS) nonattainment area. The Atlanta, Georgia 1997 8-hour ozone nonattainment area (hereafter referred to as the ''Atlanta Area'' or ''the Area'') is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in Georgia. EPA is also finding adequate the motor vehicle emissions budgets (MVEB) for volatile organic compounds (VOC) and nitrogen oxides (NOx) that were included in Georgia's RFP plan. Further, EPA is approving these MVEB. Additionally, as an administrative update EPA is also removing the numbering system from the non-regulatory provisions in the Code of Federal Regulations.

DATES: This direct final rule is effective July 29, 2013 without further notice, unless EPA receives adverse comment by June 28, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the

Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2013–0147,'' by one of the following methods:

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5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

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FOR FURTHER INFORMATION CONTACT: Ms. Sara Waterson of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9061. Ms. Sara Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

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I. What action is EPA taking?

EPA is approving changes to the Georgia SIP, submitted by the State of Georgia through GA EPD, on October 21, 2009, to meet RFP [1] requirements of the Clean Air Act (CAA or Act) for the Atlanta Area for the 1997 8-hour ozone NAAQS.[2] The RFP plan demonstrates that NO_X emissions will be reduced by at least 15 percent for the 13-County portion [3] of the Atlanta ozone nonattainment area (hereafter referred to as the ''13-County Area'') and VOC emissions will be reduced by at least 15 percent for the seven-county portion [4] of the Atlanta ozone nonattainment area (hereafter referred to as the ''7-County Area'') during the period of 2002 through 2008. Additionally, EPA is approving the required 2008 VOC MVEB and the 2008 NO_X MVEB, which were included in the October 21, 2009, RFP plan for the Atlanta Area. EPA is taking these actions because they are consistent with CAA requirements for RFP. The MVEB for the Atlanta Area, expressed in tons per day (tpd), are provided in Table 1 below. EPA is also describing the status of its transportation conformity adequacy determination for the 2008 MVEB.

TABLE 1—MVEB FOR THE 1997 8-HOUR OZONE ATLANTA AREA

2008 20-County MVEB (tpd)		
	VOC	NO_X
Total	171.83	272.67

II. What is the background for EPA's action?

A. General Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm) (62 FR 38856). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-

[1] For the 1997 8-hour ozone NAAQS, the plan to demonstrate reasonable further progress is known as the RFP plan; whereas the plan to demonstrate reasonable further progress for the 1-hour ozone NAAQS is known as the Rate-of-Progress (ROP) plan.

[2] Georgia previously submitted the ROP plan (also referred to as the 15 Percent VOC Plan) for the portion of the Atlanta Area that was previously designated nonattainment for the former 1-hour ozone NAAQS. EPA approved Georgia's ROP plan for the 1-hour ozone NAAQS for the Atlanta Area on April 26, 1999. *See* 64 FR 20196.

[3] The 13-County portion includes the counties designated nonattainment in the 1-hour ozone nonattainment area: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. *See* 56 FR 56694, November 6, 1991.

[4] Seven additional ''ring'' counties were added to the original 1-hour ozone nonattainment area for the 8-hour ozone nonattainment designations. These additional counties include: Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton. *See* 69 FR 23857, April 30, 2004.

hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857, April 30, 2004. Ambient air quality monitoring data for the 3-year period must meet the data completeness requirement as determined in 40 CFR part 50, appendix I. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Atlanta Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004), using 2001–2003 ambient air quality data. *See* 69 FR 23857, April 30, 2004. The Atlanta Area encompasses the 13 counties of the former 1-hour ozone nonattainment area plus the seven additional ''ring'' counties. At the time of designation the Atlanta Area was classified as a marginal nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date 3 years after the June 15, 2004, effective date for areas classified as marginal areas for the 1997 8-hour ozone nonattainment designations. Therefore, the Atlanta Area's original attainment date was June 15, 2007. *See* 69 FR 23951, April 30, 2004.

The Atlanta Area failed to attain the 1997 8-hour ozone NAAQS by June 15, 2007 (the applicable attainment date for marginal nonattainment areas), and did not qualify for any extension of the attainment date as a marginal area. As a consequence of this failure, on March 6, 2008, EPA published a rulemaking determining that the Atlanta Area failed to attain and, consistent with section 181(b)(2) of the CAA, the Atlanta Area was reclassified by operation of law to the next highest classification, or ''moderate'' nonattainment. *See* 73 FR 12013, March 6, 2008. When an area is reclassified, a new attainment date for the reclassified area must be established. Section 181 of the CAA explains that the attainment date for moderate nonattainment areas shall be as expeditiously as practicable, but no later than six years after designation, or June 15, 2010. EPA further required that Georgia submit SIP revisions to meet the new moderate area requirements as expeditiously as practicable, but no later than December 31, 2008.

Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. In accordance with CAA section 181(a)(5), EPA may grant up to two, one-year extensions of the attainment date under specified conditions. On November 30, 2010, EPA determined that Georgia met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. *See* 75 FR 73969. As a result, EPA extended the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS.

Subsequently, on June 23, 2011, EPA determined that the Atlanta Area attained the 1997 8-hour ozone NAAQS. *See* 76 FR 36873. The determination of attaining data was based upon quality-assured and certified ambient air monitoring data for the 2008–2010 period, showing that the Area had monitored attainment of the 1997 8-hour ozone NAAQS. As a result of the determination of attainment, the requirements for the Area to submit an attainment demonstration and associated reasonable available control measures (RACM), RFP plan, contingency measures, and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS were suspended. These nonattainment related SIP obligations remain suspended so long as the Area continues to attain the 1997 8-hour ozone NAAQS. *See* 40 CFR 52.582(d).

On February 16, 2012, Georgia withdrew the attainment demonstration submissions (except RFP, emissions statements, and the emissions inventory) as allowed by 40 CFR 51.918 for the Atlanta Area.[5] Subsequently, EPA approved Georgia's SIP revisions related to the emissions statements and emissions inventory requirements for the Atlanta Area for the 1997 8-hour ozone NAAQS. *See* 74 FR 62249 (November 27, 2009); and 77 FR 24399 (March 24, 2012), respectively. Despite the determination of attainment, Georgia opted to leave the SIP submission related to the RFP requirements for the 1997 8-hour ozone NAAQS before EPA for action. As such, EPA is taking action to approve Georgia's October 21, 2009, SIP revision as it relates to the RFP requirements for the 1997 8-hour ozone NAAQS.

B. Background for ROP Requirements for the 1-Hour Ozone NAAQS

Because Atlanta was classified as a ''serious'' nonattainment area under the 1-hour ozone NAAQS, Georgia was required to develop a SIP to reduce emissions of VOC in the 13-County Atlanta 1-hour ozone nonattainment area by 15 percent from 1990 to 1996. The plan, also known as Georgia's ROP plan SIP or the 15 Percent VOC Plan, was approved on April 26, 1999. *See* 64 FR 20186.

The CAA also requires post-1996 emission reductions of VOC and/or NO_X totaling 3 percent per year, averaged over each consecutive three-year period beginning in 1996 and continuing through the attainment date. Georgia chose to rely solely on NO_X emission reductions in its post-1996 ROP SIP (the 9 Percent Plan). This plan was required to describe how Georgia would achieve RFP towards attaining the 1-hour ozone NAAQS between 1996 and 1999, the attainment deadline for serious nonattainment areas. Georgia's 9 Percent Plan was approved on March 19, 1999. *See* 64 FR 13348.

On September 26, 2003, EPA re-classified the 13-county Atlanta 1-hour ozone nonattainment area to ''severe.'' *See* 68 FR 55469. Among other requirements, this reclassification required submission of a severe area post-1999 ROP SIP. A severe area post-1999 ROP SIP must describe how at least a 3 percent per year reduction in emissions of ozone precursors (VOC or NO_X) will be achieved, from the time of failure to meet the ''serious'' area attainment date until the ''severe'' area attainment date.

The Atlanta severe area post-1999 ROP SIP contained a description of how the 3 percent per year reductions in ozone precursor emissions, required over the period from November 15, 1999, through November 15, 2004, were achieved. It also contained MVEB for the Atlanta 1-hour ozone nonattainment area. GA EPD submitted the post-1999 ROP SIP and MVEB on December 24, 2003. EPA approved Georgia's post-1999 ROP SIP for the Atlanta Area on July 19, 2004 (69 FR 42880). EPA's approval of Georgia's post-1999 ROP SIP for the Atlanta Area completed the State's obligation related to ROP for the 1-hour ozone NAAQS.

[5] Georgia did not withdraw any elements related to reasonably available control technology (RACT) requirements, to the extent that these requirements were addressed in the attainment demonstration submissions. EPA has taken previous action to approve Georgia SIP revisions, including portions of the October 21, 2009, SIP revision, related to RACT. *See* 77 FR 59554, September 28, 2012.

C. Background for RFP Requirements for the 1997 8-hour Ozone NAAQS

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published a rule entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (hereafter referred to as the Phase 2 Rule). Section 182(b)(1) of the CAA and EPA's Phase 2 Rule [6] require a state, for each 1997 8-hour ozone nonattainment area that is classified as moderate, to submit an emissions inventory and a RFP plan to show how the state will reduce emissions of VOC.

Specifically, in ozone nonattainment areas with air quality classified as ''moderate'' or worse, the RFP requirement prescribes emission reductions from the baseline totaling 15 percent within six years of the base year (i.e., by the end of 2008 for the 8-hour ozone NAAQS). Per 40 CFR part 51.910(a)(1)(iii), moderate and higher classification areas of which a portion has an approved 1-hour ozone 15 Percent VOC Plan can choose to treat the nonattainment area as two parts, each with a separate RFP target, and may substitute reductions in NO_X for VOC in the sub-area with the approved 15 Percent Plan. The 15 percent reduction for the sub-area without an approved 1-hour ozone 15 Percent VOC Plan, however, must be achieved entirely through VOC reductions. Georgia relied solely on NO_X emission reductions for the 13-County portion of the Atlanta Area with an approved 15 Percent VOC Plan.

Pursuant to CAA section 172(c)(9), RFP plans must include contingency measures that will take effect without further action by the State or EPA, which includes additional controls that would be implemented if the Area fails to reach the RFP milestones. While the CAA does not specify the type of measures or quantity of emissions reductions required, EPA provided guidance interpreting the CAA that implementation of these contingency measures would provide additional emissions reductions of up to 3 percent of the adjusted base year inventory in the year following the RFP milestone year (i.e., in this case 2008). For more information on contingency measures please see the April 16, 1992, General Preamble (57 FR 13498, 13510) and the November 29, 2005, Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). Finally, RFP plans must also include a MVEB for the precursors for which the plan is developed. See Section IV of this rulemaking for more information on MVEB requirements.

As mentioned above, the Atlanta Area was designated nonattainment for the 1997 8-hour ozone NAAQS. Specifically, 20 counties in the Atlanta Area (including the 13 counties that were included in the former 1-hour ozone nonattainment area) were classified as a ''moderate'' nonattainment area. Georgia submitted its RFP plan and additional SIP revision under a separate cover letter on October 21, 2009, including an attainment demonstration, associated RACM, RACT, contingency measures, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS in the Atlanta Area. Today's rulemaking is approving only the RFP plan, including the associated MVEB.

III. What is EPA's analysis of the RFP plan for the Atlanta area for the 1997 8-Hour ozone NAAQS?

On October 21, 2009, Georgia submitted the RFP plan for the Atlanta Area to address the CAA's requirements for the 1997 8-hour ozone NAAQS. The Atlanta Area RFP is for the entire 20-County Area; however, GA EPD has chosen to look at the 13-County Area and 7-County Area separately for the purposes of calculating the RFP targets for NO_X and VOC, respectively. Regardless of the separation of the 13-County Area and the 7-County Area, NO_X and VOC reductions in the entire 20-County Area are available. Therefore, there are ''unclaimed'' 2008 NO_X reductions available from the 7-County Area without an approved 1-hour ozone 15 Percent VOC Plan where RFP must be demonstrated in VOC reductions and there are ''unclaimed'' 2008 VOC reductions available from the 13-County Area for which there is an approved 1-hour ozone 15 Percent VOC Plan. EPA's analysis of Georgia's RFP submission is provided below.

A. Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 182(a)(1) of the CAA. Georgia implemented the 15 percent NO_X reductions for the 13 counties in the former 1-hour ozone nonattainment area and the 15 percent VOC reduction for the seven ring counties between 2002 and 2008 with continued progress toward attainment through the attainment year.[7] EPA recommended 2002 as the base year for the emissions inventory, and therefore, 2002 is the starting point for calculating RFP. Georgia submitted its 2002 base year emissions inventory on October 21, 2009. In an action on March 24, 2012, EPA approved Georgia's 2002 base year emissions inventory for the Atlanta Area for the 1997 8-hour ozone NAAQS. *See* 77 FR 24399. A summary of the Atlanta Area 2002 base year emissions inventories is included in Table 2 below.

TABLE 2—2002 POINT AND AREA SOURCES ANNUAL EMISSIONS FOR THE ATLANTA AREA

[tons per year]

County	Point		Area		On-road		Non-road	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Barrow	0.06	0.02	0.45	3.74	5.69	4.30	1.41	0.75
Bartow	69.92	1.31	1.30	8.05	15.76	10.56	3.89	2.54
Carroll	0.06	0.85	1.30	9.54	10.91	8.10	2.39	1.87
Cherokee	0.20	0.13	0.72	6.30	10.25	5.17	3.59	5.30
Clayton	0.30	1.29	1.08	9.53	19.96	9.90	19.21	3.83
Cobb	12.62	0.89	4.12	28.18	50.66	26.84	12.67	18.82
Coweta	23.08	0.62	0.89	3.94	7.86	3.75	3.30	2.49

[6] RFP regulations are at 40 CFR 51.910.

[7] The Atlanta Area attained the 1997 8-hour ozone NAAQS by June 15, 2011, based on 2008–2010 data.

TABLE 2—2002 POINT AND AREA SOURCES ANNUAL EMISSIONS FOR THE ATLANTA AREA—Continued

[tons per year]

County	Point		Area		On-road		Non-road	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
DeKalb	0.49	4.66	4.06	44.67	63.33	31.21	9.98	16.76
Douglas	0.06	0.08	0.48	3.93	9.70	4.54	1.87	1.26
Fayette	.....	.....	0.77	4.69	5.20	2.84	2.18	1.91
Forsyth	0.12	0.48	0.84	4.82	8.41	4.28	3.11	5.36
Fulton	5.46	5.42	6.59	49.47	91.42	46.10	20.02	17.19
Gwinnett	0.09	0.13	4.55	32.02	49.26	25.20	15.36	23.85
Hall	0.29	0.69	2.79	13.69	15.12	11.59	3.80	6.47
Henry	6.44	1.34	0.60	5.26	13.40	6.40	4.68	2.75
Newton	0.00	2.01	0.79	5.21	6.72	4.95	1.95	1.29
Paulding	.....	.....	0.26	3.51	4.76	2.57	2.66	1.43
Rockdale	0.08	0.44	1.00	4.28	5.70	2.88	1.59	1.42
Spalding	0.00	0.18	0.79	5.95	5.25	4.14	0.87	1.21
Walton	0.01	0.32	0.47	4.92	5.72	4.66	1.70	1.53

As mentioned above, EPA has already approved this emissions inventory and thus is not taking comment on these inventories in today's action.

B. Adjusted Base Year Inventory and 2008 RFP Target Levels

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the CAA and 40 CFR 51.910. This baseline value is the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated prior to January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated prior to June 11, 1990. The FMVCP and RVP emissions reductions were determined by the State using EPA's on-road mobile source emissions modeling software, MOBILE6, which was the latest model at the time this submission was developed; 2002 speeds and vehicle miles traveled (VMT) from Atlanta Regional Commission's (ARC) travel demand model networks; and area-specific fleet age distributions. The FMVCP and RVP emission reductions are then removed from the base year inventory by the State, resulting in an adjusted base year inventory. The emission reductions needed to satisfy the RFP requirement are then calculated from the adjusted base year inventory. These reductions are then subtracted from the adjusted base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like the Atlanta Area, the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial six year period following the baseline inventory year. In the Phase 2 Rule, EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone NAAQS. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). For an area like Atlanta, the RFP SIP revision must provide for a 15 percent emission reduction (either NO_X and/or VOC) accounting for any growth that occurs during the six year period following the baseline emissions inventory year, that is, 2002–2008.

The Atlanta Area that was classified as severe under the 1-hour ozone NAAQS contained the counties Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. These 13 counties plus 7 ''ring'' counties (Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton) were also designated nonattainment as a part of the 1997 8-hour ozone Atlanta Area. Per 40 CFR part 51.910(a)(1)(iii), moderate areas of which a portion has an approved 1-hour ozone 15 Percent VOC Plan can choose to treat the nonattainment area as two parts, each with a separate RFP target, and may substitute reductions in NO_X for VOC in the sub-area with the approved 15 Percent Plan. The 15 percent reduction for the sub-area without an approved 15 Percent VOC Plan must still be entirely VOC. Since a 15 percent ROP[8] plan was submitted for the 1-hour ozone Area, the 13-County 2002 base year NO_X inventory was adjusted and the 7-County base year VOC inventory was adjusted.

As mentioned earlier and according to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and RVP rules promulgated prior to 1990 are not creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory is adjusted by subtracting the VOC and NO_X emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

In the Phase 2 Rule, promulgated on November 29, 2005 (70 FR 71612), EPA outlines Method 1 as the process that states should use to show compliance with RFP for areas like the Atlanta Area that already have an approved ROP plan. A summary of the steps for Method 1 is provided below.

- Step A is the actual anthropogenic base year VOC emissions inventory in 2002.
- Step B is to account for creditable emissions for RFP.
- Step C is to calculate non-creditable emissions for RFP. Non-creditable emissions include emissions from: (1) motor vehicle exhaust or evaporative emissions regulations promulgated prior to January 1, 1990; (2) regulations concern RVP promulgated prior to November 15, 1990; (3) RACT corrections required prior to November 1990; and (4) corrective inspection and maintenance (I/M) plan required prior to November 1990. Step D is to subtract

[8] As mentioned above, for the 1-hour ozone NAAQS, the plan to demonstrate progress towards attainment was known as the ROP plan; whereas for the 8-hour ozone NAAQS, this same plan is known as the RFP plan.

the non-creditable emissions (Step C) from the 2002 base year emissions (Step A).

- Step E is to calculate the 2008 target level VOC emissions. This is calculated by reducing the emissions from Step D by 15 percent.
- The estimated 2008 VOC emissions are then compared to the 2008 target level VOC emissions (Step E).

As provided in Georgia's RFP SIP revision, the State utilized the steps from Method 1 of the Phase 2 Rule. Specifically, Georgia's October 21, 2009, SIP revision sets out the State's calculations as summarized below.

1. *Step A:* Estimate the actual anthropogenic base year NO_X inventory in 2002 with all 2002 control programs in place for all sources for the 13-County area and VOC inventory in 2002 with all 2002 control programs in place for all sources for the 7-County area.

Georgia provided this emission inventory in Tables 1 and 2 of the October 21, 2009, RFP plan for the Atlanta Area, and as shown in Tables 3 and 4, below. EPA has already approved this inventory. *See* 77 FR 24399 (April 4, 2012).

TABLE 3—7-COUNTY 2002 RFP BASE YEAR VOC INVENTORY

[Tons/day]

	Point	Area	Non-road mobile	On-road mobile	Total
7-County 2002 RFP Base Year VOC Inventory	6.4	50.8	15.9	50.5	* 123.5

* Numbers are those provided in the October 21, 2009, submittal and reflect rounding conventions.

TABLE 4—13-COUNTY 2002 RFP BASE YEAR NO_X INVENTORY

[Tons/day]

	Point	Area	Non-road mobile	On-road mobile	Total
13-County 2002 RFP Base Year NO_X Inventory	84.1	24.5	111.3	342.1	* 562.1

* Numbers are those provided in the October 21, 2009, submittal and reflect rounding conventions.

2. *Step B:* Using the same highway vehicle activity inputs used to calculate the actual 2002 inventory, run the appropriate motor vehicle emissions model for 2002 and for 2008 with all post-1990-CAA measures turned off. Any other local inputs for vehicle I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 pounds per square inch (psi) depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June, 1990.

For the Atlanta Area, these adjustments are made because states are not allowed to take credit for emissions reductions that would have occurred due to fleet turnover from vehicles meeting pre-1990 standards to newer cars and trucks, or from previously existing federal fuel regulations. These non-creditable reductions are called the FMVCP/RVP reductions. *See* Appendix C, Exhibits 5 and 8, of the State submittal for details on the Adjusted Base Year Inventories.

3. *Step C:* Calculate the difference between the 2002 and 2008 VOC emission factors calculated in Step B and multiply by the 2002 vehicle miles traveled. The result is the VOC emission calculation that will occur between 2002 and 2008 without the benefits of any post-1990–CAA measures. These are the non-creditable reductions that occur over this period.

Georgia calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures turned off, and calculating the difference.

4. *Step D:* Subtract the non-creditable reductions calculated in Step C from the actual anthropogenic 2002 inventory estimated in Step A. These adjusted inventories are the basis for calculating the target level of emissions in 2008.

The adjusted VOC inventory for calculating the target level of VOC emissions reductions in the 7-County area for 2008 is 114.0 tpd [9] (i.e., 123.5 tpd (the result of Step A) minus 9.6 tpd (the result of Step C)).

The adjusted NO_X inventory for calculating the target level of NO_X emissions reductions in the 13-County area for 2008 is 519.0 tpd (i.e., 562.1 tpd the result of Step A) minus 43.1 tpd (the result of Step C)).

5. *Step E:* Reduce the adjusted inventories calculated in Step D by 15 percent. The result is the target level of emissions in 2008 in order to meet the 2008 RFP requirement. The actual projected 2008 inventory for all sources with all control measures in place, including projected 2008 growth in activity, must be at or lower than this target level of emissions.

The targeted level of emissions reductions for the Atlanta Area to meet RFP requirements is 17.1 tpd of VOC (i.e, 114.0 tpd multiplied by 15 percent) in the 7-County area. Thus the required targeted level of VOC emissions is 96.9 tpd for the 7-County area.

The targeted level of emissions reductions for the Atlanta Area to meet RFP requirements is 77.9 tpd of NO_X (i.e, 519.0 tpd multiplied by 15 percent) in the 13-County area. Thus the required targeted level of NO_X emissions is 441.2 tpd for the 13-County area.

C. Final Analysis of Georgia's RFP Analysis for the Atlanta Area

As mentioned above, the required target level for the Atlanta Area to meet the initial RFP plan requirement is a 15 percent reduction in 2008 VOC emissions from the 7-County area and 15 percent reduction in 2008 NO_X emissions from the 13-County area from the VOC and NO_X emissions in 2002 (as adjusted per CAA requirements). Specifically, to meet this requirement, Georgia needed to demonstrate a reduction of at least 17.1 tpd VOC for the 7-County area and 77.9 tpd NO_X for the 13-County area, respectively. Tables 5 and 6 below summarize the results of Georgia's calculations for this RFP analysis.

[9] Number reflects the VOC emissions reductions stated in the October 21, 2009, submittal.

TABLE 5—15 PERCENT VOC RFP ANALYSIS FOR THE 7-COUNTY PORTION OF THE ATLANTA AREA

Step from Method 1	Matrix	VOC (tpd)
Step A	Total 2002 Base Year Anthropogenic VOC Emissions	123.5
Step C	Non-Creditable VOC reductions	9.6
Step D	2002 Base Year minus the Non-Creditable Emissions	114.0
Step E	2008 Target Level of VOC Emissions	96.9

TABLE 6—15 PERCENT NO_X RFP ANALYSIS FOR THE 13-COUNTY PORTION OF THE ATLANTA AREA

Step from Method 1	Matrix	NO_X (tpd)
Step A	Total 2002 Base Year Anthropogenic NO_X Emissions	562.1
Step C	Non-Creditable NO_X reductions	43.1
Step D	2002 Base Year minus the Non-Creditable Emissions	519.0
Step E	2008 Target Level of NO_X Emissions	441.2

In its October 21, 2009, SIP revision, Georgia calculated the 2008 VOC and NO_X emissions inventories for the Atlanta Area. These emissions inventories are provided in Table 7 below.

TABLE 7—2008 PROJECTED EMISSIONS (TPD) FOR THE ATLANTA AREA

	Point	Area	Non-road mobile	On-road mobile	Total
13-County (NO_X)	99.9	25.2	104.3	221.2	450.7
7-County (VOC)	6.7	49.1	12.9	41.1	109.8

As discussed above, the required target for NO_X reductions in the 13-County Area for the year 2008 to meet the RFP requirements for the Atlanta Area is 77.9 tpd (i.e., 15 percent reduction from the adjusted 2002 baseline). The projected 13-County 2008 NO_X emissions of 450.7 tpd are above the 2008 13-County NO_X Target Level Emissions of 441.2 tpd by 9.5 tpd. However, there are unclaimed 2008 NO_X reductions totaling 126.0 tpd available from the 7-County Area without an approved 1-hour ozone 15 Percent VOC Plan where RFP must be in VOC reductions. By applying 9.5 tpd of those available 7-County NO_X reductions towards 13-County RFP, the 13-County NO_X target is met, with 116.5 available nonattainment area NO_X tons per day reductions remaining. *See* Table 8.

TABLE 8—2008 7-COUNTY AVAILABLE NO_X REDUCTIONS

	Point	Area	Non-road mobile	On-road mobile	Total
2002 Adjusted to 2008 Base Year 7-county NO_X Inventory	163.1	7.8	18.1	59.0	247.9
2008 7-County Projected NO_X Inventory	46.7	8.0	15.7	51.5	121.9
2008 7-County Available NO_X Reductions	116.4	−0.2	2.3	7.5	126.0

The required target for VOC reductions in the 7-County area for the year 2008 to meet the RFP requirements for the Atlanta Area is 17.1 tpd (i.e., 15 percent reduction from the adjusted 2002 baseline). Although the projected 7-County 2008 VOC emissions of 109.8 tpd are above the 2008 7-County VOC Target Level Emissions of 96.9 tpd by 12.9 tpd, there are unclaimed 2008 VOC reductions totaling 74.6 tpd available from the 13-County Area for which there is an approved 1-hour ozone 15 Percent VOC Plan. By applying 12.9 tpd of those available 13-County VOC reductions towards 7-County RFP, the 7-County VOC target is met, with 61.7 available nonattainment area VOC tons per day reductions remaining. *See* Table 9.

TABLE 9—2008 13-COUNTY AVAILABLE VOC REDUCTIONS

	Point	Area	Non-road mobile	On-road mobile	Total
2002 Adjusted to 2008 Base Year 13-county VOC Inventory	15.9	297.8	137.7	145.1	596.4
2008 13-County Projected VOC Inventory	14.5	269.2	107.4	130.7	521.8
2008 13-County Available VOC Reductions	1.4	28.6	30.3	43.5	74.6

Thus, EPA is making the determination that Georgia's SIP revision demonstrates the required progress towards attainment for the Atlanta Area. In today's action, EPA is approving Georgia's RFP SIP revision submitted on October 21, 2009 as meeting the CAA and EPA's regulations regarding RFP.

IV. What are the 2008 NO_X and VOC emissions inventories for the Atlanta area?

In support of its development of NO_X and VOC MVEB for the 2008, Georgia, in its October 21, 2009, SIP revision, developed the NO_X and VOC emissions inventories for the full 20-County Atlanta Area. These inventories are not required for the RFP plan but are necessary for the development of the MVEB. These emissions inventories are provided in Table 10 below.

TABLE 10—2008 20-COUNTY ATLANTA AREA PROJECTED EMISSIONS

[Tons per summer day]

	Point	Area	Non-road mobile	On-road mobile	Total
VOC	21.1	318.3	120.3	171.78	631.5
NO_X	139.4	33.2	120.1	272.64	565.3

V. What is EPA's analysis of the 2008 MVEB for the Atlanta area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstrations) and maintenance plans create MVEB for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB must be established for the target year and precursor pollutant of the RFP (i.e., in this case, for the target year of 2008 and for VOC and NO_X). The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Atlanta Area, Georgia developed VOC and NO_X MVEB for the year 2008. Specifically, Georgia developed these MVEB, as required, for the target year and relevant precursors—2008 and VOC and NO_X. The MVEB for the Atlanta Area for Georgia's 2008 RFP plan are based on the projected 2008 mobile source emissions accounting for all mobile control measures. The 2008 MVEB are defined in Table 11 below.

TABLE 11—TOTAL 20-COUNTY 2008 MVEB FOR THE 1997 8-HOUR ATLANTA AREA

[tpd]

2008 20-County MVEB		
	VOC	NO_X
Total	171.83	272.67

Through this rulemaking, EPA is approving the 2008 VOC and NO_X MVEB for the Atlanta Area because EPA has made the determination that the Area maintains the 1997 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEB for the Atlanta Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations for the 1997 8-hour ozone NAAQS for Metropolitan Planning Organizations' long-range transportation plans and transportation improvement programs. After thorough review, EPA is determining that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is now approving the budgets because they are consistent with RFP for the 1997 8-hour ozone NAAQS for the year 2008.

VI. What is the status of EPA's adequacy determination for the 2008 MVEB for the Atlanta area?

When reviewing a submitted ''control strategy'' SIP, RFP or maintenance plan containing a MVEB, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEB for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004).

Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Georgia's RFP plan submission includes VOC and NO_X MVEB for the Atlanta Area for the year 2008. EPA reviewed the MVEB through the adequacy process. The Georgia SIP submission, including the 2008 MVEB for the Atlanta Area, was open for public comment on EPA's adequacy Web site on November 9, 2009, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2008 MVEB for the Atlanta Area, closed on December 9, 2009. EPA did not receive any comments, adverse or otherwise, during the adequacy process.

EPA intends to make its determination on the adequacy of the 2008 MVEB for the Atlanta Area for transportation conformity purposes by completing the adequacy process that was started on November 9, 2009. EPA finds the 2008 MVEB adequate and is approving the 2008 NO_X and VOC MVEB. The new MVEB for NO_X and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years that involve 2008 or beyond, the applicable budgets will be the new 2008 MVEB established in this RFP plan, as defined in section V of this proposed rulemaking.

VII. Final Action

EPA is taking direct final action to approve a SIP revision, submitted on October 21, 2009, by the State of Georgia, through the GA EPD to meet the RFP requirements for the Atlanta Area for the 1997 8-hour ozone NAAQS. Additionally, EPA is approving the NO_X and VOC MVEB for the Atlanta Area that were included in Georgia's RFP plan. Furthermore, EPA is finding the budgets adequate. These actions are being taken pursuant to section 110 of the CAA. As an administrative update, EPA is removing the numbering system in table (e) of 40 CFR 52.570.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial revision and anticipates no adverse comments. However, in the proposed rules section of this issue of the **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on July 29, 2013 without further notice unless the Agency receives adverse comment by June 28, 2013. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on July 29, 2013 and no further action will be taken on the proposed rule.

VIII. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this issue of the **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: May 13, 2013

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570(e) is amended by revising the table to read as follows:

§ 52. 570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316. High Occupancy Toll (HOT) lane on I–85 from Chamblee-Tucker Road to State Road 316.	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 2/5/10.	3/18/99, 4/26/99 and 11/5/09.	
Clean Fuel Vehicles Revolving Loan Program.	Atlanta Metropolitan Area	6/17/96	4/26/99	
Regional Commute Options Program and HOV Marketing Program.	Atlanta Metropolitan Area	6/17/96	4/26/99	
HOV lanes on I–75 and I–85	Atlanta Metropolitan Area	6/17/96	4/26/99	
Two Park and Ride Lots: Rockdale County-Sigman at I–20 and Douglas County-Chapel Hill at I–20.	Atlanta Metropolitan Area	6/17/96	4/26/99	
MARTA Express Bus routes (15 buses)	Atlanta Metropolitan Area	6/17/96	4/26/99	
Signal preemption for MARTA routes #15 and #23.	Atlanta Metropolitan Area	6/17/96	4/26/99	
Improve and expand service on MARTA's existing routes in southeast DeKalb County.	Atlanta Metropolitan Area	6/17/96	4/26/99	
Acquisition of clean fuel buses for MARTA and Cobb County Transit.	Atlanta Metropolitan Area	6/17/96	4/26/99	
ATMS/Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85.	Atlanta Metropolitan Area	6/17/96	4/26/99	
Upgrading, coordination and computerizing intersections.	Atlanta Metropolitan Area	6/17/96	4/26/99	
[Reserved]:				
Atlantic Steel Transportation Control Measure.	Atlanta Metropolitan Area	3/29/00	8/28/00	
Procedures for Testing and Monitoring Sources of Air Pollutants.	Atlanta Metropolitan Area	7/31/00	7/10/01	
Enhanced Inspection/Maintenance Test Equipment, Procedures and Specifications.	Atlanta Metropolitan Area	9/20/00	7/10/01	
Preemption Waiver Request for Low-RVP, Low-Sulfur Gasoline Under Air Quality Control Rule 391–3–1–.02(2)(bbb).	Atlanta Metropolitan Area	5/31/00	2/22/02	
Technical Amendment to the Georgia Fuel Waiver Request of May 31, 2000.	Atlanta Metropolitan Area	11/9/01	2/22/02	
Georgia's State Implementation Plan for the Atlanta Ozone Nonattainment Area.	Atlanta Metropolitan Area	7/17/01	5/7/02	
Post-1999 Rate of Progress Plan	Atlanta Metropolitan Area	12/24/03	7/19/04, 69 FR 42884.	
Severe Area Vehicle Miles Traveled (VMT SIP) for the Atlanta 1-hour severe ozone nonattainment area.	Atlanta 1-hour ozone severe nonattainment area.	6/30/04	6/14/05, 70 FR 34358.	
Atlanta 1-hour ozone attainment area 2015 maintenance plan.	Atlanta severe 1-hour ozone maintenance area.	2/1/05	6/14/05, 70 FR 34660.	
Attainment Demonstration for the Chattanooga Early Action Area.	Walker and Catoosa Counties.	12/31/04	8/26/05, 70 FR 50199.	
Attainment Demonstration for the Lower Savannah-Augusta Early Action Compact Area.	Columbia and Richmond Counties.	12/31/04	8/26/05, 70 FR 50195.	
Alternative Fuel Refueling Station/Park and Ride Transportation Center, Project DO–AR–211 is removed.	Douglas County, GA	9/19/06	11/28/06, 71 FR 68743.	
Macon 8-hour Ozone Maintenance Plan.	Macon, GA encompassing a portion of Monroe County.	6/15/07	9/19/07, 72 FR 53432.	

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
Murray County 8-hour Ozone Maintenance Plan.	Murray County	6/15/07	10/16/07, 72 FR 58538.	
Atlanta Early Progress Plan	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties.	1/12/07	2/20/08, 73 FR 9206	
Rome; 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Floyd County	10/27/2009	1/12/12, 77 FR 1873	
Chattanooga; Fine Particulate Matter 2002 Base Year Emissions Inventory.	Catoosa and Walker Counties.	10/27/09	2/8/12; 77 FR 6467	
110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards.	Georgia	10/13/2007	2/6/2012, 77 FR 5706.	
Atlanta 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties and portions of Heard and Putnam Counties.	07/06/2010	3/1/2012, 77 FR 12487.	
Macon 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Bibb County and Monroe County.	8/17/2009	3/02/12, 77 FR 12724.	
Atlanta 1997 8-Hour Ozone 2002 Base-Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties.	10/21/2009	4/24/2012, 77 FR 24399.	
Regional Haze Plan	Statewide	2/11/10	6/28/12, 77 FR 38501.	
Regional Haze Plan Supplement (including BART and Reasonable Progress emissions limits).	Statewide	11/19/10	6/28/12, 77 FR 38501.	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	7/23/2008	10/25/2012, 77 FR 65125.	With the exception of 110(a)(2)(D)(i).
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	10/21/2009	10/25/2012, 77 FR 65125.	With the exception of 110(a)(2)(D)(i).
Negative Declaration for Control of VOC Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry (SOCMI) EPA–450/4–91–031, August 1993.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013.	
Negative Declaration for Control of VOC Emissions from Equipment Leaks from Natural Gas/Gasoline Processing Plants EPA–450/3–83–007, December 1983.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013	

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
Negative Declaration for Control of VOC Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment EPA–450/3–83–006, March 1984.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013	
Negative Declaration for Control of VOC Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (SOCMI), EPA–450/3–84–015, December 1984.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	09/28/2013	
110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	Georgia	7/23/2008	4/12/2013	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter National Ambient Air Quality Standards.	110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter National Ambient Air Quality Standards.	10/21/2009	4/12/2013	Addressing element 110(a)(2)(D)(i)(II) prong 3 only
1997 8-Hour Ozone Reasonable Further Progress Plan for Atlanta Area.	Atlanta 1997 8-Hour Ozone Nonattainment Area.	10/21/2009	5/29/2013	

[FR Doc. 2013–12467 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0780; FRL–9387–1]

Triforine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of triforine in or on blueberry and tomato. Summit Agro North America Holding Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 29, 2013. Objections and requests for hearings must be received on or before July 29, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0780, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; email address: *garvie.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0780 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 29, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your

objection or hearing request, identified by docket ID number EPA–HQ–OPP–2001–0780, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of November 9, 2011 (76 FR 69690) (FRL–9325–1), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7911) by Summit Agro North America Holding Corporation, 600 Third Avenue, New York, NY 10016–2001. The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the fungicide triforine, piperazine-1,4-diylbis(2,2,2-trichloroethane-1,1-diyl)diformamide [also more commonly known as triforine, (*N,N′*-[1,2-piperazinediylbis(2,2,2-trichloroethylidene)]bis[formamide])], in or on blueberry and tomato at 0.02 and 0.5 parts per million (PPM), respectively. That document referenced a summary of the petition prepared by Landis International, Inc. on behalf of Summit Agro North America Holding Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the tolerance for blueberry from 0.02 ppm to 1.0 ppm. The reasons for this change are explained in Unit IV.D.

There are no registered food uses for triforine in the United States. These tolerances were requested in connection with use of triforine on tomatoes and blueberries grown overseas. These tolerances will allow blueberries and tomatoes containing triforine residues to be imported into the United States.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for triforine including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with triforine follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The principal toxic effects of triforine are changes in the liver and hematopoietic system following repeated oral dosing, and the dog is the most sensitive species for the hematopoietic effects. Liver effects include increased liver weights, cholesterol and alkaline phosphatase levels. Toxicity was not observed in a rat 21-day dermal toxicity study at dose levels greater than the limit dose. Triforine is not acutely toxic *via* the oral, dermal, and inhalation routes. No developmental or reproductive toxicity was observed at doses below the limit dose. Triforine does not demonstrate neurotoxic or immunotoxic potential. Although the mouse study showed that triforine was associated with common tumors in the mouse, the EPA has determined that quantification of risk using a non-linear approach; i.e., reference dose (RfD), for triforine will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to triforine. That conclusion is based on the following considerations: (1) No carcinogenic response was seen in either sex in an acceptable rat cancer study; (2) the tumors found in the mouse are commonly seen in the mouse; (3) both tumors types were found only at the high dose, which was above the limit dose (males 1204, females 1507 milligrams/kilogram (mg/kg/day)); (4) triforine is not mutagenic; (5) each tumor type was observed in one sex only; i.e., liver tumors in male mice and lung tumors in female mice.

Specific information on the studies received and the nature of the adverse effects caused by triforine as well as the no-observed-adverse-effect-level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Triforine. Human Health Risk Assessment to Support Petition for the Establishment of Permanent Tolerances without U.S. Registration for Blueberries and Tomatoes* on pages 8 through 13 in docket ID number EPA–HQ–OPP–2011–0780.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level generally referred to as a population adjusted dose (PAD) or an RfD, and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a

lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for triforine used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TRIFORINE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (all populations) ..	No hazard or appropriate acute endpoint was identified in the database.		
Chronic dietary (All populations)	NOAEL= 22 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.22 mg/kg/day. cPAD = 0.22 mg/kg/day	Subchronic/Chronic oral toxicity (dog) LOAEL = 120 mg/kg/day, based on decreased RBC, hematocrit, hemoglobin values and siderosis in the liver, spleen, and bone marrow.
Incidental oral short-term (1 to 30 days).	NOAEL= 22 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = <100.	Subchronic/chronic oral toxicity (dog) LOAEL = 120 mg/kg, based on decreased RBC, hematocrit, and hemoglobin values, increased spleen weight, and siderosis in the liver, spleen, and bone marrow.
Incidental oral intermediate-term (1 to 6 months).	NOAEL= 22 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = <100.	Subchronic/chronic oral toxicity (dog) LOAEL = 120 mg/kg, based on decreased RBC, hematocrit, and hemoglobin values, increased spleen weight, and siderosis in the liver, spleen, and bone marrow.
Dermal short-term (all durations).	No potential hazard *via* the dermal route based on the lack of systemic effects following repeat dermal exposure of rats at dose levels up to 1100 mg/kg/day which is greater than the limit dose. The endpoints of concern were all assessed in this study, and there is no developmental or reproductive concern at dose levels below the limit dose.		
Inhalation short-term (1 to 30 days).	Inhalation (or oral) study. NOAEL= 22 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = <100.	Subchronic/chronic oral toxicity (dog) LOAEL = 120 mg/kg, based on decreased RBC, hematocrit, and hemoglobin values, increased spleen weight, and siderosis in the liver, spleen, and bone marrow.
Inhalation intermediate-term (1 to 6 months).	Inhalation (or oral) study. NOAEL = 22 mg/kg/day (inhalation absorption rate = 100%) UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = <100.	Subchronic/chronic oral toxicity (dog) LOAEL = 120 mg/kg, based on decreased RBC, hematocrit, and hemoglobin values, increased spleen weight, and siderosis in the liver, spleen, and bone marrow.
Cancer (Oral, dermal, inhalation).	EPA has determined that quantification of risk using a non-linear approach (i.e., RfD) will adequately account for all chronic toxicity, including carcinogenicity.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to triforine, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from triforine in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for triforine; therefore, a quantitative acute dietary exposure assessment was unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residues levels in food, EPA assumed tolerance level residues in the chronic

dietary assessment for these raw agricultural commodities (RACs). A processing study for tomatoes was submitted that showed no concentration of triforine residues in tomato paste and puree; therefore the RAC tolerance was used and the concentration factor were set to a value of ''1'' for all processed tomato products, with the exception of dried tomatoes. Empirical data are not available for this processed commodity, so the DEEM 7.81 default processing factor for dried tomatoes of 14.3 was included in the dietary risk assessment. In addition, the dietary assessment assumes that 100% of the blueberry, tomato, and tomato processed commodities consumed in the U.S. are imported, and further that all of the imports have been treated with triforine, effectively assuming 100 percent crop treated (PCT) for the two crops that are included in the dietary risk assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has determined that although the mouse study showed that triforine was associated with common tumors in the mouse, quantification of risk using a non-linear approach for triforine would adequately account for all chronic effects, including potential carcinogenicity that could result from exposure to triforine.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for triforine. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* Since this petition requests tolerances without U.S. registration, establishing the requested tolerances will have no impact on domestic drinking water. However, for the purpose of this risk assessment, the most recent drinking water assessment dated March 5, 2008, which estimated residues resulting from the residential uses of triforine, was consulted. Along with the other risk assessments supporting this action, the drinking water assessment (DP 339605; K. Moore, 3/5/08) can be found in the triforine docket, EPA–HQ–OPP–2011–0780. Modeled estimated drinking water concentrations from those uses are included in this risk assessment. Surface water estimated drinking water concentrations (EDWCs) are based on first index reservoir screening tool (FIRST) modeling and represent untreated surface water concentrations. For surface water, the modeled EDWC for annual average exposure was 0.84 parts per billion (PPB). The one-in-10-year annual average concentration is used for chronic exposure assessments. Groundwater EDWCs are based on Screening Concentration in Ground Water (SCIGROW) modeling and represent the concentration that might be expected in shallow unconfined aquifers under sandy soils. For groundwater, the average exposure estimate is 0.43 ppb. The drinking water models and their descriptions are available at the EPA Internet site: *http://www.epa.gov/oppefed1/models/water/*. The highest annual average EDWC from the surface water model of 0.84 ppb was included in the chronic dietary risk assessment.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Triforine is currently registered for the following uses that could result in residential exposures: ornamentals including roses, trees, herbaceous plants, and woody shrubs and vines. There are no new residential uses with this petition; however, in order to complete the aggregate risk assessment, the Agency updated the residential exposure assessment. Because triforine does not pose a hazard by the dermal route of exposure, the residential handler assessment includes only inhalation exposure. The residential handler exposure assessment does not identify any residential handler risk concerns, in spite of representing worst case inhalation exposures. For post-application exposures, although a quantitative residential post-application exposure assessment was not performed, the Agency concluded that there is no concern for post-application exposures to triforine for the following reasons:

i. Since no dermal endpoints of concern were identified, there is also no concern for post-application dermal exposures.

ii. While the mouthing behaviors of children are also commonly addressed in post-application assessments, the Agency does not expect, based on the primary use pattern of triforine to control diseases on roses and other ornamental plants, children to routinely contact treated plants and engage in mouthing behaviors.

iii. Triforine is relatively non-volatile which, coupled with the dilution expected outdoors and the small amounts of active ingredient used diminish the possibility of post-application inhalation exposure. Moreover, the residential handler inhalation exposure assessment, which represents worst case inhalation exposures, and is considered protective of most post-application inhalation exposure scenarios. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html*.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found triforine to share a common mechanism of toxicity with any other substances, and triforine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that triforine does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility following *in utero* exposure to triforine in either the rat or rabbit developmental toxicity study at dose levels up to the limit dose, and there is no evidence of increased susceptibility following *in utero* and/or pre-/post-natal exposure in the 2-generation reproduction study in rats at any dose levels, even those greater than the limit dose.

Triforine has been evaluated for potential developmental effects in the rat and rabbit (gavage administration). Maternal toxicity included decreased body weight and food consumption in rabbits at the limit dose, and maternal toxicity was not observed in rats at dose levels up to the limit dose. Decreased fetal body weight was observed in the rabbit at the limit dose, whereas there were no developmental effects in the rat at the limit dose (actual 840 mg/kg/day). Decreased fertility index and decreased testes weight was observed in F1 males in the 2-generation reproduction study only at a dose level greater than the limit dose.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for triforine is complete.

ii. There is no indication that triforine is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. As indicated in Unit III.D.2., there is no evidence that triforine results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to triforine in drinking water. No risk is expected from the dermal route of exposure for children's postapplication exposure. Because of the use pattern, no incidental oral exposure is expected for children and no quantitative exposure assessment was conducted. These assessments will not underestimate the exposure and risks posed by triforine.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, triforine is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to triforine from food and water will utilize <1% of the cPAD for the general U.S. population and all population subgroups. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of triforine is not expected; therefore the chronic aggregate risk includes food and drinking water only.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Triforine is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to triforine. The Agency conducted short-term aggregate risk assessments only for adult males and adult females since there are no short-term residential exposures for children. There are no oral residential exposures for adults and triforine does not pose a dermal hazard, so only residential inhalation exposure is included in the aggregate assessment. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential inhalation exposures result in aggregate MOEs of 46,000. Because EPA's level of concern for triforine is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Residential intermediate-term exposure is not anticipated; therefore an intermediate-term aggregate risk assessment is not necessary.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA has determined that quantification of risk using a non-linear approach for triforine will be protective of all chronic effects including potential carcinogenicity. There are no chronic aggregate risks of concern and, therefore, there are no cancer aggregate risks of concern.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to triforine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with electron capture detection) is available to enforce the tolerance expression.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has established MRLs for triforine in or on blueberry and tomato at 1.0 and 0.5 ppm, respectively. These MRLs are the same as the tolerances being established for triforine in the United States.

C. Response to Comments

One comment was received in response to the notice filing. The commenter asked the Agency to deny the petition stating that * * * *''toxic effects to red blood cells and iron deposition in the wrong places is enough reason to deny this product.''* The comment also requested that all studies be verified by an independent lab. The Agency responds to this comment by stating that all toxicity studies required in accordance with new 40 CFR part 158 data requirements have been submitted. The studies available for consideration of triforine toxicity provide a comprehensive and complete database. The Agency has conducted a human health risk assessment with this database and has concluded that there are no risks of concern to human health from the requested use of triforine as demonstrated by the risk assessment. Only dietary exposure is expected for

the establishment of a tolerance on imported blueberries and tomatoes and adequate studies are available for consideration of this potential exposure scenario. All studies conducted on pesticide products to support applications for research or marketing should follow the Good Laboratory Practice (GLP) standards as stipulated in 40 CFR part 160 under FIFRA. When a registrant utilizes the service of a laboratory to conduct a study, they must notify the laboratory that the study should be conducted in accordance with this part (§ 160.10). Every study that is submitted to the Agency must include a statement that the study was conducted in accordance with this part (§ 160.12). Submission of a false statement may for the basis for cancellations, suspension, etc. EPA may refuse to consider reliable any data from a study which was not conducted in accordance with this part (§ 160.17). The Agency's Office of Enforcement and Compliance (OECA) conducts inspections of laboratory facilities for the purpose of compliance review to determine that the GLP regulations of FIFRA are being observed. This compliance review includes inspection of all raw data records, specimens and other entities as needed as stipulated in this part (§ 160.15). The toxicity studies used to assess the potential risks associated with exposure to triforine were conducted in compliance with 40 CR part 160, and included submission of all raw data as well as required GLP compliance statements. Further, Agency scientists conducted a thorough and independent review of these data during the registration process. The Agency has no objection to the establishment of tolerances without U.S. registrations for residues of triforine in or on blueberry and tomato.

D. Revisions to Petitioned-for Tolerances

The tolerance level for blueberry being established by the EPA differs from that proposed in the tolerance petition submitted by Summit Agro North America Holding Corporation. The Agency determined that the tolerance level of 1.0 ppm instead of 0.02 ppm for blueberry is needed so as to harmonize with the established Codex Maximum Residue Limits (MRL). This tolerance level will allow for full harmonization of both the residue definition and the tolerance level between the United States and Codex.

V. Conclusion

Therefore, tolerances are established for residues of triforine, (*N,N'*-[1,2-piperazinediylbis(2,2,2-trichloroethylidene)]bis[formamide]), including its metabolites and degradates, in or on tomato and blueberry at 0.5 and 1.0 ppm, respectively.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1321 to read as follows:

§ 180.1321 Triforine; tolerances for residues.

(a) *General.* Tolerances are established for residues of triforine, including its metabolites and degradates. Compliance with the tolerance levels specified in the following table is to be determined by measuring only triforine (*N,N'*-[1,2-piperazinediylbis(2,2,2-trichloroehylidene)]bis[formamide]), in or on the following commodities.

Commodity	Parts per million
Blueberry [1]	1.0
Tomato [1]	0.5

[1] There are no U.S. registrations for blueberry and tomato.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2013–12461 Filed 5–28–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0558; FRL–9387–2]

Guar Hydroxypropyltrimethylammonium Chloride; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of guar hydroxypropyltrimethylammonium chloride (CAS Reg. No. 71329–50–5) when used as an inert ingredient (thickener/drift reduction agent) in pesticide formulations applied to growing crops. SciReg. Inc., on behalf of Rhodia Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of guar hydroxypropyltrimethylammonium chloride.

DATES: This regulation is effective May 29, 2013. Objections and requests for hearings must be received on or before July 29, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0558, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: William Cutchin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7099; email address: *cutchin.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0558 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 29, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0558, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of September 28, 2012 (77 FR 59581) (FRL–9364–6), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 2E8017) by SciReg. Inc., 12733 Director's Loop, Woodbridge, VA 22192 on behalf of Rhodia Inc. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of guar hydroxypropyltrimethylammonium chloride (CAS No. 71329–50–5) when used as an inert ingredient (thickener/drift reduction agent) in pesticide formulations applied to growing crops under 40 CFR 180.920. That notice referenced a summary of the petition prepared by Rhodia, Inc. the petitioner, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit V.C.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as

polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Nevertheless, in most instances, EPA generally exempts inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for guar hydroxypropyltrimethylammonium chloride including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with guar hydroxypropyltrimethylammonium chloride follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by guar hydroxypropyltrimethylammonium chloride as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Acute toxicity studies and mutagenicity studies were conducted with guar hydroxypropyltrimethylammonium chloride. However, guar hydroxypropyltrimethylammonium chloride has the same basic molecular structure (a high molecular weight polysaccarhide backbone) as guar gum, and other slightly modified forms of guar gum. Based on common molecular structure of guar hydroxypropyltrimethylammonium chloride with guar gum, hydroxyproplyl guar, carboxymethyl guar and carboxymethyl hydroxylpropyl guar, it is expected that these substances would share chemical and toxicological properties.

Guar hydroxypropyltrimethylammonium chloride has a low toxicity profile. The acute oral LD_{50} (lethal dose) is greater than 2,000 milligrams/kilogram (mg/kg). No dermal irritation, dermal sensitization, or mutagenicity was observed. Eye irritation was mild to none. Since no subchronic, reproductive and developmental, and carcinogenicity studies are available for guar hydroxypropyltrimethylammonium chloride, EPA relied on studies conducted on the structurally similar compounds guar gum, hydroxypropyl guar, and carboxymethyl guar, and carboxymethyl-hydroxypropyl guar. Subchronic, reproductive and developmental, and carcinogenicity studies with guar gum showed no long-term, reproductive/developmental toxicity or carcinogenic effects. Also teratogenicity studies with guar gum in mice, rats, and hamsters did not indicate that guar gum is a teratogen, up to levels of 800 mg/kg/day, 900 mg/kg/day, and 600 mg/kg/day, respectively. In addition, no effects on parental fertility, fetal development, sex distribution, and no malformations of the pups were observed at doses up to 7,500 mg/kg/day in the one-generation reproduction study in rats. No evidence of immunotoxicity (spleen, thymus, blood) was observed in the available toxicity studies on structurally related chemicals. Furthermore, no clinical signs of neurotoxicity were observed at very high doses in the available database for structurally similar compounds.

Based on these data, EPA concludes that guar hydroxypropyltrimethylammonium chloride has a low toxicity profile. These findings are supported by what would be expected based on the physical characteristics of the substance. As a cationic form of guar, guar hydroxypropyltrimethylammonium chloride would be expected to be a dermal and eye irritant. Its high molecular weight as a polysaccharide polymer limits its ability to be absorbed through the skin, lungs, or gastrointestinal tract; therefore, guar hydroxypropyltrimethylammonium chloride is of low concern for acute and chronic effects, reproductive/developmental toxicity, immunotoxic, neurotoxic, and carcinogenic effects.

B. Toxicological Points of Departure/Levels of Concern

The majority of the available studies suggest that high levels of guars were well tolerated by laboratory animals. Although there were two studies that showed some effects, they appear to be outliers since those results were not replicated in the longer-term studies. In the two 90-day toxicity studies, the body weight gain appears to be depressed at 500 mg/kg/day dose levels and above. However, generally the food consumption was not affected. In a third 90-day toxicity study in rats, no effect on body weight was observed at doses up to 3,000 mg/kg/day. No effect on the body weights were observed in the reproduction study in rats at doses up

to 7,500 mg/kg/day. In the carcinogenicity studies in mice and rats by the National Toxicology Program (NTP) (1982), no adverse effects were observed at doses up to 3,570 mg/kg/day. Based on their large molecular weights, these two chemicals are not expected to be significantly absorbed via oral, dermal and inhalation routes of exposure. This is further supported by the animal toxicity studies where no significant effects were observed in a carcinogenicity studies in mice and rats and reproduction study in rats at doses up to and including 3,500 mg/kg/day. Based on the above weight of evidence, no endpoint of concern was identified; therefore, it is not appropriate to conduct a quantitative assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses, drinking water, and non-dietary exposure.*

Exposure to guar hydroxypropyltrimethylammonium chloride through food, water and non-dietary sources are likely to occur. However, a quantitative exposure assessment was not conducted because no endpoint of concern (hazard) was identified in the available database.

2. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Results of toxicological studies conducted with guar hydroxypropyltrimethylammonium chloride demonstrate the substance is of low toxicity. In addition, guar hydroxypropyltrimethylammonium chloride is a slightly modified form of guar gum, a natural polymer which is an affirmed GRAS (generally recognized as safe) substance of low toxicity. Guar hydroxypropyltrimethylammonium chloride is also structurally similar to hydroxypropyl guar, carboxymethyl guar, and carboxymethyl-hydroxypropyl guar, other slightly modified forms of guar gum and all of which are exempt from the requirement of a tolerance. As part of its qualitative assessment of guar hydroxypropyltrimethylammonium chloride, EPA is not concerned about the potential for cumulative effects given the low toxicity of this substance and its structurally similar substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

As part of its qualitative assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children. Guar hydroxypropyltrimethylammonium chloride is a slightly modified form of guar gum, a natural polymer which is an affirmed GRAS substance of low toxicity. Guar hydroxypropyltrimethylammonium chloride is also structurally similar to hydroxypropyl guar, another slightly modified form guar gum. According to EPA's 2005 tolerance exemption reassessment document for hydroxypropyl guar, it was concluded that hydroxypropyl guar is a high molecular weight polymer that is devoid of reactive functional groups and which is not absorbed by any route of human exposure. Also teratogenicity studies with guar gum in mice, rats, and hamsters did not indicate that guar gum is a teratogen, up to levels of 800 mg/kg, 900 mg/kg, and 600 mg/kg, respectively. In addition, no effects on parental fertility, fetal development, sex distribution, and no malformations of the pups were observed at doses up to 7,500 mg/kg/day in the 1-generation reproduction study in rats. Based on the structural similarities to guar gum and hydroxypropyl guar, as well as its high molecular weights and low likelihood of absorption via any route of exposure, guar hydroxypropyltrimethylammonium chloride is unlikely to elicit a toxic response in infants and children when used as an inert ingredient in pesticide products. Available toxicity studies support this conclusion of low toxicity.

E. Aggregate Risks and Determination of Safety

In examining aggregate exposure, EPA considers available information concerning exposures from the pesticide residue in food and all other nonoccupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Based on results from toxicological studies, its close structural relationship to guar gum, hydroxypropyl guar, carboxymethyl guar, and carboxymethyl-hydroxypropyl guar, as well as its high molecular weight and low likelihood of absorption via any route of exposure, guar hydroxypropyltrimethylammonium chloride is considered to be a low toxicity substance. Taking into consideration all available information on guar hydroxypropyltrimethylammonium chloride, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to guar hydroxypropyltrimethylammonium chloride under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.920 for residues of guar hydroxypropyltrimethylammonium chloride when used as an inert ingredient in pesticide formulations applied, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for guar hydroxypropyltrimethylammonium chloride.

C. Response to Comments

One comment was received for a notice of filing from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns and recognizes

that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for guar hydroxypropyltrimethylammonium chloride (CAS No. 71329–50–5) when used as an inert ingredient (thickener/drift reduction agent) in pesticide formulations applied to growing crops.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 2013.

Lois Rossi,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, the table is amended by alphabetically adding the following inert ingredient to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Guar hydroxypropyltrimethylammonium chloride (CAS Reg. No. 71329–50–5)	....	Thickener/drift reduction agent.
* * * * * * *		

[FR Doc. 2013–12782 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0441; FRL–9386–5]

Difenzoquat; Order Revoking Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order of revocation.

SUMMARY: EPA is revoking all the tolerances for the pesticide difenzoquat. EPA previously required that data be submitted to support these tolerances and that notice of intent to submit that data be submitted to the Agency by March 19, 2013. No notice of intent to provide the required data was submitted.

DATES: This order of revocation is effective May 29, 2013. Objections and requests for hearings must be received on or before July 29, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.B. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0441, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How can I file an objection or hearing request?

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this order and may also request a hearing on those objections. You must file your objection or request a hearing on this order in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012- 0441 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 29, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0441, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. EPA's Order to Revoke Tolerances

A. What action is the Agency taking?

Pursuant to FFDCA section 408(f), EPA determined that additional data are reasonably required to support the continuation of the tolerances for difenzoquat which are codified at 40 CFR 180.369. In the **Federal Register** of December 19, 2012 (77 FR 75037) (FRL–9372–9), EPA issued a final data call-in order in follow-up to a proposed order which published in the **Federal Register** on July 6, 2012 (77 FR 39962) (FRL–9352–9). In the final data call-in order of December 19, 2012, EPA required the submission of various data to support the continuation of the tolerances for the pesticide difenzoquat. Because there are currently no domestic registrations for difenzoquat, these tolerances are referred to as ''import tolerances.'' According to the terms of the order, if the Agency did not receive a section 408(f) Response Form identifying a person who agrees to submit the required data within 90 days after publication of the final order (March 19, 2013), EPA would proceed to revoke the difenzoquat tolerances at 40 CFR 180.369.

Subsequent to the final data call-in order of December 19, 2012, EPA received no submissions of the ''section 408(f) Order Response'' form within the required 90-day period. Therefore, in this order, EPA is revoking all the tolerances for the pesticide difenzoquat in 40 CFR 180.369, which includes tolerances for the following commodities: Barley, bran; barley, grain; barley, straw; cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, meat; sheep, meat byproducts; wheat, bran; wheat, grain; wheat, shorts; and wheat, straw.

This tolerance revocation order for difenzoquat is subject to the objection and hearing procedure in FFDCA section 408(g)(2) but the only material issue in such a procedure is whether a submission required by the order was made in a timely fashion.

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

Under FFDCA section 408(f)(2), if a submission required by an order issued pursuant to section 408(f)(1) is not received by the date specified in that order, EPA may by order published in the **Federal Register** revoke the tolerance that is the subject of that order.

C. When do these actions become effective?

As stated in the **DATES** section, this order is effective on the date of publication in the **Federal Register**. An order issued under FFDCA section 408(f)(2) shall take effect upon publication unless the regulation or order specifies otherwise. However, the Agency may stay the effectiveness of the regulation or order if, after issuance of such regulation or order, objections are filed with respect to such regulation or order pursuant to FFDCA section 408(g)(2). (21 U.S.C. 346a(g)(1)).

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this order, and that are in the channels

of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the Food Quality Protection Act (FQPA). Under this unit, any residues of the pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Statutory and Executive Order Reviews

This action, which revokes tolerances due to a failure to comply with a data call-in order, is in the form of an order and not a rule. (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedure Act (APA), orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on a rulemaking do not apply to this action, as explained further in the following discussion.

A. Executive Order 12866 and Executive Order 13563

Because this order is not a ''regulatory action'' as that term is defined in Executive Order 12866, entitled ''*Regulatory Planning and Review*'' (58 FR 51735, October 4, 1993), this action is not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled ''*Improving Regulation and Regulatory Review*'' (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose additional burdens that require approval by OMB under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). The information collection activities associated with the prior order requesting data from any party interested in supporting the tolerances being revoked today were approved by OMB under OMB Control No. 2070–0174, and are identified by EPA ICR No. 2288.01. Burden is defined at 5 CFR 1320.3(b). Under the PRA, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

C. Regulatory Flexibility Act

Since this order is not a rule under the APA (5 U.S.C. 551(4)), and does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

D. Unfunded Mandates Reform Act; and Executive Orders 13132 and 13175

This order directly regulates growers, food processors, food handlers, and food retailers, not States or tribes; nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus the Agency has determined that Executive Order 13132, entitled ''*Federalism*'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled *''Consultation and Coordination with Indian Tribal Governments''* (65 FR 67249, November 9, 2000), do not apply to this order. In addition, this order does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538).

E. Executive Orders 13045, 13211, and 12898

As indicated previously, this action is not a ''regulatory action'' as defined by Executive Order 12866. As a result, this action is not subject to Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks*'' (62 FR 19885, April 23, 1997), and Executive Order 13211 entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*'' (66 FR 28355, May 22, 2001). In addition, this order also does not require any special considerations under Executive Order 12898, entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*'' (59 FR 7629, February 16, 1994).

F. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), (15 U.S.C. 272 note).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* does not apply because this action is not a rule as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 2013.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.369 [Removed]

■ 2. Remove § 180.369.

[FR Doc. 2013–12595 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0461; FRL–9385–9]

Methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate (1174627–68–9) when used as an inert ingredient solvent in

pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192), on behalf of Rhodia Inc. (CN 7500, 8 Cedar Brook Drive, Cranbury, NJ 08512–7500) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate.

DATES: This regulation is effective May 29, 2013. Objections and requests for hearings must be received on or before July 29, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0461. All documents in the docket are available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Mark Dow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5533; email address: *dow.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0461 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 29, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0461, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of August 22, 2012 (77 FR 50661) (FRL–9358–9), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 2E8010) by SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192), on behalf of Rhodia Inc. (CN 7500, 8 Cedar Brook Drive, Cranbury, NJ 08512–7500). The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate (1174627–68–9) when used as an inert ingredient (solvent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest (40 CFR 180.910). That document referenced a summary of the petition prepared by SciReg, Inc. (12733 Director's Loop, Woodbridge, VA 22192), on behalf of Rhodia Inc. (CN 7500, 8 Cedar Brook Drive, Cranbury, NJ 08512–7500), the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols, and hydrocarbons; surfactants such as polyoxyethylene polymers, and fatty acids; carriers such as clay, and diatomaceous earth; thickeners such as carrageenan, and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents, and emulsifiers. The term ''inert'' is not intended to imply nontoxicity, the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the

legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of, and to make a determination on aggregate exposure for methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate, including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate is not acutely toxic *via* the oral or dermal routes of exposure. It is not a primary eye irritant, a primary skin irritant, or a dermal sensitizer. A repeat dose reproduction/developmental toxicity study showed no treatment-related effects on mating or fertility. There were no treatment-related effects on gestation, litter size, litter growth, and development as compared to controls. There was no evidence of any toxicity in the parameters evaluated in this study. The NOAEL for systemic toxicity was considered to be 1,000 milligram/kilograms body weight/day (mg/kg bw/day), the highest dose tested; a LOAEL was not observed in this study. A Bacterial Reverse Mutation Assay with *Salmonella typhimurium* concluded methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate did not induce mutagenic activity. A Gene Mutation Assay with Chinese hamster cells showed no reproducible dose-dependent increase in gene mutation frequency. A Chromosome Aberration Test with Human Lymphocytes *in vitro* showed no signs of cells carrying structural chromosomal aberrations. There was no evidence of an increase in polyploidy metaphases after treatment with methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate. A Mammalian Erythrocyte Micronucleus Test with mice revealed no statistically significant decreases in the PCE/NCE ratio therefore, methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate, is considered to be negative for genotoxicity. Methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate, is considered non-mutagenic, there are no known data that directly suggest that methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate is carcinogenic. Based on the absence any toxicity at the limit dose, lack of mutagenicity concerns, and lack of carcinogenicity triggers in the Derek analysis, EPA concluded that methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate is unlikely to pose a cancer risk at anticipated human exposures. Neurotoxicity was not observed in a reproduction/developmental toxicity screening study in rats, where neurotoxic parameters were evaluated. Immunotoxicity studies were not available for review. However, signs of immunotoxicity were not observed in any of the submitted studies.

B. Toxicological Points of Departure/Levels of Concern

The available toxicity studies indicate that methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate has a very low overall toxicity. The NOAEL is 1,000 mg/kg bw/day (limit dose). Since signs of toxicity were not observed at the limit dose, an endpoint of concern for risk assessment purposes was not identified. Therefore, since no endpoint of concern was identified for the acute, and chronic dietary exposure assessments, and short-, and intermediate-term dermal, and inhalation exposure assessments, a quantitative risk assessment for methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate is not necessary.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate in food as follows: Dietary exposure to methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate can occur from eating food treated with pesticide formulations containing this inert ingredient. In addition, food can pick up residues of methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate that has been used in pesticide formulations applied to treat food contact surfaces, thus resulting in indirect exposure. However, since an endpoint of concern for risk assessment was not identified, a quantitative dietary exposure assessment for methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate was not conducted.

2. *Dietary exposure from drinking water.* Dietary exposure from drinking water to methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate can occur by drinking water that has been contaminated by run-off from a pesticide treated area, and from antimicrobial formulations used in food-contact surface sanitizing solutions. Since an endpoint for risk assessment was not identified, a quantitative dietary exposure assessment from drinking

water for methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate was not conducted.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate may be used in inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. However, since there are no toxicological effects of concern occurring below the limit dose of 1,000 mg/kg bw/day, it is not necessary to conduct quantitative assessments of residential (non-occupational) exposures and risks. There are no dermal or inhalation toxicological endpoints of concern to the Agency, therefore, quantitative assessments have not been conducted.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate to share a common mechanism of toxicity with any other substances, and methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity, and the completeness of the database on toxicity and exposure, unless EPA determines, based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of qualitative or quantitative susceptibility of infants and children in the available database.

3. *Conclusion.* As part of its qualitative assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children. The available toxicity studies suggest low toxicity of methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate. The toxicity database for methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate contains acute oral, dermal and inhalation toxicity studies; skin, eye, and sensitization studies; mutagenicity studies (gene mutation, chromosomal aberrations assay), including *in vivo* micronucleus assay; and reproduction/developmental toxicity screening study in the rat. There is no indication based upon the available data that methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate is a neurotoxic or immunotoxic chemical, or results in increased qualitative or quantitative susceptibility in infants or children. Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to this chemical when used as inert ingredient in pesticides formulations.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 for residues of methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate when used as an inert ingredient, specifically as a solvent, in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest, is safe under FFDCA section 408.

1. *Aggregate cancer risk for U.S. population.* For the reasons stated in Unit IV.A. methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate is not expected to pose a cancer risk to humans.

2. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate residues when used as an inert ingredient in pesticide formulations under 40 CFR 180.910.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for Methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate. (1174627–68–9) when used as an inert ingredient (solvent) in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest.

VII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to

the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 2013

Lois A. Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, alphabetically add the following inert ingredient to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Methyl 5-(dimethylamino)-2-methyl-5-oxopentanoate (1174627–68–9)		Solvent
* * * * * * *		

[FR Doc. 2013–12457 Filed 5–28–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2012–0821; 9817–6]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate direct rule.

SUMMARY: Oklahoma has applied to the EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Oklahoma's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on July 29, 2013 unless the EPA receives adverse written comment by June 28, 2013. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

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

2. *Email: patterson.alima@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202–2733.

4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov,* or email. The Federal *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 *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.

You can view and copy Oklahoma's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533, EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202–2733, and Email address *patterson.alima@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that Oklahoma's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma Final authorization to operate its hazardous waste program with the changes described in the authorization application. Oklahoma has responsibility for permitting treatment, storage, and disposal facilities within its borders. Also section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (''SAFETEA''), Public Law 109–59, 119 Statute 1144 (August 10, 2005) provides the State of Oklahoma opportunity to request approval from EPA to administer RCRA subtitle C in Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Oklahoma including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Oklahoma subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Oklahoma has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being authorized by today's action is already effective under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For what has Oklahoma previously been authorized?

Oklahoma initially received final Authorization on January 10, 1985, (49

FR 50362–50363) published December 27, 1984 to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program with publication dates: April 17, 1990 (55 FR 14280–14282), effective June 18, 1990; September 26, 1990 (55 FR 39274) effective November 27, 1990; April 2, 1991 (56 FR 13411–13413) effective June 3, 1991; September 20, 1991 (56 FR 47675–47677) effective November 19, 1991; September 29, 1993 (58 FR 50854–50856) effective November 29, 1993; October 12, 1993 (58 FR 52679–52682) effective December 13, 1993; October 7, 1994 (59 FR 51116–51122) effective December 21, 1994; January 11, 1995 (60 FR 2699–2702) effective April 27, 1995; October 9, 1996 (61 FR 52884–52886) effective December 23, 1996; Technical Correction March 14, 1997 (62 FR 12100–12101) effective March 14, 1997; September 22, 1998 (63 FR 50528–50531) effective November 23, 1998; March 29, 2000 (65 FR 16528–16532) effective May 30, 2000; May 10, 2000 (65 FR 29981–29985) effective June 10, 2000; January 2, 2001 (66 FR 28–33) effective March 5, 2001; April 9, 2003 (68 FR 17308–17311) effective June 9, 2003 and February 4, 2009 (74 FR 5994–6001); (66 FR 18927–18930) effective June 6, 2011 and March 15, 2012 (77 FR 15273–15276) effective May 14, 2012. The authorized Oklahoma RCRA program was incorporated by reference into the CFR published on December 9, 1998 (63 FR 67800–67834) effective February 8, 1999, August 26, 1999 (64 FR 46567–46571) effective October 25, 1999, August 27, 2003 (68 FR 51488–51492) effective October 27, 2003, August 27, 2010 (75 FR 36546) June 28, 2010 and May 17, 2012 (77 FR 29231–29235) effective July 16, 2012. On August 24, 2012, Oklahoma submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

The Oklahoma Hazardous Waste Management Act (''OHWMA'') provides the ODEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer the provisions of RCRA Cluster XXI, and designates the ODEQ as the State agency to cooperate and share information with EPA for purpose of hazardous waste regulation. The Oklahoma Environmental Quality Code (''Code''), at 27 A O.S. Section 2–7–101 et seq. establishes the statutory authority to administer the Hazardous waste management program und subtitle C. The State regulations to manage the Hazardous waste management program is at Oklahoma Administrative Code (OAC) Title 252 Chapter 205.

The DEQ adopted applicable Federal hazardous waste regulations as amended through July 1, 2011 which became effective July 1, 2012. The provisions for which the State of Oklahoma is seeking authorization are documented in the *Regulatory Documentation For Federal Provisions For Which The State Of Oklahoma Is Seeking Authorization, Federal Final Rules Published Between July 1, 2010 Through June 30, 2011 RCRA Cluster XXI* prepared on June 14, 2012.

The DEQ incorporates the Federal regulations by reference and there have been no changes in State or Federal laws or regulations that have diminished the DEQ's ability to adopt the Federal regulations by reference as set forth in the authorizations at 77 FR 1236–1262, 75 FR 15273 through 15276 for RCRA Cluster XXI. The Federal Hazardous waste regulations are adopted by reference by the DEQ at OAC 252:205, Subchapter 3. The DEQ does not adopt Federal regulations prospectively.

The State Hazardous waste management program (''State Program'') now has in place the statutory authority and regulations for all required components of Checklists 225, 226 and 227 in Cluster XXI. These statutory and regulatory provisions were developed to ensure the State program is equivalent to, consistent with and no less stringent than the Federal Hazardous waste management program.

The Environmental Quality Act, at 27A O.S. Section 1–3–101(E), grants the Oklahoma Corporation Commission (''OCC'') authority to regulate certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes generated by pipelines, bulk fuel sales terminals and certain tank farms, as well as underground storage tanks. To clarify areas of environmental jurisdiction, the ODEQ and OCC developed an ODEQ/OCC Jurisdictional Guidance Document to identify respective areas of jurisdiction. The current ODEQ/OCC jurisdictional Guidance Document was amended and signed on January 27, 1999. The revisions to the State Program necessary to administer Cluster XXI will not affect the jurisdictional authorities of the ODEQ or OCC.

The ODEQ adopted RCRA Cluster XXI applicable federal hazardous waste regulations as amended through July 1, 2011 and became effective on July 1, 2012. The rules were also codified at OAC 252:205 et seq., Subchapter 3.

Pursuant to OAC 252:205–3–1, the State's incorporation of Federal regulations does not incorporate prospectively future changes to the incorporated sections of the 40 CFR, and no other Oklahoma law or regulation reduces the scope of coverage or otherwise affects the authority provided by these incorporated-by-reference provisions. Further, Oklahoma interprets these incorporated provisions to provide identical authority to the Federal provisions. Thus, OAC Title 252, Chapter 205 provides equivalent and no less stringent authority than the Federal Subtitle C program in effect July 1, 2011. The State of Oklahoma incorporates by reference the provisions of 40 Code of Federal Regulations (CFR) parts 124 of 40 CFR that are required by 40 CFR 271.14 (with the addition of 40 CFR 124.19(a) through (c), 124.19(e), 124.31, 124.32, 124.33 and Subpart G); 40 CFR Parts 260–268 [with the exception of 260.21, 262 Subparts E and H, 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(1), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.1(g)12), 265.149, 265.150, 265.1030(c), 265.1050(f) 265.1080(e), 265.1080(f), 265.1080(g), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g)]; 40 CFR Part 270 [with the exception of 270.1(c)(2)(ix and 270.14(b)(18)]; 40 CFR Part 273; and 40 CFR Part 279.

The DEQ is the lead Department to cooperate and share information with the EPA for purpose of hazardous waste regulation.

Pursuant to 27A O.S. Section 2–7–104, the Executive Director has created the Land Protection Division (LPD) to be responsible for implementing the State Program. The LPD is staffed with personnel that have the technical background and expertise to effectively implement the provisions of the State program subtitle C Hazardous waste management program.

G. What changes are we approving with today's action?

On August 24, 2012, the State of Oklahoma submitted final complete program applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action that the State of Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

The State of Oklahoma revisions consist of regulations which specifically govern Federal Hazardous waste revisions promulgated between July 1, 2010 through June 30, 2011 (RCRA Cluster XXI). Oklahoma requirements

are included in a chart with this document.

Description of federal requirement (include checklist No. if relevant)	FEDERAL REGISTER date and page (and/or RCRA statutory authority	Analogous state authority
1. Removal of Saccharin and its Salts from the Lists of Hazardous Wastes. (Checklist 225).	75 FR 78918–78926 January 18, 2011	Oklahoma Statutes Title 27A Section 2–7–101 et seq., Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2011; Oklahoma Administrative Code, Title 252, Chapter 205, as amended effective July 1, 2012.
2. Corrections to the Academic Laboratories Generator Standards (Checklist 226).	75 FR 79304–79308 December 20, 2010	Oklahoma Statutes Title 27A Section 2–7–101 et seq., Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2011; Oklahoma Administrative Code, Title 252, Chapter 205, as amended effective July 1, 2012.
3. Revisions of the Treatment Standards for Carbamate Wastes. (Checklist 227).	76 FR 34147–34157 August 12, 2011	Oklahoma Statutes Title 27A Section 2–7–101 et seq., Oklahoma Hazardous Waste Management Act, as amended effective July 1, 2011; Oklahoma Administrative Code, Title 252, Chapter 205, as amended effective July 1, 2012.

H. Where are the revised State rules different from the Federal rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who handles permits after the authorization takes effect?

Oklahoma will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oklahoma is not yet authorized.

J. How does today's action affect Indian Country (8 U.S.C. 1151) in Oklahoma?

Section 8 U.S.C. 1151 does not affect the State of Oklahoma because under section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (''SAFETEA''), Public Law 109–59, 119 Statute 1144 (August 10, 2005) provides the State of Oklahoma opportunity to request approval from EPA to administer RCRA subtitle C in Indian Country and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA).

K. What is codification and is the EPA codifying Oklahoma's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart LL for this authorization of Oklahoma's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (76 FR 3821, January 21, 2011) is also exempt from review under Executive orders 12866 (56 FR 51735, October 4, 1993). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the

EPA, when it reviews a State authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective July 29, 2013.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 2, 2013.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2013–12712 Filed 5–28–13; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[WT Docket No. 10–177; FCC 13–4]

Commercial Radio Operators; Correction

AGENCY: Federal Communication Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: The Federal Communications Commission (FCC) is correcting a final rule that appeared in the **Federal Register** of April 18, 2013. The document amended the FCC rules concerning radio operator licenses for maritime and aviation in order to reduce administrative burden in the public's interest.

DATES: Effective May 29, 2013,

FOR FURTHER INFORMATION CONTACT: Stana Kimball, Mobility Division, Wireless Telecommunications Bureau, 202–418–1306, TTY 202–418–7233.

SUPPLEMENTARY INFORMATION: In FR Doc. 2013–02372 appearing on page 23151 in the **Federal Register** of Thursday, April 18, 2013 (78 FR 23150), the following corrections are made.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 0 is corrected by making the following correcting amendments:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5,48 Stat. 1068, as amended; 47 U.S.C. 155.

■ 2. Section 0.131 is amended by revising paragraph (j) and adding paragraph (s) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(j) Administers the Commission's commercial radio operator program (part 13 of this chapter); the Commission's program for registration, construction, marking and lighting of antenna structures (part 17 of this chapter), and the Commission's privatized ship radio inspection program (part 80 of this chapter).

* * * * *

(s)(1) Extends the Communications Act Safety Radiotelephony Certificate for a period of up to 90 days beyond the specified expiration date.

(2) Grants emergency exemption requests, extensions or waivers of inspection to ships in accordance with applicable provisions of the Communications Act, the Safety Convention, the Great Lakes Agreement or the Commission's rules.

[FR Doc. 2013–12723 Filed 5–28–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15

[ET Docket No. 04–37 and 03–104; FCC 13–53]

Broadband Over Power Lines

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addressed a petition for reconsideration filed by the national association for Amateur Radio, formally known as the American Radio Relay League (ARRL). ARRL seeks reconsideration of the Commission's *Second Report and Order* in this proceeding relating to Access Broadband over Power Line (Access BPL) systems. The Commission concludes that its previous decisions in this proceeding strike an appropriate balance between the dual objectives of providing for Access BPL technology—which has potential applications for broadband and Smart Grid uses—while protecting incumbent radio services against harmful interference.

DATES: Effective June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, 202–418–0577, *Anh.Wride@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Memorandum Opinion and Order, ET Docket No. 04–37 and 03–104, FCC 13–53, adopted April 16, 2013 and released April 17, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW.,

Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov. 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).

Summary of Report and Order

1. In the Second Memorandum Opinion and Order (BPL Second MO&O), the Commission addressed a petition for reconsideration filed by the national association for Amateur Radio, formally known as the American Radio Relay League (ARRL). ARRL seeks reconsideration of the Commission's *Second Report and Order* (BPL Second Order) in this proceeding relating to Access Broadband over Power Line (Access BPL) systems. The Commission concludes that its previous decisions in this proceeding strike an appropriate balance between the dual objectives of providing for Access BPL technology—which has potential applications for broadband and Smart Grid uses—while protecting incumbent radio services against harmful interference. The Commission denies the ARRL petition for reconsideration; it does not raise new arguments based on new information in the record or on the Commission's new analysis of limited points as directed by the Court, nor does it demonstrate any errors or omissions in the Commission's previous decisions.

2. In its Petition, ARRL again requested that the Commission modify the Access BPL rules to adopt mandatory, full-time notching of all amateur radio allocations (amateur bands), this time requesting notch depths of at least 25 dB. It bases this request on its contention that the Commission should acknowledge: (1) The unique and substantial interference potential of Access BPL systems relative to amateur radio HF communications; (2) the inapplicability and/or inadequacy of the BPL rules with respect to amateur radio interaction; (3) the clear necessity of mandatory, full-time notching by Access BPL systems of amateur radio allocations to notch depths of at least 25 dB; and (4) the absence of any negative effect on BPL systems of the obligation to maintain full-time notching of amateur bands. As discussed and as supported by the record, ARRL makes these arguments based on the same reasoning and facts that the Commission considered and disposed of previously in the *BPL First Order,* the *BPL First MO&O, and the BPL Second Order.* The Commission, again, is unpersuaded by ARRL's arguments and denies its Petition.

3. Throughout this proceeding and in its judicial appeal, the ARRL has argued that more restrictive technical standards are needed to protect the amateur radio service from interference caused by radiofrequency (RF) emissions from Access BPL systems. The Commission has specifically rejected as unnecessary these repeated requests by ARRL for tighter emissions controls on Access BPL operations, more stringent interference mitigation measures, and requirements for avoidance of BPL operations in the amateur bands.

4. The only changes adopted in the *BPL Second Order* were minor adjustments to the rules as proposed in the *BPL RFC/FNPRM.* Specifically, the Commission: (1) Modified the rules to increase the required notch filtering capability for systems operating below 30 MHz from 20 dB to 25 dB; (2) established a new alternative procedure for determining site-specific extrapolation factors, and (3) adopted a definition for the ''slant-range distance'' used in the BPL measurement guidelines to further clarify its application. As indicated, the Commission also explained its rationale for and affirmed its use of a 40-dB-per-decade extrapolation factor for frequencies below 30 MHz.

5. ARRL is not specifically requesting reconsideration of these minor modifications to the rules that were adopted in the *BPL Second Order.* Rather, ARRL is reiterating its previous request for mandatory full-time permanent notching of all amateur radio allocations, which the Commission considered and rejected in the *BPL Second Order.* In support of this request, ARRL makes several arguments, which the Commission considered sequentially.

6. First, ARRL disagrees with the Commission's analyses and conclusions on the staff studies and their bearing on the adequacy of the Access BPL rules. ARRL argues that in the *BPL Second Order* the Commission discounts its own study conducted by its Technical Research Branch (TRB) by mischaracterizing the results and by attempting to distance itself from TRB's studies and recommendations. The Commission notes that in the *BPL Second Order,* the Commission discussed this issue at length, and explained its rationale with respect to each point of this same argument that ARRL first raised in its comments to the *BPL RFC/FNPRM.* ARRL makes no new argument here. ARRL here contends that TRB's studies (*i.e.,* all of the 2003 and 2004 field studies and the July 2009 released documents) used scientifically valid methodologies and the Commission did not rebut them as a technical matter. ARRL specifically did not agree with the Commission's assessment in the *BPL Second Order* regarding the video files of the now-defunct BriarCliff Manor experimental BPL system (BriarCliff Manor video#5) recorded on August 17, 2004 that were part of the released July 2009 staff materials. In this regard, the Commission notes that it explained in detail the particulars of that experimental BPL system and the reasons why it did not rely on TRB's technical findings, stating that ''. . . it does not appear that any of the mitigating features that are required in the rules had been applied to this experimental BPL system'' [at the time the video clip was made.] In particular, the Commission noted that ''our staff did contact the licensee about interference from that system several times over the course of its operation and the operator took steps first to cease operation on the amateur frequencies and then to install new equipment that had notching capability. Subsequent examination of that system by field agents of our Enforcement Bureau (EB) found no interference, which substantiates the effectiveness of our rules when properly observed.'' The Commission further observed that it pointed out with in-depth analyses in the *BPL Second Order* that it simply did not draw the same conclusions from the released studies and materials as ARRL did, and that ''in some cases, ARRL simply (and incorrectly) draws different conclusions from the . . . [staff studies and] presentations than we do.'' ARRL has made no new argument with respect to this contention that was not already considered and disposed of in our earlier decisions.

7. ARRL also repeats its disagreements with the Commission's assessment of the nature of Access BPL technology. It questions the Commission's reasons for not imposing conducted emission limits on Access BPL and instead atypically imposing only radiated emission limits. It contends that according to several BPL standards, the actual conducted emission level for BPL is approximately 30 dB higher than the conducted emission levels for other part 15 devices that are not carrier current systems. Note that the Commission discussed

this issue in the *BPL First Order* in which it explained that because Access BPL signals are transported on medium voltage power lines of up to 40,000 volts, there would be extreme safety issues for test personnel involved in connecting test equipment that would have to be able to measure conducted emissions in such high voltage lines. This determination is now long-since established and ARRL did not submit any new information in its reconsideration petition here.

8. ARRL also argues that the *BPL Second Order* did not address why the emission limits for BPL are set at levels as much as 25 dB greater than the generally-accepted median levels of ambient noise in typical environments and more than 45 dB greater than the quiet rural environment that represent the more quiet times and frequencies within an amateur band. The Commission notes that the emission limits for Access BPL are the same as the general emission limits in § 15.209 of the rules for other part 15 intentional radiators, which have been in existence in various forms for over 50 years; furthermore, as was discussed in the *BPL Second Order,* ''to minimize the potential for harmful interference, facilitate its resolution where it may occur, and address cases where it's possible occurrence could impact critical services, the Commission adopted additional regulatory measures beyond the emissions limits in the part 15 rules.'' With regard to the ambient noise levels (noise floor), the Commission discussed these issues at length in the *BPL Second Order* and provided additional protection for all licensed services, including amateur service, by requiring an increase of 5 dB in the notching capability of Access BPL systems.

9. ARRL disagrees with the Commission's conclusion in the *BPL Second Order* that BPL systems increase the noise floor only within a relatively short distance (15–400 meters) from the power lines; it complains that this ''unquantifiable increase in noise floor'' is apparently not acceptable to the Commission when the victim operates in a U.S. Government frequency band (*e.g.,* aeronautical service) but is acceptable when the victim is an amateur radio station. ARRL argues that this treatment of different licensed radio services is arbitrary and capricious on its face. The Commission notes here that in both the *BPL First Order* and the *BPL Second Order,* the Commission discussed at length the reasons for its decision to designate only certain frequencies used by ''critical'' Federal Government services as recommended by NTIA, as being excluded from Access BPL usage (only 2% of the spectrum within the 1.7–80 MHz band qualify as excluded frequencies.) Although ARRL has repeatedly requested to have all amateur HF and VHF allocations be included with critical Federal Government services, the Commission found, and still finds, that amateur radio frequencies do not warrant the special protection afforded to frequencies reserved for international aeronautical and maritime safety operation. In this regard, the Commission notes that amateur frequencies are generally used for routine communications and hobby activities, notwithstanding the fact that amateurs may on occasion assist in providing emergency communications. The Commission finds that the recently released information in the staff unredacted studies did not provide any new information not already known to the Commission and ARRL did not bring any new information on this issue on reconsideration.

10. ARRL next points to issues regarding the interference potential from Access BPL systems to amateur radio operations. It argues that in the *BPL First Order* at paragraph 39, the Commission was wrong in stating that BPL is not an efficient radiator, and that BPL interference actually permeates large areas because overhead unshielded power lines exist throughout residential areas, not just along one line of one roadway. The Commission addressed this issue in the *BPL First Order,* making reference to the NTIA Phase 1 Study in which NTIA agrees with the Commission that these systems are not efficient radiators, nor are their emissions cumulative such that they permeate areas in which they are located. The Commission also addressed ARRL's repeated argument that BPL causes preclusive interference over large areas in the *BPL Second Order.* ARRL did not bring any new information or argument to this issue on reconsideration.

11. In requesting reconsideration of the Commission's decision to decline its request for full-time permanent notching of amateur bands in the *BPL Second Order,* ARRL claims that the Commission ignores the ubiquitous nature of amateur radio and such a decision completely fails to prevent interference to mobile stations. It argues that a mobile amateur station should not have to drive outside an entire city or community in order to be able to communicate. The Commission discussed the issue of mobile communications in detail along with the variability of levels in HF communications, stating in part that ''. . . the significant variability in background noise levels limits the reliability of HF signals below 30 MHz such that BPL emissions at . . . [the limit required in the rules] . . . should not generally be considered harmful interference;'' however, ''to take a more conservative approach [the Commission] decided to provide additional protection to mobile stations by increasing the required notch depth from 20 dB to 25 dB.'' ARRL did not bring any new information to this issue on reconsideration.

12. ARRL also states that on December 29, 2010, it submitted a BPL interference complaint jointly to the Commission's Enforcement Bureau (EB) and Office of Engineering and Technology (OET) regarding some BPL systems operated by International Broadband Electric Communications (IBEC), and on February 10, 2011, it submitted a request to OET to set aside the certification grants for the equipment used by these IBEC BPL systems. ARRL argues that because no action has been taken on these complaints, the rules should require permanent notching of amateur frequencies since *post hoc* enforcement of interference issues is not adequate. Over the years, the Commission has investigated and taken action on BPL complaints where it appeared that it was warranted. In the early period of BPL development, before the rules were in place and compliant equipment was in use, some of our investigations took time to complete. After the rules were established in 2004, there were fewer incidences of interference complaints and we have had cooperation from the BPL system operators to resolve them. Before the Commission could take action on ARRL's December 2010 interference complaint and February 2011 request regarding IBEC, IBEC had started the shut-down of all its BPL operations, making investigation of its operations as they related to the complaints moot. This anomalous case cannot be extrapolated to conclude that the Commission does not have the capability and/or readiness to enforce its BPL rules. To the contrary, the Commission has diligently investigated previous complaints about interference from BPL systems.

13. ARRL further disagrees with the Commission's assumption in the *BPL Second Order* that the BPL operator has a strong incentive to voluntarily utilize full notching of the amateur bands in the vicinity of amateur radio operators for interference mitigation unless full-time permanent notching of amateur bands throughout a BPL system is required by the rules. The Commission

reiterates here, to the contrary, that ''[g]iven that identification and resolution of harmful interference can involve expenditures of staff time and resources for Access BPL providers and possibly the temporary disruption of service to their subscribers, these providers have a strong incentive to take *a priori* steps to ensure that they avoid causing interference to the local radio services, including amateurs''. ARRL has not provided a basis for reconsideration of this position. As for ARRL's complaint that IBEC BPL systems in operation in North Carolina, Virginia and Pennsylvania at one time did voluntarily notch amateur bands but stopped doing so, IBEC and other operators were not obligated to notch, or continue to notch, the amateur bands on a full-time, system-wide basis. The Commission does not see a reason to consider the IBEC experience involving a single interference complaint for a system that was ultimately shut down to be a basis for imposing a mandatory notching requirement. In any event, ARRL fails to relate that in the decision which it challenges here we merely noted the likely incentive for BPL operators to notch where that provides the most efficacious approach for dealing with potential interference issues. We clearly did not rely on voluntary, full-time, system-wide notching as a basis for our rules at that time nor do we now.

14. ARRL next contends that the Commission ignored several sources that point to a high probability of interference from Access BPL to existing HF and VHF spectrum users. In accordance with the Court's mandate, the Commission analyzed all relevant information and explained in great detail in the *BPL Second Order* that it is not persuaded by ARRL's technical submissions, including the reports and technical standards referenced in its numerous filings, that our assessment of the interference potential from BPL operations was incorrect or inappropriate, or that modifications to the BPL emissions limits and other technical rules to provide additional protection for the amateur service are warranted. In its instant Petition, ARRL specifically argues that the Commission did not discuss an OFCOM study on In-House BPL in our consideration of Access BPL interference potential. However, that report was not given significant weight in our deliberations because it specifically covers *In-House* BPL, the operating characteristics of which are significantly different from those of Access BPL and therefore render that report not substantively relevant to the issues under consideration in the present proceeding.

15. ARRL repeats its argument that the BPL database contains many errors that undermine the usefulness of the database as a tool for interference mitigation. In the *BPL Second Order* the Commission encouraged the database administrator, the Utilities Telecom Council (UTC) to be diligent in its management of the database and other interested parties to work with UTC in providing information to ensure that the records in the database are accurate and up-to-date, and UTC affirmed that the database has been and is being reviewed periodically to ensure that the information is currently accurate. The Commission also notes that there could be some period of time between the date a BPL operator enters information into the BPL database regarding a near-future deployment and the actual deployment date, which might depend on business conditions, financial obligations, change in business plans, etc. The Commission expressed its expectation that UTC periodically contact its BPL database members to ensure that obsolete information is removed or updated and we have counseled UTC on its obligations. While the Commission expects the BPL database to be maintained to accurately indicate the status of BPL operations, it nonetheless note that an Access BPL system that ceases to operate without updating its database information does not pose an increased potential for unanticipated interference. If any specific cases of BPL operators failing to provide information to the database in a timely fashion as required by § 15.615(a) of the Commission's rules are brought to our attention, the Commission will consider taking enforcement action as appropriate.

16. ARRL next takes issue with the alternative procedure for determining site-specific extrapolation factors for BPL systems adopted in the *BPL Second Order.* ARRL again complains that measurements at four points are inadequate to establish a reliable extrapolation factor. ARRL again repeats its original argument that measurements should be made along the power line for each measurement distance from that line, and that the maximum value at each distance from that line for each frequency be used for the calculation. The Commission reiterates that while it did not adopt ARRL's suggested procedure involving the number of measurement points along the power line, our new method for determining site-specific extrapolation factors follows the IEEE Standard P1775–2010 that requires measurements to be made at *a minimum* of four points; however, depending on the specific installation site, this method could require measuring many more data points in order to establish a straight line with a minimum 0.9 regression coefficient of multiple correlation. This multiple-point requirement and the resultant potentially numerous measurements counter ARRL's repeated concern that having measurements at ''only four points'' is ''woefully inadequate.'' The Commission has analyzed and rejected ARRL's proposal in *the BPL Second Order* in favor of the procedure published in the IEEE Standard P1775–2010, which the Commission also noted was an improvement over current practices, and ARRL makes no new arguments here.

17. ARRL further argues that since the Commission acknowledged in the *BPL Second Order* that there is variability in the attenuation of emissions from BPL systems across individual sites that are not captured by a uniform extrapolation factor, full-time notching of amateur bands is called for. However, this is one of the stated reasons for which the Commission adopted the alternative procedure for determining site-specific extrapolation factors. The Commission noted that the option to use site-specific values can substantially alleviate the measurement concerns associated with the standard extrapolation factor and the variability in attenuation rates that may be observed in the field, and particularly where measurements at a site may plainly not appear to conform to the 40–dB-per-decade standard. The Commission again observes that it has addressed ARRL's concerns with the alternative method for determining site-specific extrapolation factors at length in the *BPL Second Order,* and ARRL makes no new arguments here.

18. ARRL also continues to dispute the Commission's decision to retain the existing 40-dB-per-decade value for the standard distance extrapolation factor for BPL systems. The Commission discussed this issue at length in the *BPL Second Order* and concluded that there is no single ''correct'' value for an extrapolation for RF emissions from power lines due to a multitude of reasons and that there is no basis for changing from the longstanding 40-dB-per-decade standard. However, the Commission notes that by explicitly providing that ''slant-range'' distance is to be used in conjunction with the extrapolation factor when calculating the emission levels, the existing 40-dB-per-decade extrapolation factor produces values that are closer to what ARRL calculates using what it believes to be the correct extrapolation factor (20

dB per decade). Here, ARRL agrees with the Commission that the slant-range method may be a slight improvement over using horizontal distance, but again repeats its previous argument that radiated emission levels above the power lines are stronger than they are at near-ground levels and contends that BPL emission measurements should be made at the level of the power lines, not close to the ground as specified in the BPL Measurement Guidelines because such measurement would not capture the worst-case emissions. It also re-argues that NTIA recommended a 5 dB correction factor to address this deficiency but the Commission chose not to adopt it. The Commission disposed of the issue regarding receive antenna height and correction factor in both the *BPL First Order and BPL Second Order.* ARRL did not bring any new information on reconsideration here.

19. Finally, ARRL contends that there would not be any negative effect on BPL systems if the Commission were to implement full-time notching of amateur radio allocations to notch depths of at least 25 dB and therefore argues that its request would not be burdensome to the BPL industry. The Commission does not believe that it should require all BPL systems to permanently notch specific frequencies at a certain notch depth just because the technology is capable of doing so. As stated in the *BPL Second Order,* to require that BPL systems permanently avoid all the amateur radio frequencies would unnecessarily restrict BPL operations and leave unused valuable Access BPL capacity in areas/locations where no amateur operations are present that could receive interference. ARRL did not bring any new information on reconsideration here.

20. In its opposition to the Petition, Current Group LLC (Current) contends that the ARRL Petition is largely a rehash of previous filings, and that the Commission should find that the Petition has failed to make a *prima facie* case for reconsideration and summarily deny it. Similarly, the Edison Electric Institute and the Utilities Telecom Council (EEI/UTC) argue that as a procedural matter, the ARRL's request for full-time notching of the entire amateur band has been rejected before and may not be raised again in reconsideration of the *BPL Second Order.* The HomePlug Powerline Alliance (HomePlug) also states that ARRL's arguments have already been fully considered by the Commission no less than three times in this proceeding and its Petition should be denied or dismissed pursuant to § 1.106(p)(3) of the Commission rules. As discussed, the Commission largely agrees with these oppositions and denies the petition for reconsideration for the reasons stated.

Ordering Clauses

21. Pursuant to authority contained in contained in sections 4(i), 301, 302, 303(e), 303(f), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302a, 303(e), 303(f), 303(r), 405, and 1.429 of the Commission's rules, 47 CFR Section 1.429, that the Petition for Reconsideration filed by ARRL *is denied.*

22. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Memorandum Opinion and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress

23. The Commission will not send a copy of this Second Memorandum Opinion and Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Commission did not adopt any new rules here.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–12746 Filed 5–28–13; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 10–255 and PS Docket No. 11–153; FCC 13–64]

RIN 3060–AJ60

Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission requires all commercial mobile radio service (CMRS) providers and providers of interconnected text messaging services (*i.e.,* all providers of software applications that enable a consumer to send text messages to all or substantially all text-capable U.S. telephone numbers and receive text messages from the same) to provide an automatic ''bounce-back'' text message where a consumer attempts to send a text message to 911 in a location where text-to-911 is not available. The rules are adopted with the goal of reducing the risk of individuals sending text messages to 911 during an emergency and mistakenly believing that 911 authorities had received it, particularly during the transition to Next Generation 911 (NG911), when text-to-911 will be available in some areas sooner than others and may be supported by certain service providers but not by others.

DATES: This rule is effective June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Timothy May, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Room 7–A727, Washington, DC 20554. Telephone: (202) 418–1463, email: *timothy.may@fcc.gov*.

SUPPLEMENTARY INFORMATION: In this *Report & Order* (*R&O*), FCC 13–64, adopted May 8, 2013, and released May 17, 2013, the Commission requires all CMRS providers and providers of interconnected text messaging services (*i.e.,* all providers of software applications that enable a consumer to send text messages to all or substantially all text-capable U.S. telephone numbers and receive text messages from the same) (collectively, ''covered text providers'') to provide an automatic ''bounce-back'' text message in situations where a consumer attempts to send a text message to 911 in a location where text-to-911 is not available. The rules the Commission adopts will substantially reduce the risk of a person sending a text message to 911 in an emergency and mistakenly believing that 911 authorities have received it. Instead, the text sender will receive an immediate response that text-to-911 is not supported along with direction to use another means to contact emergency services, *e.g.,* place a voice call to 911.

Requiring all covered text providers to implement a bounce-back mechanism is particularly important because while deployment of text-to-911 has begun, the transition is still in the very early stages and will not be uniform. During the transition, text-to-911 will be available in certain geographic areas sooner than it is available in others and may be supported by certain service providers but not by others. At the same time, as text-to-911 becomes more widely available, it is likely to generate increased consumer expectations as to its availability, which makes it increasingly important for consumers to be made aware when it is not available in an emergency.

The Commission finds that it is technically feasible for all covered text providers to provide automatic bounce-

back messages. The record in this proceeding indicates that some service providers already send an automatic bounce-back message to their subscribers when a subscriber attempts to send a text to 911. In addition, the four largest CMRS providers—AT&T, Sprint Nextel, T-Mobile, and Verizon—have voluntarily committed to provide bounce-back messaging capability throughout their networks by June 30, 2013. While the Commission finds that it is technically and economically feasible for all covered text providers to implement this capability quickly, the Commission recognizes that not all providers may be able to do so by the June 30, 2013 date to which the four major carriers are committed. Therefore, the Commission establishes September 30, 2013 as the deadline for all covered text providers to implement the bounce-back capability required by this *R&O.* However, the Commission encourages covered text providers to implement bounce-back message capabilities as soon as possible in order to deal expeditiously with the existing consumer confusion about the availability of text-to-911. Although this new requirement will impose additional costs on some of the covered text providers, the Commission has determined that these costs are small and likely will be far exceeded by the public benefits of substantially reducing the risk of persons sending a text message to 911 in an emergency and mistakenly believing that 911 authorities have received it.

In addition to all CMRS providers, the Commission extends the bounce-back requirements adopted in the *R&O* to all interconnected text messaging providers. The Commission defines interconnected text providers as those providers that enable a consumer to send text messages to all or substantially all text-capable U.S. telephone numbers and receive text messages from the same. Such providers of interconnected text messaging service include providers that enable the transmission of covered messages over their own networks or facilities (*e.g.,* CMRS licensees), as well as third-party or over-the-top (OTT) providers that enable the transmission of covered texts over another providers' network or facilities, including through the use of applications downloaded on mobile phones. For interconnected text applications on the market prior to the adoption of the *R&O,* interconnected text providers must make an update available by the September 30, 2013 implementation date. For future applications not on the market as of the date of the adoption of this *R&O,* interconnected text providers must incorporate a bounce-back message capability into their initial programming.

The Commission affirms that it is extending this provision only to interconnected text message applications as defined in the *R&O,* and not to non-interconnected IP-based messaging applications that support communication with a defined set of users of compatible applications but that do not support general communication with text-capable telephone numbers. Additionally, the Commission clarifies that the rules adopted in the *R&O* do not apply to voice-only service providers.

For clarity, the Commission states that the service must be capable of reaching ''all or substantially all'' text-capable U.S. telephone numbers and removing the reference to mobile numbers, since the North American Numbering Plan does not make distinctions between numbers in the plan. The Commission also affirms that the definition of interconnected text does not extend to text messages that are directed by IP-based messaging applications that support communication with a defined set of users of compatible applications but that do not support general communication with all or substantially all text-capable telephone numbers.

The Commission adopts its proposal with certain modifications to address concerns raised by commenters to the *FNPRM.*[1] In general, the *R&O* requires all covered text providers (*i.e.,* both CMRS providers and interconnected text providers) to provide a bounce-back message when a consumer attempts to send a text message to a PSAP by means of the three-digit short code ''911'' and the covered text provider cannot deliver the text because (1) the consumer is located in an area where text-to-911 is not available, or (2) the covered text provider either does not support text-to-911 generally or does not support it in the particular area at the time of the consumer's attempted text.

The first scenario addresses the situation where the PSAP serving the consumer's geographic area has not yet implemented text-to-911 capability. The Commission includes the second scenario to address instances where a covered text provider does not support text-to-911, even in areas where the PSAP has implemented text-to-911 capability. This is necessary because implementation of text-to-911 by covered text providers will not be uniform across the nation or within any given area. For example, most of the text-to-911 trials and deployments to date have involved PSAPs only receiving texts from a single carrier. In those situations, consumers of other carriers that are not yet supporting the PSAP's trial or deployment will be unable to send text messages to 911 for some period of time. Therefore, the Commission requires these carriers to provide a bounce-back message to consumers—even though the PSAP is making text-to-911 ''available'' in the area.

The Commission also notes that the rule it adopts today requires all covered text providers to implement bounce-back capability even though some providers contend that they cannot and should not be required to support text-to-911. The Commission has not yet decided the issue of whether all covered text providers should be required to support text-to-911 as proposed in the *FNPRM.* That issue remains pending in this proceeding, and the Commission does not prejudge it here. However, regardless of whether all covered text providers are eventually required to support text-to-911, the fact that they provide the ability to text to telephone numbers generally is likely to lead some consumers to assume that they also have text-to-911 capability. This could further lead consumers to put themselves at risk by attempting to send emergency text messages over such applications. The Commission therefore concludes that to prevent consumer confusion and protect life and safety in such situations, the bounce-back requirement should apply to all covered text providers that do not support text-to-911 services.

As proposed in the *FNPRM,* the Commission requires covered text providers to provide bounce-back messages only in those cases where the provider (or the provider's text-to-911 vendor) has direct control over the transmission of the text message.[2] The Commission does not require that a bounce-back be provided in every instance where a confirmation of delivery is not received by the text provider, because this may include circumstances outside the text

[1] In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications Framework for Next Generation 911 Deployment, PS Docket No. 11–153, PS Docket No. 10–255, *Further Notice of Proposed Rulemaking,* 27 FCC Rcd 15659, 78 FR 1799 (2012) (*FNPRM*).

[2] In the case of a preinstalled or downloadable interconnected text application, the Commission defines the application provider as having ''control'' for purposes of the bounce-back requirement. However, if the user or a third party modifies or manipulates the application after it is installed or downloaded so that it no longer supports bounce-back, the provider will be presumed not to have control.

provider's control. However, the Commission agrees that a bounce-back message should be provided when the text provider cannot determine the PSAP to which the text should be routed.

The Commission further clarifies that the obligation of an interconnected text provider with respect to providing an automatic bounce-back message may differ depending on whether the application uses an IP-based network or a CMRS provider's underlying SMS network to deliver text messages to text-capable telephone numbers. Some interconnected text applications use IP-based transmissions to route text messages to a server, which then converts the message to SMS if necessary for delivery to the destination number.[3] In such cases, the interconnected text service provider is responsible for delivering an application-based automatic bounce-back message to consumers if and when text-to-911 is unavailable. Other interconnected text applications are configured to transmit text messages in SMS format directly over the SMS network of the consumer's underlying CMRS provider, which will result in the application user receiving a bounce-back message from the CMRS provider when text-to-911 is not available.[4] In these cases, where the text message defaults to the underlying CMRS provider's network, the interconnected text provider satisfies its consumer notification obligation so long as it does not prevent or inhibit the CMRS provider's automatic bounce-back message from being delivered to the application user.

The Commission also requires covered text providers that are delivering texts to PSAPs that are supporting text-to-911 to provide a mechanism for the PSAP to request temporary suspension of text for any reason, including but not limited to network congestion, call-taker overload, PSAP failure, or security breach.[5] In those circumstances, the covered text provider must provide a bounce-back message to any consumer attempting to send a text to 911 in the area covered by the temporary suspension. Covered text providers must also provide a mechanism to allow PSAPs to resume text-to-911 service after such temporary suspension. The Commission encourages carriers, interconnected text messaging providers and PSAPs to establish standard protocols and interfaces for triggering these mechanisms. The Commission also emphasizes that the bounce-back requirement will only apply where the PSAP requests the temporary shutdown using a notification mechanism established by the provider or the provider's vendor for this purpose. The Commission encourages PSAPs and covered text providers to work together when establishing temporary shutdown mechanisms, so that both PSAPs and providers are clearly apprised of their respective roles and have established procedures in place for establishing such temporary shutdowns.

For the reasons of public safety and public awareness cited above, the Commission does not find it appropriate to adopt any form of blanket exemption of the September 30, 2013 requirement for CMRS providers and interconnected text messaging providers that believe they will not be able to meet the deadline. Any covered providers who are unable to implement the bounce-back requirement by September 30, 2013 should file a request for waiver. Waivers or exemptions from these requirements are best suited to a case-by-case analysis under the waiver standard, where the facts and circumstances of each individual case can be determined on its own merits.[6] Notwithstanding the availability of the waiver process, we emphasize the important public safety purpose of this requirement and our expectation that providers will implement bounce-back messaging by the deadline.

The Commission requires all covered text providers to provide an automatic bounce-back message that includes, at a minimum, two essential points of information: (1) That text-to-911 is not available; and (2) that the consumer should try to contact 911 using another means. As an example, a sufficient bounce-back message that satisfies these criteria could say: *There is no text-to-911 service available. Make a voice call to 911 or use another means to contact emergency services.* The Commission declines to require covered text providers to use specific wording.[7] The Commission believes its approach affords covered text providers with the necessary guidance and flexibility to create bounce-back messages that are understood by their particular consumer base. In addition, the approach enables covered text providers to continue to use the messages they presently have in operation, to the extent that they conform to these criteria.[8] This approach also provides sufficient uniformity in automatic bounce-back messages to allow for consistent training and public education materials.

Additionally, the Commission requires all CMRS providers to provide an automatic bounce-back message when a consumer roaming on a network initiates a text-to-911 in an area where text-to-911 service is not available. Consumers roaming on other carriers' networks have an expectation that they can access 911 services in an emergency. Given the important safety of life implications, carriers should make automatic bounce-back messages available to consumers roaming on their network to the same extent they provide such messages to their own subscribers.

The Commission recognizes that certain legacy devices are not capable of sending text messages to a three-digit short code. For those devices that are not capable of generating messages to 911 and whose text messaging software cannot be upgraded over the air (*e.g.,* through a push software upgrade), the CMRS provider will never receive a message and thus cannot generate a bounce-back message.[9] The Commission clarifies that legacy devices that are incapable of sending texts via three digit short codes are not subject to the bounce-back message requirement,

[3] For example, TextMe (go-text.me/) and Heywire (*www.heywire.com*).

[4] For example, Apple Messages (*www.apple.com/ios/messages/*).

[5] *See, e.g., FNPRM,* 27 FCC Rcd at 15670 para., 32 & n.70 (proposing and seeking comment on whether an automatic bounce-back notification should be provided when, *inter alia,* a PSAP is unable to accept texts to 911, including circumstances where the PSAP may not be able to handle all incoming text messages, and discussing the temporary blocking of messages and sending of return bounce-back messages).

[6] The Commission may, on its own motion, waive its rules for good cause shown. 47 CFR 1.3. *See also Northeast Cellular Telephone Co., L.P.* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990) (''FCC has authority to waive its rules if there is 'good cause' to do so.''). The Commission may also exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest, and grant of a waiver would not undermine the policy served by the rule. *See WAIT Radio* v. *FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd,* 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied,* 409 U.S. 1027 (1972).

[7] The Commission notes that its action does not preclude the voluntary adoption of a common automatic bounce-back message by covered text providers, developed by industry in coordination with public safety, consumer groups, disability rights advocates, and other interested parties. The Commission encourages close and continued coordination among all relevant parties to ensure the successful implementation of the automatic bounce-back message requirement.

[8] Examples of current bounce-back messages that would satisfy our criteria include those offered by Heywire (''Heywire does not support Enhanced 911. If you are in need of emergency services, please dial 911 on your landline or mobile phone'') and Verizon (''Please make a voice call to 911. There is no text service to 911 available at this time'').

[9] *See* Motorola Mobility Comments at 2–3 (arguing that the proposed bounce-back message requirement would not help customers who may be located in an area where text-to-911 is supported but who are using a device that is not technically capable of sending a three digit short code).

provided the software for these devices cannot be upgraded over the air to allow text-to-911. In such cases, the messaging application or interface on the mobile device will likely provide an error message indicating an invalid destination number, reducing user confusion somewhat even if the message is less specific than the bounce-back message. If the text messaging software can be upgraded, however, the Commission treats such devices in the same manner as the software offered by interconnected text providers.

The Commission clarifies that CMRS providers are not required to provide an automatic bounce-back message when a consumer attempts to text 911 on a non-service initialized phone. Deliberations of the EAAC have affirmed that the text capability of non-service initialized handsets is neither technically nor economically feasible.[10] At the same time, the Commission notes that some providers may provide text messaging solutions that allow users to send text messages even on NSI phones (*e.g.,* Wi-Fi-enabled text applications). The Commission clarifies that those text providers must still provide bounce-back messaging consistent with the rules we adopt today.

Finally, the Commission declines to require covered text providers to provide consumers with text-to-911 testing capability at this time. Until operational experience indicates otherwise, the Commission believes that consumer education efforts should discourage the sending of texts to 911 except in actual emergencies.

The Commission has already committed the Public Safety and Homeland Security Bureau (PSHSB) and the Consumer and the Consumer and Governmental Affairs Bureau (CGB) to implement a comprehensive consumer education program concerning text-to-911, and to coordinate their efforts with state and local 911 authorities, other federal and state agencies, public safety organizations, industry, disability organizations, and consumer groups. The Commission directs PSHSB and CGB to put in place a consumer information Web site that provides the public with information and instructions on how and when to use text-to-911 no later than June 30, 2013.

The *R&O* is available at *http://www.fcc.gov/document/text-911-bounce-back-message-order.*

[10] *See, e.g., Report of Emergency Access Advisory Committee (EAAC) Subcommittee 1 on Interim Text Messaging to 9–1–1,* March 1, 2013 at 9.

Procedural Matters

Paperwork Reduction Act

The *R&O* does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. Therefore, it does not contain any new or modified 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.

Congressional Review Act

The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[11] the Commission has prepared this present Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *R&O.* The Commission will send a copy of this *R&O,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[12] In addition, the *R&O* and FRFA (or summaries thereof) will be published in the **Federal Register**.[13]

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

In this *Report & Order* (*R&O*), the Commission requires all CMRS providers and providers of interconnected text messaging services (*i.e.,* all providers of software applications that enable a consumer to send text messages to all or substantially all text-capable U.S. telephone numbers and receive text messages from the same) to provide an automatic ''bounce-back'' text message in situations where a consumer attempts to send a text message to 911 in a location where text-to-911 is not available. The rules the Commission adopts in *R&O* will substantially reduce the risk of a person sending a text message to 911 in an emergency and mistakenly believing that 911 authorities have received it. Instead, the text sender will receive an immediate response that text-to-911 is not supported along with direction to use another means to contact emergency services.

Requiring all CMRS providers and interconnected text providers to implement a bounce-back mechanism is particularly important because while deployment of text-to-911 has begun, the transition is still in the very early stages and will not be uniform. During the transition, text-to-911 will be available in certain geographic areas sooner than it is available in others and may be supported by certain service providers but not by others. At the same time, as text-to-911 becomes more widely available, it is likely to generate increased consumer expectations as to its availability, which makes it increasingly important for consumers to be made aware when it is *not* available in an emergency.

The record in this proceeding indicates that some service providers already send an automatic bounce-back message to their subscribers when a subscriber attempts to send a text to 911. In addition, the four largest CMRS providers—AT&T, Sprint Nextel, T-Mobile, and Verizon—have voluntarily committed to provide bounce-back messaging capability throughout their networks by June 30, 2013. In this *R&O,* the Commission builds on this voluntary commitment and concludes that all CMRS providers and interconnected text providers (collectively, ''covered text providers'') should be required to provide this capability. The Commission further specifies the circumstances under which a bounce-back message must be provided and the information that the message must contain. Finally, while the Commission finds it is technically and economically feasible for all covered text providers to implement this capability quickly, the Commission recognizes that not all providers may be able to do so by the June 30, 2013 date to which the four major carriers are committed. Therefore, the Commission establishes September 30, 2013 as the deadline for all covered text providers to implement the bounce-back capability required by this *R&O.* However, the Commission encourages covered text providers to implement bounce-back message capabilities as soon as possible in order to deal expeditiously with the existing consumer confusion about the availability of text-to-911. Although this new requirement will impose additional costs on some of the covered text providers, the Commission has determined that these costs likely will be far exceeded by the public benefits of substantially reducing the risk of persons sending a text message to 911

[11] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C.. 601 *et. seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[12] *See* 5 U.S.C. 603(a).

[13] *See id.*

in an emergency and mistakenly believing that 911 authorities have received it.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No commenter raised issues in response to the bounce-back portion of the IRFA included in the *FNPRM.* The Commission concludes that the proposed mandates here provide covered text providers and Public Safety Answering Points (PSAPs) with a sufficient measure of flexibility to account for technical and cost-related concerns. In the event that small entities face unique circumstances that restrict their ability to comply with the Commission's rules, the Commission can address them through the waiver process. The Commission has determined that implementing bounce-back messages is technically feasible and the cost of implementation is small.

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

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 rules adopted, herein.[14] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [15] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[16] 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.[17] Below, the Commission describes and estimates the number of small entity licensees that may be affected by the adopted rules of this *R&O.*

Small Businesses, Small Organizations, and Small Governmental Jurisdictions. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.[18] Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [19] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[20] Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[21] Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.[22] The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.''[23] Thus, the Commission estimates that most governmental jurisdictions are small.

1. Wireless Telecommunications Service Providers

Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

Wireless Telecommunications Carriers (except satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.[24] 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.[25] Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our actions.[26]

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.[27] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[28] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[29] Consequently, the Commission estimates that most providers of incumbent local exchange service are

[14] 5 U.S.C. 603(b)(3).

[15] 5 U.S.C. 601(6).

[16] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[17] 15 U.S.C. 632.

[18] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *available at http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (last visited Dec. 11, 2012).

[19] 5 U.S.C. 601(4).

[20] INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

[21] 5 U.S.C. 601(5).

[22] U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

[23] The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011—U.S. Census Bureau, available at *http://www.census.gov/popest/data/cities/totals/2011/index.html.* If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

[24] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search.*

[25] 13 CFR 121.201, NAICS code 517110.

[26] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[27] *See* 13 CFR 121.201, NAICS code 517110.

[28] *See* Federal Communications Commission, *Trends in Telephone Service* (Sep. 2010) at Table 5.3, *available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf* (*last accessed* Apr. 25, 2013).

[29] *See id.*

small businesses that may be affected by rules adopted pursuant to the NPRM.

The Commission has 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.'' [30] 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.[31] The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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.[32] 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.[33] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[34] 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.[35] In addition, 72 carriers have reported that they are Other Local Service Providers.[36] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[37] 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 NPRM.

Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[38] For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[39] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[40] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.[41] On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.[42] Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.[43] Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.[44] On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.[45] Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.[46] On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.[47] Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.[48]

Narrowband Personal Communications Services. To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.*[49] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross

[30] 5 U.S.C. 601(3).

[31] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a); *see also* 5 U.S.C. 601(3). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[32] *See* 13 CFR 121.201, NAICS code 517110.

[33] *See Trends in Telephone Service* at Table 5.3.

[34] *See id.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*; *Amendment of the Commission's Cellular/PCS Cross-Ownership Rule*; WT Docket No. 96–59, GN Docket No. 90–314, Report and Order, 11 FCC Rcd 7824, 7850–52, paras. 57–60 (1996) (''*PCS Report and Order*''); *see also* 47 CFR 24.720(b).

[39] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[40] *See Alvarez Letter* 1998.

[41] *See Broadband PCS, D, E and F Block Auction Closes,* Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

[42] *See C, D, E, and F Block Broadband PCS Auction Closes,* Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees,* WT Docket No. 97–82, *Fourth Report and Order,* 13 FCC Rcd 15743, 15768, para. 46 (1998).

[43] *See C and F Block Broadband PCS Auction Closes*; *Winning Bidders Announced,* Public Notice, 16 FCC Rcd 2339 (2001).

[44] *See Broadband PCS Spectrum Auction Closes*; *Winning Bidders Announced for Auction No. 58,* Public Notice, 20 FCC Rcd 3703 (2005).

[45] *See Auction of Broadband PCS Spectrum Licenses Closes*; *Winning Bidders Announced for Auction No. 71,* Public Notice, 22 FCC Rcd 9247 (2007).

[46] *Id.*

[47] *See Auction of AWS–1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78,* Public Notice, 23 FCC Rcd 12749 (WTB 2008).

[48] *Id.*

[49] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS,* GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[50]

Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, the Commission uses the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[51] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[52] The SBA has approved these definitions.[53] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[54] For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[55] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[56] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[57] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[58] The SBA has approved these small size standards.[59] Auctions of Phase II licenses commenced on and closed in 1998.[60] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[61] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[62] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[63] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses.[64] Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years (''small business'') received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $3 million for the preceding three years received a 35 percent discount on its winning bid (''very small business''). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.[65] In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that

[50] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[51] NAICS Code 51210.

[52] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), *Report and Order,* 12 FCC Rcd 10785, 10879 para. 194 (1997).

[53] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[54] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[55] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

[56] Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order,* 12 FCC Rcd 10943, 11068–70 paras. 291–295 (1997).

[57] *Id.* at 11068 para. 291.

[58] *Id.*

[59] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998 (*Alvarez to Phythyon Letter 1998*).

[60] *See generally* ''220 MHz Service Auction Closes,'' Public Notice, 14 FCC Rcd 605 (WTB 1998).

[61] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice,* 14 FCC Rcd 1085 (WTB 1999).

[62] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' Public Notice, 14 FCC Rcd 11218 (WTB 1999).

[63] *See* ''Multi-Radio Service Auction Closes,'' Public Notice, 17 FCC Rcd 1446 (WTB 2002).

[64] *See* ''Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *Public Notice,* 22 FCC Rcd 3404 (2007).

[65] *See* ''Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, Public Notice, 22 FCC Rcd 11573 (2007).

identified themselves as a small business won 5 of the 76 licenses won.

Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[66] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[67] According to Trends in Telephone Service data, 413 carriers reported that they were engaged in wireless telephony.[68] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[69] Therefore, more than half of these entities can be considered small.

Satellite Telecommunications Providers. Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[70] The second has a size standard of $25 million or less in annual receipts.[71]

The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing 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.'' [72] Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year.[73] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[74] Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

The second category, *i.e.,* ''All Other Telecommunications,'' comprises ''establishments 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.'' [75] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[76] Of this total, 2,346 firms had annual receipts of under $25 million and 37 firms had annual receipts of $25 million to $49, 999,999.[77] Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

2. Equipment Manufacturers

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [78] The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees.[79] According to Census Bureau data for 2010, there were a total of 810 establishments in this category that operated for the entire year.[80] Of this total, 787 had employment of fewer than 500, and an additional 23 had employment of 500 to 999.[81] Thus, under this size standard, the majority of firms can be considered small.

Semiconductor and Related Device Manufacturing. These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees' storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' [82] According to data from the 2007 U.S. Census, in 2007, there were 954 establishments engaged in this business. Of these, 545 had from 1 to 19 employees; 219 had from 20 to 99 employees; and 190 had 100 or more employees.[83] Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

3. Information Service and Software Providers

Software Publishers. Since 2007 these services have been defined within the broad economic census category of Custom Computer Programming Services; that category is defined as establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer. The SBA has developed a small business size standard for this category, which is annual gross receipts of $25 million or less. According to data from the 2007 U.S. Census, there were 41,571 establishments engaged in this business in 2007. Of these, 40,149 had annual gross receipts of less than $10,000,000. Another 1,422 establishments had gross receipts of $10,000,000 or more. Based on this data, the Commission concludes

[66] 13 CFR 121.201, NAICS code 517210.

[67] *Id.*

[68] Trends in Telephone Service at Table 5.3.

[69] *Id.*

[70] 13 CFR 121.201, NAICS code 517410.

[71] 13 CFR 121.201, NAICS code 517919.

[72] U.S. Census Bureau, 2007 NAICS Definitions, ''517410 Satellite Telecommunications.''

[73] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[74] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[75] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search.*

[76] *U.S. Censhttp://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[77] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[78] U.S. Census Bureau, 2007 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/naics/2007/def/ND334220.HTM#N334220.*

[79] 13 CFR 121.201, NAICS code 334220.

[80] U.S. Census Bureau, American FactFinder, 2010 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released June 26, 2012); *http://factfinder.census.gov.* The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses.

[81] *Id.* Eighteen establishments had employment of 1,000 or more.

[82] U.S. Census Bureau, 2007 Economic Census, Industry Series: Manufacturing, ''Semiconductor and Related Device Manufacturing, '' NAICS code 334413.

[83] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=300&-ds_name=EC0731I1&-_lang=en.*

that the majority of the businesses engaged in this industry are small.

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.'' [84] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.[85] According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year.[86] Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more.[87] 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.[88] Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more.[89] Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the *R&O.*

Internet Publishing and Broadcasting and Web Search Portals. The Commission's action may pertain to interconnected Voice over Internet Protocol (VoIP) services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' [90] The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees.[91] According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year.[92] Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more.[93] Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the *R&O.*

All Other Information Services. The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' [94] The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts.[95] According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year.[96] Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999.[97] Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

All Other Telecommunications. The Census Bureau defines this industry as including ''establishments 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.'' [98] The SBA has developed a small business size standard for this category; that size standard is $30.0 million or less in average annual receipts.[99] According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year.[100] Of these, 2,305 establishments had annual receipts of under $10 million and 84 establishments had annual receipts of $10 million or more.[101] Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

In the *R&O,* the Commission amends its part 20 rules to require CMRS providers and certain interconnected text providers to implement ''bounce-back'' messages when a consumer attempts to text 911 in an area where text-to-911 is unavailable. Specifically, the rules apply to all CMRS providers as well as all providers of interconnected text messaging services that enable

[84] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers'' (partial definition), *available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007%20NAICS%20Search* (last visited Mar. 27, 2013).

[85] 13 CFR 121.201, NAICS code 517110.

[86] U.S. Census Bureau, 2007 Economic Census, Information: Subject Series—Estab and Firm Size: Table 5, ''Employment Size of Firms for the United States: 2007, NAICS Code 517110'' (issued Nov. 2010).

[87] *See id.*

[88] U.S. Census Bureau, 2007 Economic Census, Information: Subject Series—Estab and Firm Size: Table 5, ''Employment Size of Firms for the United States: 2007, NAICS Code 5171103'' (issued Nov. 2010).

[89] *See id.*

[90] U.S. Census Bureau, ''2007 NAICS Definitions: 519130 Internet Publishing and Broadcasting and Web Search Portals,'' *available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519130&search=2007%20NAICS%20Search* (last visited Mar. 27, 2013).

[91] *See* 13 CFR 121.201, NAICS code 519130.

[92] U.S. Census Bureau, 2007 Economic Census, Information: Subject Series—Estab and Firm Size: Table 5, ''Employment Size of Firms for the United States: 2007, NAICS Code 519130'' (issued Nov. 2010).

[93] *Id.*

[94] U.S. Census Bureau, ''2007 NAICS Definitions: 519190 All Other Information Services'', *available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=519190&search=2007%20NAICS%20Search* (last visited Mar. 27, 2013).

[95] *See* 13 CFR 121.201, NAICS code 519190.

[96] U.S. Census Bureau, 2007 Economic Census, Information: Subject Series—Estab and Firm Size: Table 5, ''Employment Size of Firms for the United States: 2007, NAICS Code 519190'' (issued Nov. 2010).

[97] U.S. Census Bureau, 2007 Economic Census, Information: Subject Series—Estab and Firm Size: Table 4, ''Receipts Size of Firms for the United States: 2007, NAICS Code 519190'' (issued Nov. 2010).

[98] U.S. Census Bureau, ''2007 NAICS Definitions: 517919 All Other Telecommunications,'' *available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search* (last visited Mar. 27, 2013).

[99] *See* 13 CFR 121.201, NAICS code 517919.

[100] U.S. Census Bureau, 2007 Economic Census, Information: Subject Series—Estab and Firm Size: Table 4, ''Receipts Size of Firms for the United States: 2007, NAICS Code 517919'' (issued Nov. 2010).

[101] *See id.*

consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones. The rules also require covered text providers that are delivering texts to PSAPs that are supporting text-to-911 to provide a mechanism for the PSAP to request temporary suspension of text for any reason, including but not limited to network congestion, call-taker overload, PSAP failure, or security breach. In those circumstances, the covered text provider must provide a bounce-back message to any consumer attempting to send a text to 911 in the area covered by the temporary suspension. Covered text providers must also provide a mechanism to allow PSAPs to resume text-to-911 service after such temporary suspension.

The projected compliance requirements resulting from the *R&O* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context is necessary to alleviate potential consumer confusion from adopting different rules for different providers. As the nation transitions to full text-to-911, it is critical that all consumers, including consumers of services offered by small entities, be made aware of the limitations of text-to-911 in their area. The Commission believes, and the record in this proceeding confirms, that the costs and/or administrative burdens associated with the rules will not unduly burden small entities.

Compliance costs for the new rule will be small, requiring only minor coding and/or server changes. Based on the record, CMRS providers and interconnected text providers have agreed that these changes are technically and financially feasible, with small costs to the covered provider. Additionally, the Commission provides an example of language that covered providers may use to satisfy the bounce-back requirement, further reducing potential administrative, legal and technical costs of compliance.

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

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 or reporting requirements under the rule for 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 small entities. ''[102]

Based on the Commission's review of the record, the Commission finds that it is practicable for all CMRS providers, including small providers, to implement a bounce-back notification without incurring unduly burdensome costs. The record also reflects that it would not be unduly burdensome for covered text providers to implement bounce-back capability.[103] The record in this proceeding indicates that some service providers, including small or rural providers,[104] as well as covered text providers,[105] already send an automatic bounce-back message to their subscribers when a subscriber attempts to send a text to 911. The *R&O* recognizes the technical and operational issues that must be addressed before imposing a specific notification requirement, and allows time for implementation of a standardized message.

In considering the record received in response to the *FNPRM,* the Commission examined alternatives to ease the burden on small and rural covered text providers. These alternatives included extending the implementation deadline, or exempting small and rural covered text providers. However, the record in this proceeding indicates that the technical and financial costs for implementing bounce-back messages are small. Many small carriers have argued that they can meet the requirements imposed in this *R&O* on a faster timeline than the one established in the rules. For example, the Competitive Carriers Association (CCA), which represents many small and rural CMRS providers, states that, ''. . . based on recent business developments cultivated by CCA and its members, most CCA carrier members will now be able to implement a bounce-back message by June 30, 2013. ''[106] Nonetheless, in order to further ease the burden on small and rural covered providers, the rules the Commission adopts in the *R&O* extend the deadline proposed in the *Further Notice of Proposed Rulemaking* from June 30, 2013 to September 30, 2013. Additionally, the rules adopted in the *R&O* allow for certain limited exemptions in cases where it is technologically infeasible to implement a bounce-back message (*e.g.,* for certain handsets that are incapable of doing so).

Further, the *R&O* contains a detailed Cost-Benefit Analysis which finds that the life-saving public safety benefits of imposing a bounce-back requirement on covered text providers far outweigh the costs of such a rule.

Finally, in the event that small entities face unique circumstances with respect to these rules, such entities may request waiver relief from the Commission. Accordingly, the Commission finds that it has discharged its duty to consider the burdens imposed on small entities.

E. Legal Basis

The legal basis for any action that may be taken pursuant to this *R&O* is contained in Sections 1, 4(i), 301, 303(b), 303(r), 307, 309, 316, 319, 324, 332, 333, 615a, 615a–1, and 615b of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303(b), 303(r), 307, 309, 316, 319, 324, 332, 333, 615a, 615a–1, 615b, and 47 U.S.C. 615c.

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

None.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE SERVICES

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: 47 U.S.C. Sections 151, 154, 160, 201, 251–254, 301, 303, 303(b), 303(r), 307, 309, 316, 319, 324, 332, 333, 615a, 615a–1, 615b, and 615c unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

■ 2. Section 20.18 is amended by adding paragraph (n) to read as follows:

[102] 5 U.S.C. 603(c)(1)–(c)(4).

[103] *See, e.g.,* Letter from Rebecca Murphy Thompson, General Counsel, to Marlene H. Dortch, Secretary, Federal Communications Commission, in PS Docket No. 11–153 and PS Docket No. 10–255, March 25, 2013 (CCA Ex Parte); Proximiti Comments at 1.

[104] For example, SouthernLINC.

[105] For example, textPlus and Heywire.

[106] CCA *Ex Parte* at 1.

§ 20.18 911 Service.

* * * * *

(n) *Text-to-911 Requirements.* (1) *Covered Text Provider:* Notwithstanding any other provisions in this section, for purposes of this paragraph (n) of this section, a ''covered text provider'' includes all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones.

(2) *Automatic Bounce-back Message:* an automatic text message delivered to a consumer by a covered text provider in response to the consumer's attempt to send a text message to 911 when the consumer is located in an area where text-to-911 service is unavailable or the covered text provider does not support text-to-911 service generally or in the area where the consumer is located at the time.

(3) No later than September 30, 2013, all covered text providers shall provide an automatic bounce-back message under the following circumstances:

(i) A consumer attempts to send a text message to a Public Safety Answering Point (PSAP) by means of the three-digit short code ''911''; and

(ii) The covered text provider cannot deliver the text because the consumer is located in an area where:

(A) Text-to-911 service is unavailable; or

(B) The covered text provider does not support text-to-911 service at the time.

(4)(i) A covered text provider is not required to provide an automatic bounce-back message when:

(A) Transmission of the text message is not controlled by the provider;

(B) A consumer is attempting to text 911, through a text messaging application that requires CMRS service, from a non-service initialized handset;

(C) When the text-to-911 message cannot be delivered to a PSAP due to failure in the PSAP network that has not been reported to the provider; or

(D) A consumer is attempting to text 911 through a device that is incapable of sending texts via three digit short codes, provided the software for the device cannot be upgraded over the air to allow text-to-911.

(ii) The provider of a preinstalled or downloadable interconnected text application is considered to have ''control'' over transmission of text messages for purposes of paragraph (n)(4)(i)(A) of this section. However, if a user or a third party modifies or manipulates the application after it is installed or downloaded so that it no longer supports bounce-back messaging, the application provider will be presumed not to have control.

(5) The automatic bounce-back message shall, at a minimum, inform the consumer that text-to-911 service is not available and advise the consumer or texting program user to use another means to contact emergency services.

(6) Covered text providers that support text-to-911 must provide a mechanism to allow PSAPs that accept text-to-911 to request temporary suspension of text-to-911 service for any reason, including, but not limited to, network congestion, call taker overload, PSAP failure, or security breach, and to request resumption of text-to-911 service after such temporary suspension. During any period of suspension of text-to-911 service, the covered text provider must provide an automatic bounce-back message to any consumer attempting to text to 911 in the area subject to the temporary suspension.

(7) A CMRS provider subject to § 20.12 shall provide an automatic bounce-back message to any consumer roaming on its network who sends a text message to 911 when

(i) The consumer is located in an area where text-to-911 service is unavailable, or

(ii) The CMRS provider does not support text-to-911 service at the time.

(8) A software application provider that transmits text messages directly into the SMS network of the consumer's underlying CMRS provider satisfies the obligations of paragraph (n)(3) of this section provided it does not prevent or inhibit delivery of the CMRS provider's automatic bounce-back message to the consumer.

[FR Doc. 2013–12748 Filed 5–28–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130212129–3474–02]

RIN 0648–BC98

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule revises the commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2013 fishing year and announces the quota closure dates in the exclusive economic zone (EEZ) off each Gulf state for the 2013 red snapper recreational fishing season. This final rule is intended to help achieve optimum yield for the Gulf red snapper resource without increasing the risk of red snapper experiencing overfishing.

DATES: This rule is effective May 29, 2013.

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Cynthia.Meyer@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 4, 2013, NMFS published a proposed rule for the framework action and requested public comment (78 FR 20292). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Through this final rule, NMFS sets the 2013 commercial quota at 4.315 million lb (1.957 million kg), round weight, and the 2013 recreational quota at 4.145 million lb (1.880 million kg), round weight. NMFS also sets the 2013 red snapper recreational fishing season for Gulf Federal waters through this final rule.

Under 50 CFR 622.34(b), the red snapper recreational fishing season opens each year on June 1 and closes when the recreational quota is projected to be reached. The bag limit for red snapper in Gulf exclusive economic

zone (EEZ) is 2 fish, as specified in 50 CFR 622.38(b)(3). On March 25, 2013, NMFS implemented an emergency rule to authorize NMFS to set the closure date of the red snapper recreational fishing season in the EEZ off individual states (78 FR 17882). The closure dates off each Gulf state in that emergency rule were based on the recreational quota revision contained in this final rule and any state's inconsistent regulations. For 2013, Texas established a year-round season with a 4-fish bag limit, Louisiana established an 88-day season with a 3-fish bag limit, and Florida established a 44-day season with a 2-fish bag limit. Mississippi and Alabama did not implement inconsistent regulations in their state waters.

On May 7, 2013, the NMFS Southeast Fisheries Science Center provided the NMFS Southeast Regional Office with updated landings data for monitoring quotas and annual catch limits using data from the Marine Recreational Information Program (MRIP). These landings data included 2012 landings converted from the Marine Recreational Fisheries Statistics Survey Program (MRFSS) to MRIP. Prior to May 7, 2013, these data were not available for use in NMFS Southeast Regional Office's calculations, so MRFSS landings data were used to calculate the season lengths identified in the proposed rule. Because the new data are now available, NMFS re-calculated the projected 2013 red snapper recreational season lengths off each Gulf state using the 2012 landings data from MRIP instead of from MRFSS.

NMFS now uses MRIP to monitor landings and is considered to be the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act. National Standard 2 states that ''conservation and management measures shall be based upon the best scientific information available.'' MRIP has slowly been integrated into NMFS's recreational data monitoring program and has now replaced MRFSS completely.

In addition to using MRIP data, new information from Louisiana and Texas was used to calculate the red snapper recreational season closure dates. Louisiana provided in-season catch estimates from their quota monitoring program and Texas provided final landings for 2012. The previous closure estimates were based on projected Texas landings for 2012. This re-calculation of the red snapper recreational seasons results in additional fishing days for all 5 Gulf States compared to the tentative red snapper recreational seasons previously discussed in the proposed rule. Based on the regulations established by Texas, Louisiana, and Florida; landings data from MRIP; the new information provided by Louisiana and Texas; and the recreational quota being set by this rulemaking, the closure dates for the EEZ off each state, effective at 12:01 a.m., local time, are set as follows: Texas, June 18, 2013; Louisiana, June 25, 2013; Mississippi, July 5, 2013; Alabama, July 5, 2013; and Florida, June 27, 2013.

To determine these closure dates, NMFS analyzed the catch rates for each state. The method for calculating these dates can be found in SERO–LAPP–2013–02 at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/red_snapper/documents/pdfs/2013_red_snapper_emergency_regs.pdf.* The amount each state's Federal season is shortened is contingent on estimates of landings when the Federal season is closed. The more a state exceeds its apportionment of the annual recreational quota, the more the Federal recreational season must be reduced in the Federal waters off that state to compensate for the overage. NMFS estimates catch rates on the order of 1.5 to 3 times greater than the current state water catch rates due to factors such as increasing catch rates and fish size, higher bag limits, weekend fishing, peak season fishing, increases in stock abundance, potentially significant levels of deliberate or accidental non-compliance by constituents with state/Federal boundaries during incompatible regulatory periods, and the fact that some for-hire vessels are not federally permitted and contribute to landings when the Federal season is closed. For the season projections, NMFS used 2 times the catch rate because using 1.5 times the catch rate would potentially be an underestimate and using 3 times the catch rate could be too conservative.

Comments and Responses

During the comment period, NMFS received 43 comments, including 36 from private citizens, 2 from recreational fishing organizations, 3 from a commercial fishing organization and 2 from environmental groups. Comments pertinent to the rule unanimously supported increasing the red snapper quota and did not raise any additional issues within the scope of this rulemaking. NMFS agrees with the commenters that the quota increases are appropriate actions, and are in accordance with the red snapper rebuilding plan.

Many of these same commenters provided additional observations and suggestions for alternative strategies to manage the recreational red snapper harvest, including changes to the bag limit and size limits, slot limits, alternative seasons, regional management, separate allocations for private anglers and the for-hire fleet, and reallocation of the quotas between the recreational and commercial sector. The Council has considered many of the suggested options in the past, and continues to consider alternative management options for the recreational harvest of red snapper. NMFS agrees that alternative recreational management strategies may prove to be viable options for the management of red snapper in the future; however, these comments and suggestions are beyond the scope of this rulemaking to increase the commercial and recreational quotas for red snapper for the 2013 fishing year, and thus will not be further addressed in this rule.

Changes From the Proposed Rule

On April 17, 2013, NMFS published in the **Federal Register** an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format into the regulatory text. Therefore, the commercial and recreational quotas for red snapper previously located in the regulatory text at § 622.42(a)(1)(i) and (a)(2)(i), respectively, are now located at § 622.39(a)(1)(i) and (a)(2)(i), respectively.

Classification

The Regional Administrator, Southeast Region, NMFS determined that this final rule and the framework action are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

This final 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a

result, a regulatory flexibility analysis was not required and none was prepared.

The NOAA Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of the management measures contained in this final rule. A 30-day delay in effectiveness of the final rule is impracticable because the recreational fishing season for red snapper begins on June 1, and therefore, there is not enough time for NMFS to provide both notice and comment on the proposed rule and a 30-day delay in effectiveness on the final rule, before the season starts. This final rule implements increased commercial and recreational quotas for Gulf red snapper based on the increase in the acceptable biological catch (ABC) from 8.08 million lb (3.67 million kg) to 8.46 million lb (3.83 million kg), round weight, as recommended by the Council's Science and Statistical Committee (SSC). The SSC met in November 2012 to review new scientific information and recommended an increased ABC for 2013. At its February 2013 Council meeting, the Council voted to implement commercial and recreational quota increases in 2013 based on the ABC recommended by the SSC. Increased quotas will allow additional harvest of red snapper and will provide the opportunity for the fishery to achieve optimum yield. Additionally, NMFS received new scientific information on May 7, 2013, to use to update and extend the red snapper recreational seasons. The new data included 2012 landings converted from MRFSS to MRIP. Prior to May 7, 2013, these data were not available, so MRFSS landings data were used to calculate the season lengths identified in the proposed rule. Because the new data are now available, NMFS re-calculated the projected 2013 red snapper recreational season lengths off each Gulf state using the 2012 landings data from MRIP instead of from MRFSS, which is the best scientific information now available. Because the recreational fishing season begins on June 1, there isn't enough time for NMFS to provide both notice and comment on the proposed rule and a 30-day delay in effectiveness on the final rule. Therefore, NMFS provided the opportunity for notice and comment on the proposed rule, but is waiving the 30-day delay in effectiveness on this final rule.

In addition, a 30-day delay in effectiveness of this final rule would be contrary to the public interest. If this rule is not effective immediately, and the recreational fishing season closure dates cannot be implemented immediately, the recreational ACL could be exceeded and overfishing of the red snapper resource could occur. The recreational closure date off Texas has been set for 12:01 a.m., local time, June 18, 2013; the recreational closure date off Louisiana has been set for 12:01 a.m., local time, June 25, 2013; and the recreational closure date off Florida has been set for 12:01 a.m., local time, June 27, 2013. If this rule were effective 30 days after publication, these closure dates could not be implemented and recreational fishing off these states would continue to occur. Additional fishing off these states could lead to the recreational ACL being exceeded which could lead to an overfishing situation. This would be in violation of National Standard 1 of the Magnuson-Stevens Act. National Standard 1 states that ''management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery . . .'' The red snapper stock is still overfished and under a rebuilding plan through 2032. The next SEDAR benchmark stock assessment is currently undergoing. To keep red snapper on the rebuilding plan and prevent overfishing from occurring, this rule needs to take effect immediately.

For these reasons, the AA waives the 30-day delay in effectiveness of this final rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Red Snapper.

Dated: May 23, 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 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 § 622.39, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Red snapper*—4.315 million lb (1.957 million kg), round weight.

(2) * * *

(i) *Recreational quota for red snapper*—4.145 million lb (1.880 million kg), round weight.

* * * * *

[FR Doc. 2013–12702 Filed 5–23–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 130103006–3477–02]

RIN 0648–BC89

Fisheries in the Western Pacific; 5-Year Extension of Moratorium on Harvest of Gold Corals

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

ACTION: Final rule.

SUMMARY: This final rule extends the region-wide moratorium on the harvest of gold corals in the U.S. Pacific Islands through June 30, 2018. NMFS intends this final rule to prevent overfishing and to stimulate research on gold corals.

DATES: This rule is effective June 28, 2013.

ADDRESSES: Background information on Pacific Island precious coral fisheries is found in the western Pacific fishery ecosystem plans, available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Lewis Van Fossen, NMFS PIR Sustainable Fisheries, 808–541–1378.

SUPPLEMENTARY INFORMATION: Precious corals (also called deep-sea corals), including gold corals, are used in high-quality jewelry. NMFS and the Council manage precious corals under fishery ecosystem plans for American Samoa, Hawaii, the Mariana Islands (Guam and the Northern Mariana Islands), and the U.S. Pacific Remote Island Areas. On September 12, 2008, NMFS established a 5-year moratorium on the harvest of gold corals in U.S. Pacific Islands (73 FR 47098). The moratorium was based on information that gold corals grew much more slowly and lived longer than previously thought, suggesting that these species were vulnerable to overharvest. NMFS and the Council intended the harvest moratorium to

encourage research into gold coral biology and prevent overfishing.

Subsequent research found that gold corals in the U.S. Pacific Islands grow about 0.22 cm annually and the average colony age is about 950 years. These findings confirmed previous assumptions about gold corals' vulnerability to overharvesting. Additionally, researchers found that gold corals may also rely on the presence of bamboo coral. Gold coral larvae may require bamboo coral colonies as a growth substrate, attaching themselves to the host colony and eventually overgrowing it to form a new gold coral colony. This final rule is necessary to encourage more research into gold coral biology and to develop sustainable management measures.

This final rule extends the moratorium on harvesting gold corals in the U.S. Pacific Islands through June 30, 2018. Additional information on this final rule may be found in the preamble to the proposed rule (78 FR 18302) and is not repeated here.

Comments and Responses

On March 26, 2013, NMFS published a proposed rule and request for public comments (78 FR 18302); the comment period ended April 25, 2013. NMFS received one comment that generally supported the proposed rule, and no comments to the contrary.

Changes From the Proposed Rule

This final rule contains no changes from the proposed rule.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, has determined that this final rule is necessary for the conservation and management of Pacific Island gold coral fisheries, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Northern Mariana Islands.

Dated: May 23, 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 amends 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

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

■ 2. Revise § 665.169 to read as follows:

§ 665.169 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

■ 3. Revise § 665.270 to read as follows:

§ 665.270 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

■ 4. Revise § 665.469 to read as follows:

§ 665.469 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

■ 5. Revise § 665.669 to read as follows:

§ 665.669 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2018.

[FR Doc. 2013–12743 Filed 5–28–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 103
Wednesday, May 29, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AE21

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of the Electronic Benefit Transfer-Related Provisions of Public Law 111–296; Extension of Comment Period

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This proposed rule would revise regulations governing the WIC Program, incorporating the provisions set forth in the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) related to Electronic Benefit Transfer (EBT) for the WIC Program. The comment period is being extended to provide additional time for interested parties to review the proposed rule, to June 29, 2013.

DATES: The comment period for the proposed rule that was published on February 28, 2013 (78 FR 13549) has been extended from May 29, 2013 to June 29, 2013. To be assured of consideration, comments must be postmarked on or before June 29, 2013.

ADDRESSES: FNS invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Mail:* Send written comments to Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302, (703) 305–2746.
- *Web site:* Go to *http://www.fns.usda.gov/wic.* Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would amend the WIC regulations to implement provisions related to EBT in the WIC Program included in Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), signed into law on December 13, 2010. The HHFKA amended provisions of the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) (CNA). The EBT provisions of the HHFKA that are included in this proposed rule are: (1) A definition of EBT; (2) a mandate that all WIC State agencies implement EBT systems by October 1, 2020; (3) a requirement for State agencies to submit annual EBT status reports on their progress toward EBT implementation; (4) revisions to current provisions that prohibit imposition of costs on retail vendors; (5) a requirement for the Secretary of Agriculture to establish minimum lane equipage standards; (6) a requirement for the Secretary of Agriculture to establish technical standards and operating rules; and (7) a requirement that State agencies use the National Universal Product Code (NUPC) database. FNS issued policy and guidance to WIC State agencies on the implementation of the legislative requirements addressed in this rulemaking that were effective on October 1, 2010. However, selected areas of the law are discretionary and therefore, FNS is seeking public comment on several of the requirements contained in this proposed rule. The comment period is extended to provide additional time for interested parties to review and submit comments on the proposed EBT changes until June 29, 2013.

Dated: May 22, 2013.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2013–12688 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0002]

RIN 0579–AD63

Importation of Avocados From Continental Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would allow the importation of avocados from continental Spain (excluding the Balearic Islands and Canary Islands) into the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before June 13, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0002-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0002, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0002* or

in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2289.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2013, we published in the **Federal Register** (78 FR 6222–6227, Docket No. APHIS–2012–0002), a proposal [1] to amend the fruits and vegetables regulations to allow the importation of avocados from continental Spain (excluding the Balearic Islands and Canary Islands) into the United States subject to a systems approach and treatment.

Comments on the proposed rule were required to be received on or before April 1, 2013. We are reopening the comment period on Docket No. APHIS–2012–0002 for an additional 15 days. This action will allow interested persons additional time to prepare and submit comments. We will also accept comments received between April 2, 2013 (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–12679 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the proposed rule, risk documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0002.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0132]

RIN 0579–AD62

Importation of Fresh Apricots From Continental Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would allow the importation into the United States of fresh apricots from continental Spain. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published January 30, 2013 (78 FR 6227) is reopened. We will consider all comments that we receive on or before June 13, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0132-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0132, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0132* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2289.

SUPPLEMENTARY INFORMATION: On January 30, 2013, we published in the **Federal Register** (78 FR 6227–6232, Docket No. APHIS–2011–0132) a proposal [1] to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh apricots from continental Spain into the United States subject to a systems approach jointly agreed upon in a bilateral workplan between APHIS and the national plant protection organization of Spain.

Comments on the proposed rule were required to be received on or before April 1, 2013. We are reopening the comment period on Docket No. APHIS–2011–0132 for an additional 15 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between April 2, 2013 (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–12685 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the proposed rule, risk documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0132.*

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR part 417

[Docket No. FSIS–2009–0019]

HACCP Systems Validation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of updated guidance for Hazard Analysis Critical Control Point (HACCP) systems validation. In addition, FSIS is announcing that it will hold a public meeting on June 25, 2013, to review changes to the guidance announced in this notice and to take comments. The public meeting will also be available by teleconference.

Following the public meeting, the Agency will accept written comments until July 25, 2013. Given the extensive opportunity for comment on the guidance, however, the Agency believes

that very few, if any, issues remain in this proceeding.

DATES: The public meeting will be held on June 25, 2013 from 8:30 a.m. to 12:30 p.m. On-site registration will begin at 8:00 a.m. Written comments may be submitted until July 25, 2013.

ADDRESSES: The public meeting will be held in the 1st Floor Auditorium of Patriots Plaza 3, 355 E Street SW., Washington, DC 20024.

FSIS will finalize the agenda by June 18, 2013 and post it on the FSIS Web page at: *http://www.fsis.usda.gov/News_&_Events/meetings_&_events/index.asp.*

Registration: Pre-registration is recommended. To pre-register, access the FSIS Web site at *http://www.fsis.usda.gov/News_&_Events/meetings_&_events/index.asp.* Call-in information will be provided via email to pre-registered participants. If you are interested in making a public comment during the teleconference, please indicate so on the registration form.

In addition to the public meeting, interested persons may submit comments using either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, OPPD, RIMS, Patriots Plaza 3, 1400 Independence Avenue SW., Mail Stop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20024.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0019. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William K. Shaw, Jr., Ph.D., Office of Policy and Program Development, FSIS, USDA, 1400 Independence Avenue SW., Patriots Plaza 3, Mailstop 3782, Room 8–142, Washington, DC 20250. *Telephone:* (301) 504–0852 Fax: (202)245–4792. *E-Mail: william.shaw@fsis.usda.gov.*

Background

FSIS administers the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution in commerce of meat or poultry products that are unwholesome, adulterated, or misbranded. To reduce the risk of foodborne illness from meat or poultry products, FSIS issued regulations on July 25, 1996, which require that federally inspected establishments adopt HACCP systems (61 FR 38806). These regulations require that federally inspected establishments adopt measures to prevent or control the occurrence of food safety hazards at each stage of the production process where such hazards are reasonably likely to occur.

In the May 9, 2012 **Federal Register** (77 FR 27135), FSIS issued a notice to clarify its requirements for validation by an establishment of its HACCP system and to announce the availability of the draft guidance on validation, which is discussed in more detail below. The HACCP regulations in 9 CFR part 417 require that establishments validate the HACCP plan's adequacy to control the food safety hazards identified by the hazard analysis (9 CFR 417.4(a)). These regulations prescribe requirements for the initial validation of an establishment's HACCP plan and require establishments to ''conduct activities designed to determine that the HACCP plan is functioning as intended.'' During this initial validation period, establishments are to ''repeatedly test the adequacy of the CCPs, critical limits, monitoring and recordkeeping procedures, and corrective actions'' prescribed in their HACCP plans (9 CFR 417.4(a)(1)). As FSIS explained in the May 9, 2012 **Federal Register**, validation under 9 CFR 417.4(a)(1) requires that establishments assemble two types of data: 1) the scientific or technical support for the judgments made in designing the HACCP system, and 2) evidence derived from the HACCP plan in operation to demonstrate that the establishment is able to implement the critical operational parameters necessary to achieve the results documented in the scientific or technical support.

The regulations also provide that ''[v]alidation . . . encompasses reviews of the records themselves, routinely generated by the HACCP system, in the context of other validation activities'' (9 CFR 417.4(a)(1)). As FSIS explained in the May 9, 2012 **Federal Register**, if an establishment's supporting documentation for its hazard analysis includes records associated with a prerequisite program that provides for an intervention or process designed to prevent a hazard from being likely to occur, the establishment's validation records would need to include all documents associated with the prerequisite program. Thus, validation of the HACCP system involves validation of the critical control points in the HACCP plan, as well as of any interventions or processes used to support decisions in the hazard analysis.

Initial Draft Guidance

In March 2010, FSIS posted on its Web site an initial draft guidance document to assist the industry, particularly small and very small establishments, in complying with the requirements for HACCP systems, pursuant to 9 CFR 417.4.

On June 14, 2010, FSIS held a public meeting to discuss the initial draft HACCP validation guidance and received input from stakeholders. The transcript of the June 2010 public meeting is available on the FSIS Web site at: *http://www.fsis.usda.gov/PDF/Transcripts_HACCP_Validation_061410.pdf.*

FSIS received over 2,000 comments on the initial draft guidance, particularly with respect to the use of microbiological testing to validate the effectiveness of HACCP systems in controlling biological hazards. The Agency considered the issues raised by the comments received in response to the May 2010 **Federal Register** notice and at the June 2010 public meeting and developed updated second draft compliance guidance.

On September 22–23, 2011, FSIS shared a second draft of the HACCP validation guidance with the National Advisory Committee on Meat and Poultry Inspection (NACMPI). The Committee reviewed the draft and provided comments and suggestions to FSIS on how to improve the guidance. The NACMPI report is available on the FSIS Web site at: *http://www.fsis.usda.gov/PDF/Validation_Issue_Paper_Final.pdf.* The Agency made additional revisions to the draft guidance in response to the input from NACMPI.

In a May 9, 2012 **Federal Register** notice, FSIS announced the availability of, and requested comments on, the revised draft guidance document

(*http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2009-0019.htm*). In the May 2012 **Federal Register** notice, the Agency also clarified its requirements for HACCP system validation and responded to the comments that it had received on the initial draft guidance. The May 2012 **Federal Register** notice explained that the Agency was soliciting comments on the revised draft, and that it would hold another public meeting before issuing final guidance for HACCP systems validation (77 FR 27135).

Comments on the Guidance

FSIS received fifty-one (51) comments on its May 2012 revised draft guidance on HACCP validation from small and very small meat or poultry processors, trade associations representing animal producers, small business owners, corporations, State Departments of Agriculture, and consumer advocacy organizations. FSIS has carefully considered the comments and has revised its draft guidance in light of these comments. The following is a brief summary and discussion of the major issues raised in the comments to the draft guidance document.

1. Concerns About Validation, Its Applicability, and Cost

Comment: Several commenters asked why the validation guidance or new FSIS enforcement of validation requirements is necessary, especially given the amount of time the HACCP regulations have been in place. These commenters stated that establishments should not have to ''revalidate'' their systems.

Response: The validation guidance is necessary because the Agency found that establishments have not adequately validated their systems. During the process of developing the draft guidance, FSIS added an appendix to the document that explains the need for validation and FSIS's experiences that led it to create the guidance document (*e.g.,* FSIS's findings following a 2011 Lebanon bologna outbreak that the establishment's scientific support on file did not match the process the establishment was using to make the bologna; non-O157 positives in 2012 that FSIS concluded likely occurred because of improperly designed interventions; and the chicken pot pie outbreaks in 2007 that FSIS concluded may have occurred because of improperly validated cooking instructions).

Based on findings from FSIS's data analyses and outbreak investigations, the Agency recommends that establishments use the guidance document to ensure that their HACCP systems are properly validated. On an annual basis, and whenever changes occur that affect the hazard analysis of the HACCP plan, the establishment should conduct a reassessment as required in 9 CFR 417.4(a)(3) (*i.e.,* review records generated over the course of the previous year, or during the period the change occurred, that reflect how the HACCP system is performing as a whole and analyze them to determine whether food safety goals are being met).

If the reassessment shows that the HACCP system is effective and functioning as intended, the establishment can consider continuing on with the same system and the same monitoring and verification procedures and frequencies. If reassessment shows that either their HACCP system was not set up correctly, is not being implemented consistently, or is no longer effective, the establishment would make changes to its HACCP system (*e.g.,* add another intervention) and then would, in most cases, be required to validate any changes to its HACCP system.

While most establishments have assembled the scientific or technical documentation needed to support their HACCP systems, many establishments have not gathered the necessary in-plant validation data demonstrating that their HACCP systems are functioning as intended, which is why the guidance document is necessary. As is explained below, in approximately six months from the time that FSIS issues the final validation guidance, FSIS intends to begin verifying that establishments comply with all validation requirements.

Comment: Several commenters expressed concern about the cost of validation, particularly for small establishments that have many different HACCP plans. One comment stated that if a very small establishment cannot afford to comply with validation requirements, it should have the option to return to ''conventional'' inspection instead of HACCP. Commenters were also concerned about the costs of obtaining in-plant microbial data and other costs associated with validation.

Response: HACCP was implemented in 1996 and has resulted in great improvements in food safety. The Agency is not going back to a command and control inspection approach because it would not provide establishments with the flexibility to design innovative systems that ensure food safety.

In the guidance, FSIS states that microbiological testing is needed for in-plant data in only limited circumstances and has provided low cost ways in which establishments can validate their systems in place of microbiological testing, such as ensuring that they are meeting the critical operating parameters of the interventions as defined in the scientific support. Therefore, FSIS estimates that costs associated with meeting validation requirements will be minimal.

Comment: Several commenters stated that establishments should not have to validate their prerequisite programs because 9 CFR 417.4(a)(1) does not apply to prerequisite programs. One commenter recommended that, in the absence of a CCP, prerequisite programs referenced in the flow chart should be validated, but that otherwise, establishments should not be required to validate their prerequisite programs. The same commenter also requested that FSIS begin only reviewing validation for CCPs and then, at a later date, begin reviewing validation for prerequisite programs referenced in the flow chart. One commenter stated that only prerequisite programs that contain scientifically supported critical operating parameters (*e.g.,* foreign material control, Good Manufacturing Practices, employee hygiene) should have to be validated. Several commenters stated that they needed guidance concerning how to validate pest control, employee hygiene, sanitation practices, and other processes.

Response: Validation is the process of demonstrating that the HACCP system, as designed, can adequately control identified hazards to produce a safe, unadulterated product. Prerequisite programs designed to support a decision in the hazard analysis are part of the HACCP system. When an establishment determines that a hazard is not reasonably likely to occur because the prerequisite program prevents the hazard, that prerequisite program becomes part of the HACCP system. Therefore, prerequisite programs designed to support decisions in the hazard analysis (*e.g.* Sanitation Standard Operating Procedures (Sanitation SOPs), purchase specifications, antimicrobial interventions) need to be validated to ensure that the overall system can operate effectively. Even though 9 CFR 417.4(a)(1) does not refer to Sanitation SOPs or other prerequisite programs, establishments' initial validation activities need to include employee hygiene and other similar prerequisite programs if they are used to support decisions in the hazard analysis. As explained in the guidance, in order to validate such programs, establishments

need to provide scientific documentation that supports that they will work as intended and to collect in-plant data to support that the programs can be implemented as designed.

Comment: Some commenters stated that establishments should not be required to validate cooking instructions because the cooking is performed by the consumer. One comment stated that discussion of validating the time and temperature combinations for cooking instructions should be removed from the guidance. Another commenter requested more guidance on how establishments should validate cooking instructions. Another commenter asked for confirmation that validated cooking instructions are not considered a CCP.

Response: An establishment must validate all measures that it relies upon to prevent or control the hazards that it has identified in its HACCP system, whether the measures are part of the HACCP plan itself or part of a program that includes measures that affect the hazard analysis. Thus, if an establishment's HACCP system includes cooking instructions as a measure to address a potential food safety hazard after entry into the establishment, the establishment must properly validate the instructions.

As we saw in the 2007 salmonellosis outbreak associated with chicken pot pies, providing cooking instructions on a package that cannot be repeated by the consumer represents an increased risk to the consumer. Had the establishment validated the cooking instructions on the pot pies to ensure they would achieve the desired endpoint temperature under actual consumer cooking conditions, these illnesses may have been prevented (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5747a3.htm*).

If an establishment's HACCP system includes placing cooking instructions on the product's label, the instructions must be validated to ensure that consumers who follow the instructions will achieve the endpoint time/temperature needed to ensure that the product is cooked and safe to consume. While validated cooking instructions may be used as a control to address hazards that may occur after the product has left the establishment, the establishment is still required to address food safety hazards that are reasonably likely to occur in the production process and identify the measures the establishment can apply to control those hazards (9 CFR 417.2(a)(1). *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5747a3.htm*).

FSIS is in the process of developing a guidance document on validating cooking instructions for mechanically tenderized beef product. FSIS has previously recommended validated cooking instructions for product that appears to be ready-to-eat, but its meat or poultry components have not received a sufficient lethality step or some other component has not received a lethality step. *http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/10240.4/Resource_1.pdf* Resource 1 for NRTE products that appear to be RTE (*e.g.,* entrees, dinners, casseroles etc) *http://www.fsis.usda.gov/PDF/Info_on_Validation_of_Labeled_Cooking_Instructions_Raw_or_Partially_Cooked_Poultry.pdf* (validated cooking instructions) *http://www.fsis.usda.gov/PDF/Labeling_Policy_Guidance_Uncooked_Breaded_Boneless_Poultry_Products.pdf* (this link includes the background information and Q&As)

Comment: Several comments stated that establishments should not be required to collect in-plant data for more than one product in a HACCP process category. These commenters also requested guidance on how to select a product from within each HACCP category. Commenters noted that such in-plant data would include execution data for all CCPs, interventions, and prerequisite programs used to support decisions in the hazard analysis. One commenter questioned whether the establishment would need to validate the food safety system for each product if the only difference among products is a seasoning. Another commenter stated that it is possible to have in-plant data for product of one species within a HACCP category serve as in-plant data to validate the process for product from another species if there are no additional food safety concerns. Another commenter stated that FSIS's guidance should follow the NACMPI recommendations to group typical products into categories and select ''worst case products'' within the group.

Response: In the revised guidance, FSIS has clarified that establishments are not required to collect in-plant data for more than one product within a HACCP process category. The guidance now provides information concerning how establishments should select a product from within a HACCP category. The guidance also provides information on how establishments can develop a decision-making document concerning product choices for collecting in-plant data. The guidance provides examples of how to collect in-plant data to aid industry, but establishments will have the flexibility to develop their own criteria.

Comment: A few commenters requested confirmation that establishments would not have to conduct ''initial'' validation for all changes that result from reassessment. Several commenters asked whether the whole system would need to be validated or just a change following reassessment. One commenter stated that improved implementation of a HACCP system would not necessarily result in changes to the design of the system.

Response: Establishments do not need to conduct validation of the whole system for all changes that result from reassessment. Depending on the change, the establishment will likely only need to validate that the change is functioning as intended. For example, an establishment may change the thickness of a raw patty product and determine that it only needs to validate that the cooking instructions still achieve the desired endpoint temperature at the new product thickness. In this example, the establishment would not need to validate the entire HACCP system.

Comment: Several commenters stated that very small establishments that produce products infrequently cannot obtain 13 production days worth of records within 90 calendar days. One commenter suggested extending the validation period beyond 90 calendar days in order to obtain 13 days worth of records. Another commenter requested that the guidance document clarify that large establishments have the flexibility to determine whether there are a sufficient number of production days within the 90 calendar-day period to gather appropriate data.

Response: The guidance explains that for large establishments, 90 calendar days equates to approximately 60 production days. FSIS recognizes that many small and very small establishments do not operate daily. Therefore, the guidance also states that a minimum level of records from 13 production days within those initial 90 calendar days should be used to initially validate a small or very small establishment's HACCP system. The establishment should consider focusing validation activities on the product produced most frequently within each HACCP category.

In the guidance, FSIS recognizes that there are some establishments that produce products so infrequently that they would not be able to gather records from 13 production days within those 90 initial calendar days. If the establishment infrequently produces several products that are each part of a separate HACCP category, there is

inherent risk with the processes if the establishment does not have experience in producing them. Therefore, to determine whether the system is properly designed and executed, even though the regulations provide 90 days for a conditional grant of inspection (9 CFR 304.3(b)), an establishment needing more than 90 days can ask the District Office, in writing, for additional time to collect at least 13 production days of records. The guidance explains that establishments may also consider evaluating data collected for products across multiple HACCP categories that share some common steps, ingredients, or equipment, to determine whether the data together can support its ability to meet critical operational parameters.

Scientific Support

Comment: Appendix A of the final rule, ''Performance Standards for the Production of Certain Meat and Poultry Products'' (64 FR 746–748) is specific to *Salmonella* but is often used to support lethality of other pathogens, such as *E. coli* O157:H7 and *Lm.* Therefore, several commenters asked whether establishments could use Appendix A as scientific support for process controls for pathogens other than *Salmonella.*

Response: FSIS has revised the validation guidance to clarify that during slaughter, in order to be most effective, it is very important that interventions have been studied for the pathogen and product pair of interest. In addition, FSIS has clarified that for thermal processing treatments, *Salmonella* can be used as an indicator for other pathogens of concern. Therefore, Appendix A can be used as scientific justification for the process without further support that the results apply to other pathogens such as *E. coli* O157:H7 or *Lm.*

Comment: Some commenters questioned whether their scientific support must be peer-reviewed. One commenter asked whether a processing authority could be an establishment owner with knowledge of the process. The commenter also asked if it could use documents that only provide a critical limit as scientific support (for example, a University publication or a textbook with growth limits of bacteria).

Response: FSIS has revised the guidance to clarify that the Agency recommends peer-reviewed scientific data to support the process used, but does not require peer-reviewed data. An establishment may use peer-reviewed scientific data or information in addition to a scientific article from a peer-reviewed journal as scientific support for its processes. Such information would include data from a textbook on the growth limits of certain pathogens, based on a food product's water activity and pH. This information could be used as scientific support because information in scientific textbooks has generally been peer-reviewed. Peer-reviewed scientific data goes through a process of evaluation involving qualified individuals within the relevant field that ensures the integrity of the data.

Scientific data that is not peer-reviewed is less reliable than peer-reviewed data, because there could be flaws in the science that a peer review would have revealed. If an establishment uses scientific data that is not peer-reviewed, the establishment may be subject to additional scrutiny by Agency personnel performing verification activities.

An establishment may rely on a process authority to provide necessary scientific support for the establishment's process. As stated above, to meet validation requirements, the establishment is required to ensure that the scientific data and documentation provided by the processing authority supports that the process addresses the identified hazards, and meets the expectations for validation requirements.

Comment: Several commenters stated that the guidance document is still too vague in terms of how close the scientific support needs to match an actual process. For example, commenters asked whether the manufacturer of a grinder would have to be the same as the grinder used in a supporting study. Commenters also asked how significant casing size differences among the process used and support studies would need to be before the support document would no longer apply. Commenters stated that parameters are often more controlled during research than in-plant, and that it is costly for establishments to measure temperature and pounds per square inch.

Response: In the guidance, FSIS has clarified how scientific support should match an actual process. Generally, establishments should use the same critical operational parameters as those in the support documents. In some circumstances, establishments may be able to support using critical operational parameters that are different from those in the support documents (*e.g.,* higher concentrations of antimicrobials or higher thermal processing temperatures). In these cases, establishments should provide justification supporting that the levels chosen are at least as effective as those in the support documents. This justification is needed because higher levels of a critical operational parameter may not always be equally effective. For example, antimicrobial agents may only be effective within a range of concentration after which point efficacy may decrease. Similarly, higher processing temperatures may result in the surface of the product drying out before adequate lethality is achieved. Establishments also need to ensure the levels are safe and suitable (*http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/7120.1.pdf* and 9 CFR 424.21(c)).

Comment: Several commenters stated that FSIS Notice 36–12 (*http://www.fsis.usda.gov/oppde/rdad/FSISNotices/36-12.pdf*) suggested that the challenge study establishments used in the case of the Lebanon bologna would not be adequate support because the critical operational parameters in the study did not match those used in the establishment.

Response: The FSIS notice on Lebanon bologna explained that the actual process that the establishment used did not match the scientific support. As a result, the establishment's process did not achieve adequate lethality. Establishments producing Lebanon bologna can use the guidance as scientific support; however, they need to ensure that their process meets the critical operating parameters used in the study.

FSIS recognizes that scientific support performed in a laboratory may not always match an establishment's *exact* parameters. However, significant differences, such as the permeability of the casing used or the diameter of the product, are key factors that affect lethality and therefore cannot be overlooked. For instance, if an establishment wants to use a permeable casing, the establishment cannot assume that its process will achieve the same reduction in pathogens as achieved in a study using an impermeable casing.

Comment: Some comments stated that discussion of critical operational parameters in the guidance will lead some to conclude that all parameters are critical. Several commenters requested that FSIS create a third party or consortium to help establishments identify scientific support and critical operational parameters. Another commenter requested that FSIS's guidance address validation and scientific support for additional hazards, such as viruses and protozoa.

Several commenters stated that establishments do not have the expertise to scientifically support or identify critical operational parameters. One commenter stated that establishments

do not know how to test parameters of the different processes.

Response: Critical operational parameters are the specific conditions that the intervention must operate under in order for it to be effective. The guidance document explains in detail how an establishment can identify the critical operational parameters in its scientific support. Specifically, Appendix 3, provides step-by-step guidance to establishments.

FSIS will continue to post commonly cited journal articles on its Web site in which critical operational parameters have been identified and will offer support through askFSIS to establishments trying to identify critical operational parameters.

Comment: One commenter requested that reference to Purac's modeling program be made within the guidance, and that the guidance address the use of pathogen modeling programs as scientific supporting documentation. The commenter also requested an additional example in the guidance to show how an establishment could validate the effectiveness of an antimicrobial agent through pathogen modeling.

Response: FSIS has added a reference to pathogen modeling as a type of scientific support. In addition, FSIS has added an example in Appendix 3 to show how an establishment can validate its stabilization process through pathogen modeling. FSIS does not advocate certain programs and therefore did not cite Purac in the guidance.

Comment: One commenter requested a listing of surrogate or indicator organisms that can be used for validation. Another commenter requested clarification on when establishments can use scientific support based on indicator organisms.

Response: As explained in the guidance document, establishments should not rely on scientific support containing data from indicator or surrogate organisms unless available data establishes a relationship between the presence or level of a pathogen or toxin and the indicator organism. Such data can be collected from in-laboratory studies using indicator organisms that parallel the data in a challenge study performed with the inoculated pathogen. This data could be collected in the same way in which the pathogen is being tested or in another study performed under similar conditions. If similar and consistent reduction or control can be established, then control of the indicator organisms can be reliably used to indicate expected pathogen control in actual application in-plant.

2. Validation Worksheet Examples

Comment: One commenter stated that FSIS should include an explanation of how the validation worksheet examples can be used. Another commenter recommended that the guidance state that establishments have flexibility to utilize approaches other than those in the worksheet examples. Two commenters recommended that FSIS recognize in the guidance that not all critical operational parameters identified in the Appendix will apply to all processes.

Another commenter requested more detail be provided in the worksheet examples in terms of formatting and the types of data that establishments should collect.

One comment stated that establishments' environmental monitoring verifies that the Sanitation SOPs are working as intended, but does not validate them.

Response: In the guidance document, FSIS has added numerous validation worksheet examples to illustrate how an establishment may want to display its own in-plant validation data. As FSIS explains in the guidance, the validation worksheet examples are for illustration purposes only and are included to help establishments to understand the types of scientific support and in-plant documentation that are needed to comply with the validation requirements.

With regard to the comment on the Sanitation SOP monitoring, FSIS included this data in the guidance as an example of data collected during the initial 90 days of the set-up of a new program. Scientific support is needed to support the frequency of testing (which would address the factors used to determine the frequency). In-plant validation data is needed to support that the testing is adequate.

3. Microbiological Testing

Comment: One comment asked for clarification as to whether samples need to be collected for each and every process, product, or species, and whether establishments would need to collect 13 samples for every product produced, as in the regulations that require establishments to conduct testing for generic *E. coli* (9 CFR 310.25 and 381.94)

Response: If an establishment's scientific support contains microbiological data showing the efficacy of the intervention against the identified food safety hazard, then the in-plant data does not need to include sampling. In that case, the in-plant data should support that the establishment follows the critical operational parameters from the study.

Agency Training and Implementation

Comment: Commenters stated that FSIS should ensure that inspection program personnel consistently verify and enforce validation requirements. One commenter stated that FSIS should share training for FSIS personnel with industry.

A commenter also recommended that FSIS hold regional sessions to communicate the policy to establishments, and that the Agency engage cooperative extension programs in its communication strategy. One commenter recommended that the Agency create a tutorial on understanding scientific articles and on identifying critical operational parameters. Commenters also requested that FSIS issue a notice or directive explaining how inspectors should use the validation guideline.

A few commenters requested that FSIS phase-in verification of validation requirements based on risk or product categories, rather than establishment size. One commenter requested an additional six months to gather validation documents before FSIS begins new verification activities related to validation.

Response: The guidance is meant for establishments. FSIS will ensure inspection program personnel understand validation requirements and will issue necessary instructions to field personnel so that they are aware of the final guidance and share it with establishments. FSIS will also issue necessary instructions to field personnel for them to verify that establishments meet all validation requirements.

FSIS will implement its new verification activities by phasing them in based on establishment size. For large establishments, the agency plans to wait approximately six months from the date that the final guidance is issued to start verifying and enforcing the second element of validation (initial in-plant validation). Thus, large establishments will have six months from the date that the final guidance is issued to gather all necessary in-plant demonstration documents.

FSIS intends to begin verifying that small and very small establishments meet all validation requirements nine months from the date the final guidance is issued. Therefore, these establishments will have approximately nine months from the date the final guidance is issued to gather all necessary in-plant demonstration documents before FSIS will verify and

enforce the second element of validation.

Other Changes to Validation Guidance

Examples: The guidance contains additional examples of food safety problems linked to inadequate validation and recommendations to aid establishments in meeting initial validation requirements. These examples demonstrate the need for validation and provide support for recommendations made within the guidance.

Scientific Support Documents. FSIS has added a section to the guidance that explains to establishments how to determine whether scientific support documents are sufficiently related to the process, product, and hazard identified in the hazard analysis to constitute appropriate validation. The guidance explains that the supporting documentation should identify the hazard (biological, physical, and chemical), the expected level of hazard reduction or prevention to be achieved, all critical operational parameters or conditions necessary to address the hazard, the processing steps that will achieve the specified reduction or prevention, and how these processing steps can be monitored. FSIS has also included information on how establishments can identify supporting documentation that adequately addresses the expected level of hazard or reduction or prevention to be achieved. FSIS provided examples for biological, physical, and chemical hazards that should aid establishments in ensuring that the scientific support closely matches the hazard being controlled. FSIS has also clarified when establishments may use scientific support containing data from indicator or surrogate organisms.

Critical Operational Parameters. The guidance continues to state that critical operational parameters are those necessary for interventions to be effective and explains how an establishment can identify the critical operational parameters in its scientific support. As discussed above in response to comments, establishments generally should use the same critical operational parameters as those in the support documents. However, in some circumstances, establishments may be able to support using critical operational parameters that are different from those in the support documents (*e.g.,* higher concentrations of antimicrobials or higher thermal processing temperatures). In these cases, establishments should provide justification supporting that the levels chosen are at least as effective as those in the support documents.

FSIS has added an additional Appendix (Appendix 2) to provide an example of a decision-making document an establishment could develop when it uses different levels of a critical operational parameter than the parameters in the support document. An establishment may use the decision-making document to explain the scientific rationale for why it is using critical operational parameters that are different from those in the support documents.

In-plant data. The guidance recommends that establishments collect in-plant validation data for a wide variety of products and worst case scenarios. Appendix 4 of the guidance contains validation worksheet examples that establishments may reference to help them understand the types of scientific support and in-plant documentation that are needed to comply with the validation requirements.

Initial validation vs. on-going verification. The guidance explains the differences between initial validation and on-going verification and the relationship between the activities performed to provide initial validation as opposed to on-going verification. The revised guidance also clarifies when changes that result from reassessment would not require validation. For example, an establishment may need to reassess its HACCP system following a change in supplier of a raw material, but the change would not require validation if the establishment determines that the composition of the raw material and microbiological profile are not significantly different from the material provided by the previous supplier. In other cases, changes that result from the reassessment would not require additional scientific support but would require additional in-plant demonstration data. For example, an establishment may find through reassessment that the design of an intervention was adequate, but that its employees are not implementing the intervention correctly. In that case, the establishment would only need to collect in-plant data to demonstrate that the intervention could be implemented appropriately. Depending on the change, the establishment would likely only need to validate that the change is functioning as intended and not the entire HACCP system. The current draft of the compliance guide is available for public viewing in the FSIS docket room and on the FSIS Web site at *http://www.fsis.usda.gov/Significant_Guidance/index.asp*.

Public Meeting

On June 25, 2013, the Agency will hold a public meeting to review the information presented in this document and accept comments.

Next Steps

Following the public meeting, the Agency will accept public comment for 30 days. Given the extensive opportunity for public comment on the compliance guide, it is likely that there are very few, if any, remaining issues. Therefore, FSIS does not foresee granting an extension to this final 30 day comment period. As soon as possible after the comment period ends, the Agency will issue a **Federal Register** notice announcing the final guidance and will post the final guidance to its Web page. FSIS will implement its new verification activities phased in by establishment size. As stated above, for large establishments, the Agency plans to delay verification of the second element of validation as part of its inspection activities for approximately six months from the date the final guidance is posted. For small and very small establishments, the Agency plans to delay implementation for approximately nine months from the date the final guidance is posted.

Until FSIS begins enforcing all validation requirements, FSIS inspection personnel will continue to issue noncompliance records (NRs) if an establishment lacks the required scientific or technical support for its HACCP system, or if the scientific or technical support is inadequate. FSIS will continue to issue a Notice of Intended Enforcement if, taken together with other relevant findings, an establishment's scientific or technical support is inadequate, and the Agency can support a determination that the establishment's HACCP system is inadequate for any of the reasons provided in 9 CFR 417.6.

Moreover, if, in conducting a Food Safety Assessment (FSA), an Enforcement, Investigations, and Analysis Officer (EIAO) finds that an establishment has not collected in-plant data to demonstrate that its HACCP process works as intended, the EIAO will note this finding in the FSA and inform the establishment. Until FSIS begins enforcing the in-plant data requirements, FSIS will not issue NRs or take enforcement actions based solely on a finding that an establishment lacks in-plant validation data.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at

http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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Done at Washington, DC on May 23, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–12763 Filed 5–24–13; 8:45 am]

BILLING CODE 3410–DM–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703, 715, and 741

RIN 3133–AD90

Derivatives

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Rule.

SUMMARY: This proposed rule permits credit unions to engage in limited derivatives activities for the purpose of mitigating interest rate risk. This proposed rule applies to federal credit unions and any federally insured, state-chartered credit unions that are permitted under applicable state law to engage in derivatives transactions. It requires any credit union seeking derivatives authority to submit an application for one of two levels of authority. Level I and Level II authority differ on the permissible levels of transactions as well as the application, expertise, and systems requirements associated with operating a derivatives program.

DATES: Comments must be received on or before July 29, 2013.

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

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

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson or Lisa Henderson, Staff Attorneys, Office of General Counsel, at the above address or telephone (703) 518–6540; J. Owen Cole, Director, Division of Capital and Credit Markets, or Rick Mayfield, Senior Capital Markets Specialist, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Dr. John Worth, Chief Economist, Office of the Chief Economist, at the above address or telephone (703) 518–6660.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The NCUA Board (Board) is proposing to allow credit unions to engage in limited derivatives transactions [1] for the purpose of mitigating interest rate risk (IRR). This proposed authority does not, however, allow credit unions to offer derivatives. This proposed rule applies to all federal credit unions (FCUs) and all federally insured state- chartered credit unions (FISCUs) that are expressly permitted by applicable state law to engage in derivatives transactions. The Board believes this proposed rule allows eligible credit unions to utilize an additional tool to mitigate IRR, while also reducing risk to the National Credit Union Share Insurance Fund (NCUSIF).

The rule requires eligible credit unions to apply to NCUA or, in the case of a FISCU, NCUA and the applicable state supervisory authority (SSA), for either Level I or Level II derivatives authority. As discussed in greater detail below, Level I and Level II authority differ on the permissible levels of transactions as well as the application, expertise, and systems requirements.

B. The Act and NCUA's Regulations

The Federal Credit Union Act (Act) provides FCUs with the authority to invest in certain securities, obligations, and accounts.[2] For safety and soundness reasons, however, NCUA has adopted regulatory restrictions on certain investments and activities permitted by the Act.[3] Currently, derivatives are among the investments specifically prohibited by NCUA.[4]

[1] A derivative is an instrument whose price is dependent on or derived from one or more underlying assets. A derivatives transaction involves a contract between two parties, called counterparties, that exchange value based on the fluctuation of the underlying asset or index. A counterparty is the other party to the derivatives transaction and can include swap dealers and major swap participants, which are terms to identify entities that operate primarily in the derivatives market. These transactions may involve collateral and a collateral custodian, which is an entity that holds the collateral for the two contracting parties.

[2] 12 U.S.C. 1757(7) and (15).

[3] 12 CFR 703.16.

[4] *Id.* at 703.16(a). Section 703.16(a), however, provides three exceptions to the general prohibition on derivatives. First, an FCU may purchase or sell any derivatives permitted under § 703.14(g) or under § 701.21(i) of NCUA's lending regulations. Second, an FCU may purchase or sell an embedded option not required under generally accepted accounting principles (GAAP) to be accounted for separately from the host contract. Third, an FCU may enter into interest rate lock commitments or

Continued

NCUA prohibited derivatives because they are complex financial instruments that potentially introduce significant degrees of risk to a credit union. Accordingly, this risk calls for a more robust asset/liability management (ALM) capability that is supported by a higher degree of sophistication, analytical rigor and risk management expertise.

Traditionally, derivatives instruments have been customizable over-the-counter instruments. They span a wide variety of types and structures, many of which are unsuitable for credit unions. As the financial derivatives markets have evolved, however, greater standardization of contracts, collateral requirements, market participation and price transparency have made certain derivatives more suitable for meeting the risk mitigation needs of some credit unions. In addition, given the historically low interest rate environment of the last few years, IRR now poses a material risk to many credit unions.

Recognizing that derivatives can be beneficial in helping credit unions to mitigate IRR, the Board believes it is appropriate to allow credit unions to use derivatives for the limited purpose of IRR mitigation. The Board notes, however, that derivatives are not the only way for credit unions to control IRR. Rather, the Board emphasizes that derivatives are just one tool that credit unions may employ as part of a comprehensive ALM strategy.

This rule builds on the IRR rule that the Board issued in 2012, which required certain federally insured credit unions to develop and adopt a written policy on IRR management and a program to effectively implement that policy.[5] The IRR rule provides guidance in developing an effective IRR management program to identify, measure, monitor, and control IRR. This proposed rule does not change any of the requirements in the IRR rule, but rather is another measure the Board is taking to enhance risk management alternatives.

C. 1998 IRPS

This proposed rule is consistent with a 1998 Interpretive Ruling and Policy Statement (IRPS) 98–2, Investment Securities and End-User Derivatives issued by NCUA.[6] IRPS 98–2 provides guidance to credit unions on sound practices for managing the risks of investment securities and end-user derivatives activities, including transactions in swaps and caps. While derivatives are generally prohibited by regulation for FCUs, the IRPS provides guidance on other investments as well and applies to FISCUs with derivatives authority under applicable state law. The Board, therefore, joined the other Federal Financial Institutions Examination Council members in promulgating the guidance.

The IRPS notes that effective management of the risks associated with securities and derivatives instruments represents an essential component of safe and sound practice. It identifies certain elements as fundamental to all sound risk management programs. These elements include oversight by a credit union's board of directors and senior management and a comprehensive risk management process that effectively identifies, measures, monitors, and controls risk. This proposed rule incorporates many of the guiding principles of IRPS 98–2, as well as lessons learned from the derivatives pilot programs and comments received on two advanced notices of proposed rulemaking (ANPRs).

D. Pilot Programs

Since 1999, the Board has been evaluating pilot programs for limited derivatives authority. These pilot programs have provided NCUA with insight to move from a limited experimental authority to a more general regulatory authority. They have shown the Board that most credit unions need to develop sufficient experience, management, and infrastructure before beginning a derivatives program. Once these are developed, however, credit unions can operate a limited derivatives program in a safe and sound manner.

In addition, several key lessons emerged from NCUA's experience with the derivative pilot programs. Some programs were managed directly by credit unions, while others were administered by external service providers. NCUA observed that the understanding and management of derivatives transactions, while generally sound and effective, were rudimentary in some instances. Various weaknesses were encountered over time. Some areas of concern included: lack of, or inadequate, assessments of the capacity to absorb losses and establish processes to proactively limit loss exposure; lack of due diligence on counterparties and credit risk mitigation; lack of vigilant collateral management; heavy reliance on external parties to value derivatives for base and stress scenarios; and lack of analysis and disclosure for transaction costs (spreads over market). These noted areas, which were addressed through the supervision process, have influenced the Board's current perspective on the need for the requirements and limits contained in this rule. These lessons also raise the need for NCUA's supervision skills and resources to be enhanced commensurate with a broader derivatives authority that expands beyond limited pilot usage. This rule is crafted to address these lessons and the comments received on the two ANPRs.

E. ANPRs

1. ANPR I

In June 2011, the Board issued an ANPR (ANPR I) requesting public comment on whether and how to modify its rule on investment and deposit activities to permit FCUs to enter into derivatives transactions for the purpose of offsetting IRR.[7] The Board requested comment on five broad topics, three of which related to NCUA's pilot programs and third-party programs. The other two topics directly addressed independent derivatives authority. The following summary focuses on the topics directly related to the promulgation of this proposed rule.

First, the Board asked if it should consider allowing credit unions to engage in independent derivatives activities. Ten out of 29 commenters believed the Board should allow credit unions to engage in derivatives activity independently, subject to ability, expertise, adequate understanding and controls, so long as the activity is shown to reduce IRR. Three commenters supported allowing credit unions to engage in derivatives activity independently without further comment. Three commenters supported allowing credit unions that have already demonstrated ability in a third party program to have independent derivatives authority. Two supported independent approval only if limited and qualified by high standards.

Next, the Board asked what criteria it should consider in allowing a credit union to independently engage in derivatives activities. The Board suggested criteria such as asset size, capital adequacy, balance sheet composition, or risk exposure with and without derivatives. Nine commenters believed there should not be numerical criteria, such as size. Five commenters thought there should be other criteria

forward sales commitments made in connection with a loan originated by the FCU. The Board believed that the benefits of the three exceptions outweighed the potential risk and recognized these items were tools FCUs needed.

[5] 71 FR 5155 (February 2, 2012).

[6] IRSP 98–2 (October 1, 1998).

[7] 76 FR 37030 (June 24, 2011).

such as experience, correlation testing and modeling expertise. Two commenters said the criteria should be the capital or earnings of the credit union.

In addition, ten commenters stated that credit unions applying to engage independently should follow the present third party pilot program standards. Two credit unions said that NCUA should require credit unions to prepare succession plans, exit plans, and to engage independent CPAs. Five commenters said that approval to engage independently should be given on a similar basis as part 704 Expanded Authorities.[8]

Finally, the Board asked if it should require credit unions to demonstrate enhanced functionality in terms of the experience of personnel, credit analysis and reporting infrastructure to evaluate the creditworthiness of derivative counterparties. Ten commenters said that there is no need for enhanced credit functionality because requirements for bilateral collateral, credit ratings and mandatory clearing make this unnecessary. Three commenters believed credit unions should show enhanced credit functionality and that the standard should be clear and objective. Twelve commenters argued credit unions should demonstrate enhanced hedging expertise including modeling, live pricing, hedge impact, trade execution, system capabilities and reporting balance sheet strategies.

2. ANPR II

The Board issued a second ANPR in January 2012 (ANPR II)[9] to obtain further industry input to help ensure that any rule granting independent derivatives authority is manageable for both participating FCUs and NCUA, while simultaneously protecting the credit union industry from undue risk. In ANPR II, the Board asked six questions regarding the conditions under which NCUA might grant authority for an FCU to engage in derivatives transactions independently.

Question One. The Board asked if NCUA should require an FCU to demonstrate a material IRR exposure or another risk management need, before it receives independent derivatives authority. Seven commenters supported such a requirement, and 19 opposed it. Eleven of those 19 commenters expressed concern that such a requirement would prevent FCUs from proactively managing IRR through the use of derivatives before IRR poses a danger to the FCU.

Question Two. The Board asked if it was appropriate to require minimum performance levels, as measured, for example, by CAMEL ratings and net worth classifications, when considering whether to grant an FCU's application to independently engage in derivatives transactions. The Board further asked, if the answer is yes, what performance measures and levels would be appropriate and should the Board permit waivers from these requirements.

Seventeen commenters stated that NCUA should require minimum performance levels before approving an FCU's application for independent derivatives authority. The majority of the suggested metrics were CAMEL ratings and net worth classifications. Four commenters suggested a CAMEL 2 rating as a minimum and one suggested a CAMEL 3 rating. Some commenters opposed using CAMEL ratings because the ratings contain elements that are not relevant to an FCU's need or capability to support an independent derivatives program.

Eight commenters argued that NCUA should not require minimum performance levels. One commenter stated that poorly capitalized FCUs would actually benefit from derivatives. Another stated that standards are not necessary because the market would not support an FCU in poor financial health as a counterparty. Two commenters supported allowing waivers from performance standards if an FCU could demonstrate that it met certain criteria, such as need, or could show that it had the ability to transact derivatives.

Question Three. The Board asked what derivatives experience and expertise an FCU's staff should demonstrate before receiving independent derivatives authority. The Board questioned whether NCUA should require additional experience and expertise when there is more complexity in the FCU's statement of financial condition and to what extent an FCU should be allowed to rely on an outside party to fulfill any such requirements.

Nineteen commenters stated that experience or demonstrated skill was necessary to conduct derivatives transactions, but they did not want NCUA to condition approval of independent derivatives authority on specific experience requirements. Several commenters suggested that FCU boards of directors should define experience based on each FCU's derivatives program. One commenter stated that FCUs should demonstrate an advanced level of skill in conducting derivatives transactions, and one commenter suggested a broader level of experience such as professional accreditations to satisfy an experience requirement. Other commenters argued that, because ''plain vanilla'' derivatives instruments present little or no risk, the Board should not require specific experience. Seven commenters supported NCUA allowing third parties to meet an experience requirement, and seven were opposed.

Question Four. The Board asked whether NCUA should limit FCUs to using interest rate swaps and interest rate caps and whether interest rate swaps should be pay-fixed/receive-floating instruments. The Board also asked what other limits it should establish to ensure that an FCU does not transact interest rate derivatives in an amount greater than the level of its IRR exposure.

Twenty-five commenters agreed that NCUA should allow FCUs to use interest rate caps[10] and pay-fixed/receive-floating interest rate swaps[11] to offset and manage IRR. Twenty of these commenters, however, suggested that NCUA also allow credit unions to use other types of derivatives, including floors, collars, pay-floating/receive-fixed swaps, pay-variable/receive-fixed swaps, basis swaps, forwards, futures, and swaptions.

Question Five. The Board asked whether NCUA or an FCU's board of directors should establish exposure limits for FCUs and whether there should be limits on the aggregate amount of each type of derivatives instrument in the portfolio or on the aggregate amount of derivatives transacted with any counterparty. The Board also asked whether limits should be based on the notional amount of a derivatives instrument, its mark-to-market valuation, or both. Twenty-three commenters suggested that an FCU's board of directors should set the exposure limits, and five supported regulatory limits.

Question Six. The Board requested comment on whether there are ways to mitigate counterparty risk besides posting collateral and sought suggestions for appropriate collateralization conditions. Fourteen commenters supported collateral requirements, and four were opposed. Six credit unions stated that FCUs

[8] 12 CFR part 704, Appendix B.

[9] 77 FR 5416 (Feb. 3, 2012).

[10] In an interest rate cap, one party agrees to compensate another party for the amount by which an underlying short-term rate exceeds a specified rate on a series of dates during the life of the contract.

[11] A pay-fixed/receive-floating interest rate swap is an agreement where a credit union pays the counterparty a fixed rate of return in exchange for returns based upon future rates of a floating rate index for a predetermined period of time.

should be allowed to use letters of credit from a Federal Home Loan Bank or similar institution to meet collateral requirements. Three credit unions suggested that NCUA should allow the use of a non-zero threshold for collateral [12] posting by the counterparty, subject to the capital strength of the credit union.

II. Proposed Amendments

Taking into account the lessons learned from the pilot programs, the comments from the ANPRs, and the guiding principles in the IRPS, the Board is proposing the following amendments. The Board believes these amendments achieve a balance between IRR mitigation, a safe and sound derivatives program, and flexibility for credit unions.

A. Changes to Part 703

This proposed rule divides part 703 into two subparts. Subpart A consists of the current part 703, with some minor modifications. These modifications, discussed below, include added definitions the Board believes will add to the clarity to the rule. Subpart B consists of rules and requirements relating to IRR derivatives authority.

As discussed above, current § 703.16(a) lists derivatives as a prohibited investment for FCUs, but provides three exceptions.[13] This proposed rule deletes the general prohibition against derivatives in § 703.16(a) and moves the exceptions described there to a new permissible investments paragraph in § 703.14. Proposed paragraph (k) of § 703.14 authorizes FCUs to enter into all of the derivatives transactions permitted in current § 703.16(a) plus the derivatives transactions permitted in proposed subpart B of part 703.

This proposed rule also adds a definition of ''derivatives,'' ''forward sales commitment,'' and ''interest rate lock commitment'' and updates the definition of ''fair value.'' The new definitions clarify terms that are currently used in part 703. The updated definition of ''fair value'' cross references the definition used in GAAP.

B. Derivatives Authority

This proposed rule allows credit unions to enter into interest rate swaps and to purchase interest rate caps, and it requires pre-approval for all derivatives users. There will be two levels of pre-approval, Level I and Level II, permitting different degrees of derivatives authority with differing degrees of regulatory requirements.

C. Application of the Proposed Rule

The Act permits the Board to prescribe rules and regulations for all federally insured credit unions it deems are necessary to protect the NCUSIF and the credit union industry.[14] Before implementing a rule that applies to all federally insured credit unions, the Board carefully considers all available alternatives and the degree of risk posed to the NCUSIF by an activity the Board seeks to regulate. In the area of derivatives, the Board recognizes the risks inherent in these instruments and that the unregulated use of derivatives poses significant risk to the NCUSIF. For those reasons, this proposed rule applies to both FCUs and certain FISCUs described below.

This proposed rule applies to any FISCU that is permitted by its state law to engage in derivatives. This proposed rule does not grant any FISCU authority to engage in derivatives if applicable state law does not expressly allow it. It does, however, require those FISCUs with derivatives authority under state law to follow the requirements of this proposed rule. In addition, if aspects of a state's derivatives rule are more restrictive than this rule, FISCUs in that state must follow the more restrictive provisions of the state rule. In all other cases, a FISCU with derivatives authority must follow this proposed rule.

As discussed in more detail below, this proposed rule requires a FISCU to submit an application to its SSA. The SSA will review the application and forward its decision to NCUA for concurrence. The Board believes this approach will create a uniform system of approval and examination of credit unions permitted to engage in derivatives transactions, leading to greater protection of the NCUSIF.

D. Levels of Authority

As noted above, this proposed rule requires pre-approval from NCUA or, in the case of a FISCU, from the applicable SSA with NCUA's concurrence. Credit unions meeting specific eligibility criteria under this rule are permitted to apply for Level I or Level II derivatives authority.

Level I derivatives authority contains lower permissible transaction limits, but also entails a more streamlined application process and less restrictive requirements with respect to experience, personnel, and systems. Conversely, Level II allows for higher transaction limits set by NCUA up to a specific ceiling, but entails an onsite evaluation, higher regulatory requirements, a higher application fee, and the necessary personnel and systems to be in place before a credit union may apply. The following chart highlights the differences between Level I authority and Level II authority. These differences are discussed in more detail in other sections of this preamble.

LEVEL I AND LEVEL II COMPARISON

Level I	Level II
Eligibility: To apply for Level I authority a credit union must: • Show, in its application, how derivatives are part of the credit union's IRR mitigation strategy. IRR mitigation may be of current or prospective IRR. • Have a composite CAMEL code rating assigned by NCUA of 1, 2, or 3 with a management component of 1 or 2. • Have assets of at least $250 million, as of its most recent call report.	Eligibility: • In addition to all of the eligibility criteria under Level I in this chart, a credit union seeking Level II authority must also be able to demonstrate in its application why the limits for Level I authority are not sufficient to meet the credit union's IRR mitigation needs.
Authorities and Limits:	Authorities and Limits:

[12] A threshold amount is the amount of unsecured credit each party is prepared to accept before requiring collateral. A non-zero threshold arrangement means that the parties would be willing to accept some level of unsecured credit.

[13] 12 CFR § 703.16(a).

[14] 12 U.S.C. § 1789(11).

LEVEL I AND LEVEL II COMPARISON—Continued

Level I	Level II
• Interest rate swaps are limited to a notional value of 100% of net worth. • Interest rate caps are limited to an aggregate book value of 10% of net worth. • The combined limit of interest rate swaps and interest rate caps is limited to 100% of the aggregate limits based on usage. • Aggregate fair value loss on all interest rate swap positions cannot exceed 10% of net worth.[15]	• Interest rate swaps are limited to a notional value of 250% of net worth. • Interest rate caps are limited to an aggregate book value of 25% of net worth. • NCUA will set the combined limit of interest rate swaps and interest rate caps during the approval process. • Aggregate fair value loss on all interest rate swap positions cannot exceed 25% of net worth.[16]
• Maximum weighted average life of all derivatives transactions may not exceed 5 years. • A single derivatives position maturity may not exceed 7 years.	• Maximum weighted average life of all derivatives transactions may not exceed 7 years. • A single derivatives position maturity may not exceed 10 years. • Single counterparty notional exposure cannot exceed 100% of net worth for interest rate swaps and single counterparty book value may not exceed 10% of net worth for interest rate caps.
Application Review by Regulators: • 90 days from the date the appropriate Field Director determines a credit union's application is complete or receives a decision from an SSA, in the case of a FISCU.	Application Review by Regulators: • 120 days from the date the appropriate Field Director determines a credit union's application is complete or receives a decision from an SSA, in the case of a FISCU.
Application content. A credit union must demonstrate: • How derivatives are one part of the credit union's IRR mitigation strategy. Mitigation may be of current or prospective IRR. • How it plans to acquire, employ, and/or create the required resources, policies, processes, systems, internal controls, modeling, and competencies. • That its senior executive officers and board of directors understand the role derivatives play in the credit union's balance sheet management and the risk inherent in derivatives activities. • How it intends to use external service providers.	Application content. In addition to the content required in an application for Level I, a credit union applying for Level II authority must also: • Demonstrate why the limits for Level I authority are not sufficient for it to use derivatives as part of its IRR mitigation strategy. • Have the systems and personnel required by this rule in place *before* submitting its application.
External service providers: A credit union may contract with external service providers to: • Support: ○ Evaluating credit risk management. ○ Evaluating liquidity risk. ○ Asset/liability risk management. • Conduct: ○ Accounting reporting. ○ Counterparty exposure management. ○ Collateral management. ○ Trade execution. ○ Transaction management. ○ Financial statement auditing. ○ Legal services.	External service providers: A credit union may contract with external service providers to: • Support: ○ Asset/liability risk management. ○ Evaluating credit risk. ○ Counterparty exposure management. ○ Evaluating liquidity risk. ○ Collateral management. ○ Transaction management. • Conduct: ○ Accounting reporting. ○ Trade execution. ○ Financial statement auditing. ○ Legal services.
Application fee: As set by NCUA. The Board is considering amounts starting at $25,000.	Application fee: • As set by NCUA. The Board is considering amounts between $75,000 and $125,000.

E. Permissible Transactions

As stated above, this proposed rule limits permissible derivatives transactions for both Level I and Level II to interest rate caps and interest rate swaps. The Board considered all of the comments requesting additional levels of derivatives authority. At the present time, however, the Board believes that credit unions' capabilities and experience dictate a targeted approach to permissible derivatives. In addition, the Board believes this limited permissibility achieves the purpose of this rule, which is to provide credit unions with a meaningful tool to mitigate IRR. The Board recognizes and intends that these proposed limits may not provide mitigation for 100% of every credit union's IRR. Rather, the Board intends derivatives to be one part of a broader IRR mitigation and ALM strategy.

With regard to interest rate swaps, the Board is proposing to authorize only standard ''pay-fixed/receive-floating'' and ''pay-floating/receive-fixed'' [17] interest rate swaps. It is currently anticipated that most interest rate swaps users would enter into ''pay-fixed/receive-floating'' transactions to hedge against rising interest rates. This ''plain vanilla'' interest rate swap affords some protection against the most common interest rate exposure experienced by credit unions with material IRR sensitivity, namely, a statement of financial condition with an asset portfolio that does not reset to external rate changes as quickly as its liabilities.

[15] A credit union with Level I authority that exceeds this limit may not enter into any new derivatives transactions and must submit a corrective action plan to NCUA (or NCUA and the applicable SSA, in the case of a FISCU).

[16] A credit union with Level II authority that exceeds this limit may not enter into any new derivatives transactions and must submit a corrective action plan to NCUA (or NCUA and the applicable SSA, in the case of a FISCU).

[17] A pay-floating/receive-fixed interest rate swap is an agreement where a credit union pays the counterparty returns based on a floating rate index in exchange for returns based on a fixed rate of interest on a predetermined notional amount for a predetermined period of time.

Most credit unions use non-maturity and other short-term shares to fund longer duration assets creating an inherent re-pricing mismatch for which pay-fixed/receive-floating interest rate swaps can provide some effective mitigation.

Many variations of swap structures exist. NCUA is not authorizing any of the complex variations of the pay-fixed/receive-floating interest rate swaps structure because doing so introduces measures of complexity and risk that are more difficult to model, measure, monitor, and control. The Board does not believe the marginal risk management utility from more complex structures is sufficient to warrant the additional inherent risks. The Board seeks comment on whether credit unions believe that complex swap structures are necessary and, if so, which structures and why.

The Board is also restricting derivatives transactions to derivatives that are not leveraged. In some cases financial instruments have multipliers assigned to interest rate payments. These multipliers create a form of leverage that can either increase or decrease exposure to the rate or index to which the financial instrument is exposed. For example, a financial instrument could be structured to pay a floating rate of 3-month Treasury Bills times 1.2. This multiplier creates leverage and is impermissible under this proposed rule. This proposed rule allows credit unions to engage in a limited amount of ''plain vanilla'' derivatives transactions. Incorporating leverage could result in derivatives exposure beyond the limitations in this rule.

The Board is also excluding from the definition of interest rate swaps those where the notional amount varies because it does not believe the benefits of these instruments offset their added complexity. The maturity of instruments where the notional amounts vary can change in ways that may be unrelated to a credit union's own IRR. The Board does not intend for derivatives usage to add layers of complexity to a credit union's IRR management. Instead, the Board intends for credit unions to use derivatives as one tool in a comprehensive IRR management approach.

Consistent with the limitations for variable rate investments set in § 703.14(a),[18] NCUA is limiting permissible indices for interest rate swaps to domestic interest rates. In addition, any derivatives transaction must be denominated in U.S. dollars. These restrictions are consistent with the use of derivatives to manage IRR, as a credit union's IRR is correlated to changes in domestic interest rates.

The Board is also proposing to set a three-day settlement requirement for derivatives transactions. The counterparties to a derivatives transaction negotiate many elements of the transaction, including the settlement terms. The Board is proposing a three-day limitation based on market convention and believes it allows sufficient time to settle, while preventing forward-settling transactions, which can be used for speculation rather than mitigation. The Board invites comments on the appropriateness of this limit in the context of not wanting to allow forward-settling derivatives transactions.

Finally, this proposed rule prohibits credit unions from using derivatives to create structured liability offerings [19] for members or nonmembers, except as permitted under § 703.14(g) of NCUA's regulations.[20] That provision allows FCUs to purchase equity options for the purpose of offering their members dividends based on the performance of an equity index. Except for such dividends, FCUs may not use derivatives to offer structured liability products.

F. Eligibility

1. IRR Mitigation

As noted above, some commenters to the ANPRs expressed concerns with the general concept of requiring credit unions to demonstrate a material IRR exposure or another risk management need as a condition of derivatives authority. Other commenters supported requiring a credit union to demonstrate material IRR exposure before being granted independent derivatives authority. Among commenters expressing concerns with the concept of demonstrated need, one common concern was that requiring demonstrated need will reduce FCUs' incentives to responsibly manage IRR. The concern suggests that CUs will either proactively increase IRR in order to demonstrate need or will be less vigilant in managing IRR.

The purpose of this rule is to provide credit unions that meet certain standards with interest rate derivatives as an additional tool to reduce IRR exposure. As suggested by commenters, the Board recognizes that requiring the demonstration of material need for IRR reduction may create perverse incentives and lead to unintended consequences.

As discussed below, rather than demonstrate material interest rate risk exposure, a credit union must present a comprehensive risk management strategy, and articulate how the inclusion of interest rate derivatives will complement existing risk mitigation tools. In addition, a credit union applying for Level II authority must show why the limits in Level I authority are not sufficient to meet its IRR mitigation needs. The Board believes these requirements eliminate the unintended consequences cited by commenters, while ensuring a credit union fully considers how derivatives fit within its overall IRR mitigation strategy.

2. CAMEL Requirements

This proposed rule also requires a credit union's most recent composite CAMEL code rating, assigned by NCUA, to be a 1, 2, or 3, with a management component rating of 1 or 2. The Board believes that a high management component rating accounts for credit unions that may have a weak financial position because of IRR, but have the management in place to effectively identify, measure, monitor, and control significant risks. The Board intends this eligibility requirement to ensure that well-managed credit unions that need derivatives to mitigate IRR are able to obtain this authority.

3. Asset Threshold

As an eligibility requirement, the Board is also proposing an asset threshold of $250 million. An asset threshold of $250 million includes most credit unions with IRR exposure and the capacity to use derivatives. The Board arrived at this threshold by analyzing interest rate exposure at credit unions of varying asset size, the share of these credit unions' assets as a share of the credit union system, and the use of interest rate derivatives by similarly-sized community banks.

a. IRR Exposure

The Board notes that IRR is more prevalent among credit unions with assets over $250 million. Table 1 provides the average share of fixed rate assets, average share of money market deposits, and average share of non-core deposits (*e.g.,* deposits other than regular share and share draft accounts). These assets and liabilities represent the primary drivers of IRR exposure in a credit union's portfolio. Credit unions with more than $250 million in total

[18] 12 CFR § 703.14(a).

[19] A structured liability is an offering with contractual option features, such as periodic caps and calls, similar to those found in structured securities or structured notes.

[20] 12 CFR § 703.14(g).

assets have nearly twice the exposure to fixed rate assets and hold a much greater share of non-core deposits than credit unions with $250 million or less in assets.

Credit unions with more than $250 million in total assets represent 78% of the system-wide assets. With much of the IRR in these larger credit unions, the rule covers the vast majority of the IRR in the credit union system.

TABLE 1—IRR EXPOSURE AT CREDIT UNIONS BY ASSET CATEGORY (2012Q4) [21]

	Asset category			
	< $250M	$250M–$1B	$1B–$5B	$5B+
Share of Loans in Fixed Rate Mortgages	18%	35%	38%	36%
Share of Deposits in Money Market Accts	8%	22%	27%	26%
Share of Non-Core Deposits	32%	54%	60%	61%
Number of Credit Unions	6,066	556	180	17
Share of Systemwide Assets	22%	27%	33%	18%

b. Capacity

The cost to build staff and execute trades, and the counterparty requirements for many derivatives contracts, restricts most of these transactions to large commercial banks and community banks with more than $250 million in total assets. The Board believes this also holds true with credit unions. Table 2 below demonstrates the increasing likelihood of derivatives participation among larger financial institutions.

TABLE 2—CAPACITY FOR DERIVATIVES BASED ON BANK USE RATES [22]

	Asset category			
	< $250M	$250M–$1B	$1B–$5B	$5B+
Number of Banks and Thrifts	4,506	1,918	490	178
Number of Banks and Thrifts Holding Any Interest Rate Derivatives	347	535	280	148
Derivatives Use Rate	8%	28%	57%	83%
Average Notional Amount Held	$0.7M	$12M	$94M	$1.0T

Based on these considerations, the Board believes an asset threshold of $250 million is appropriate. It will allow those credit unions with the need and capacity to take advantage of this additional IRR mitigation tool.

In addition, a threshold of $250 million is a benchmark NCUA uses in other supervision areas, such as for annual examinations for FISCUs. The Board believes this figure represents a relative distinction between credit unions with more complex asset-liability structures and risks.

G. Proposed Requirements

The following discussion outlines the proposed requirements for credit unions with Level I and Level II authority. The Board points out the distinctions between the two levels and explains the reason for the differences. As discussed above, the difference between the two levels is in the permissible levels of transactions, as well as the application, expertise, and systems requirements.

1. Policies and Procedures

This proposed rule requires a credit union applying for Level I or Level II authority to operate according to written policies and procedures. These policies and procedures must, at a minimum, address managerial oversight, scope of activities, approved counterparties, risk management, legal issues, accounting standards, limits, counterparty exposure, margin requirements, and reporting requirements. The proposed rule requires that a credit union's board of directors review these policies and procedures annually and update them when necessary.

The Board believes it is important for everyone involved in a credit union's derivatives program, including external service providers, to be aware of the derivatives program's requirements, restrictions, and parameters. In addition, the Board believes written policies help ensure a credit union's board of directors contemplates every aspect of a derivatives program and the effect each will have on the credit union. An annual review will ensure the policies are updated to reflect the changing environment and the credit union's needs and goals.

2. Collateral Requirements

The Board is proposing requirements for collateral to ensure credit unions are fully protected in the event of market disruptions or counterparty defaults. These proposed collateral requirements include limiting collateral to highly liquid instruments permitted under the Act.

The proposed rule restricts the forms of collateral that are permitted for a credit union to the most liquid and easily valued instruments so that they can be easily negotiated even in times of market illiquidity. In addition, collateral arrangements must be bilateral and collateral may not be held by counterparties except at a legally separate affiliate. These requirements ensure that a credit union's exposure is de minimis by specifying that derivatives positions are priced daily, that the threshold amounts at which collateral is required are zero, and that mandatory triggers for transfer amounts are low. The Board has also included a proposed requirement that accounts for cases where a credit union lacking financial strength may be required to

[21] Data from the 2012Q4 NCUA Call Report.

[22] Data calculated from the 2012Q4 FDIC Call Report and is calculated for all banks and thrifts that report non-zero notional amounts outstanding for interest rate derivatives contracts.

post additional collateral for a counterparty to be willing to transact.

The Board notes that all of these proposed collateral provisions are based on common practices in the derivatives market. In addition, the Board believes these provisions will help protect the safety and soundness of a credit union with derivatives authority and will not pose an unreasonable burden.

This proposed rule limits eligible collateral to cash, Treasury securities, fixed-rate non-callable agency debentures, and zero-coupon non-callable agency debentures. Eligible collateral must also be permissible under the Act, part 703 of NCUA's regulations, and the credit union's own investment policy. NCUA is aware that these collateral restrictions are more limited than the permissible investments in the Act and NCUA's regulations, but the Board believes implementing narrower limitations is necessary to ensure collateral will be both highly liquid and easy to value. The Board notes that both Treasury and agency securities are generally considered the most liquid debenture sectors within the fixed-income arena. Furthermore, limiting agencies to fixed-rate and zero-coupon, non-callable structures further increases liquidity and ease of valuations. The importance of collateral in a derivatives transaction is to protect a credit union in the event the derivatives counterparty fails. Requiring highly liquid and easy to value securities, or cash, will help ensure credit unions are protected in the event of a counterparty default. The Board believes these restrictions will provide ample collateral options to derivatives counterparties.

In addition, the proposed rule requires that derivatives exposures be fully collateralized. This requirement is also an integral part of derivatives clearing requirements for banking organizations participating in the derivatives markets, including margins on collateral. Collateral management integrally reinforces good counterparty management.

Credit unions also need to consider the possible effects of derivatives transactions on liquidity. This includes the use of liquid assets as collateral for transactions which may reduce assets available for other liquidity needs. Margin requirements can fluctuate and require increasing amounts of collateral. Credit unions with Level II derivatives authority in particular should be aware of additional liquidity pressure from increased margin requirements for counterparty exposure under potential stress conditions where the credit union's loss on a derivatives position increases significantly. The replacement cost for a terminated or defaulted derivative transaction can also impinge on liquidity.

The proposed rule also limits a collateral custodian to an entity that is not the counterparty to the transaction (except for affiliates that are separate legal entities organized under U.S. law), is authorized to be a custodian, is subject to federal or state examination, and has equity of at least $50 million. Like the restrictions on counterparties discussed below, the Board is proposing this limitation to ensure that any entity holding collateral in a derivatives transaction is qualified and well capitalized so as not to add undue risk to a derivatives transaction.

3. Counterparty Requirements

In addition to the proposed collateral requirements to reduce risk to credit unions, the Board is proposing counterparty requirements with the same intent. First, the proposed rule limits credit risk by limiting permissible counterparties to swap dealers and major swap participants as defined by the Commodity Futures Trading Commission (CFTC).[23] At the time of this proposed rule, more than 70 domestic swap dealers have provisionally registered with the CFTC under its clearing requirements. By restricting counterparties to swap dealers and major swap participants, the Board is limiting counterparties to established institutions that meet the standards of and are subject to oversight by the CFTC. This pool of counterparties is sufficiently broad for credit unions to access the derivatives markets. The proposed rule also limits counterparties to those doing business under the laws of the United States to protect credit unions in case of counterparty dispute.

Second, the Board is proposing to require credit unions to develop the internal capacity to conduct a credit risk analysis of any potential counterparty. This means that a credit union must be able to carefully assess the likelihood of default and timely repayment of derivatives obligations. In addition, a credit union must be aware of the financial strength of its counterparties, as well as the counterparty's capital buffers to absorb losses and access liquidity.

4. Reporting

The proposed rule requires the senior executive officers to deliver a monthly report to the credit union's board of directors on certain aspects of the derivatives program. The proposed rule defines a credit union's senior executive officers as a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (*e.g.,* any assistant president, any vice president or any assistant treasurer/manager), and the chief financial officer (controller) that are directly within the chain of command for the oversight of a credit union's derivatives program, as identified in a credit union's process and responsibility framework.

This report must include an identification of noncompliance with the credit union's policies or any applicable law or regulation, including this rule, utilization limits, an itemization of the credit union's individual positions, a comprehensive view of the credit union's balance sheet, and the cost of executing new derivatives transactions. The Board believes it is important for a credit union's board of directors to be timely and accurately informed about the condition of the derivatives program so that it can make adjustments in the derivatives strategy to ensure the short and long-term goals of the credit union are met.

The Board also expects that senior executive officers would receive daily and weekly reports from individuals responsible for managing transactions and tracking risk compliance. While not included in the rule, the Board believes this is a prudent strategy to ensure adequate supervision of the derivatives program.

5. Systems, Processes, Personnel

The Board believes that appropriate systems, processes, and personnel are vital to a safe and successful derivatives program. The Board, therefore, has proposed several related requirements. The Board notes certain differences between systems, processes, and personnel requirements for Level I and those for Level II. The Board believes that the Level II requirements should be greater because of the higher transaction limits. The specific requirements are discussed below.

a. Personnel

Having the proper personnel in place at a credit union is fundamental to ensuring the safety and soundness of a derivatives program. To ensure a derivatives program is well managed and achieves the goals of the credit union, the board of directors, senior executive officials, and qualified derivatives personnel need to have varying degrees of knowledge and

[23] 17 CFR §§ 1.3(ggg) and (hhh).

expertise to carry out their respective functions.

i. A Credit Union's Board of Directors

A credit union's board of directors is responsible for establishing the business plan for the credit union and ensuring that the policies and programs achieve the goals of that plan. A credit union's board of directors must receive training before the credit union enters into any derivatives transactions, and annually thereafter. This training should educate the board members on the benefits and risks associated with derivatives, as well as how derivatives fit within a credit union's balance sheet and can be used as an effective IRR mitigation tool. The Board expects this training will provide a credit union's board of directors with the knowledge necessary to fulfill its fiduciary responsibility and provide strategic oversight of a derivatives program. A credit union must make evidence of this training available during its next NCUA or SSA examination.

ii. Senior Executive Officers

A credit union's senior executive officers are tasked with carrying out the credit union board's plan for using derivatives. This includes understanding the benefits and risks associated with derivatives as well as knowing how derivatives fit within the credit union's business model and balance sheet. As these officers are directly overseeing the day-to-day operation of a credit union's derivatives program, the Board expects them to have a comprehensive understanding of derivatives. During a credit union's application process, NCUA will evaluate each senior executive officer responsible for overseeing the credit union's derivatives program to ensure that each person has the education, skills, and experience necessary to oversee a derivatives program that is managed safely and effectively.

A credit union must immediately notify NCUA (and, if applicable, the appropriate SSA) when a senior executive officer position as defined in this rule becomes vacant.[24] A credit union must also immediately provide NCUA (and, if applicable, the appropriate SSA) with documentation evidencing knowledge and experience for any person who becomes a senior executive officer as defined in this rule while the credit union has derivatives authority. This supporting documentation must demonstrate that the new senior executive officer has the skill and experience required by the rule. Failure to provide this documentation or to show that the new senior executive officer is qualified under the rule will mean the credit union is no longer in compliance with the rule, and would be subject to the regulatory violation provisions, discussed below.

iii. Qualified Derivatives Personnel

In order to engage in any new activity, it is incumbent on the credit union to ensure that personnel with appropriate training and experience are responsible for the day-to-day activity. The risk of a derivatives program is not limited by the complexity of permissible products. While the Board is proposing ''plain vanilla'' interest rate swaps and interest rate caps as a way to mitigate a credit union's IRR, these tools still present complex issues with the transaction, risk management, and the operational aspects of a derivatives program.

The proposed rule requires three years of experience for qualified derivatives personnel at a credit union seeking Level I authority and five years of experience for Level II. The Board believes that increased limits correlate with increased risk, which necessitates additional experience by a credit union's qualified derivatives personnel. To satisfy the experience requirement of the proposed rule, qualified derivatives personnel must have at least the requisite number of years of direct transactional experience in the trading, structuring, analyzing, monitoring, or auditing of financial derivatives transactions at a financial institution, a risk management advisory practice, or a financial regulatory organization. Staff must also have the demonstrated expertise in statement of financial condition analysis. The Board believes that direct experience with derivatives allows a credit union to effectively manage risk and properly execute all derivatives transactions.

The Board recognizes the comments on ANPR II stating that NCUA should not condition approval on experience requirements. The Board believes that without qualified staff, however, a credit union will not be able to safely and effectively manage a derivatives program.

6. Internal Controls Structure

In addition to having the proper personnel in place, it is imperative that a credit union be organized in a way that ensures the proper level of oversight, separation of duties, and reviews and audits. As discussed below, this proposed rule has six requirements the Board believes will ensure a credit union's derivatives program is operated safely and soundly.

a. Separation of Duties

An important internal controls principle is dividing duties so that no one person has sole control over any transaction and its recording and accounting. Separation of duties helps reduce an employee's opportunity to commit and conceal fraud or errors. Errors in derivatives operations can result in significant losses because of the effect of leverage. Accordingly, the proposed rule requires that as part of its derivatives management and internal controls structure, a credit union maintain separation of duties for the functions of: (1) Derivatives execution and oversight; (2) accounting for and confirmation of derivatives transactions; (3) ALM; and (4) credit, collateral, and liquidity management. The Board believes these core functions must be accomplished by different people to ensure an effective system of checks and balances.

b. Framework

This proposed rule also requires a credit union with derivatives authority to maintain, in its written derivatives policy, a written and schematic description of the derivatives decision process. This framework description must show how decisions on derivatives are made, starting with the board's decision to use derivatives to mitigate IRR, to the senior executives formulating a derivatives plan and choosing the counterparties and derivatives, to the execution of the derivatives transaction and the monitoring and accounting through the life of the transaction. The Board is requiring that this framework be both written and in a schematic or flow chart form. A visual depiction of a credit union's decision process provides the credit union's employees and examiners with a useful summary of who is making and executing all of the decisions and functions associated with the credit union's derivatives program.

c. Internal Controls Audit

A credit union with Level I or Level II derivatives authority must, at least annually, have an internal controls audit conducted by an external service

[24] *Senior executive officer* is, for the purposes of this proposed rule, a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (*e.g.,* any assistant president, any vice president or any assistant treasurer/manager), and the chief financial officer (controller) that are directly within the chain of command for the oversight of a credit union's derivatives program, as identified in a credit union's process and responsibility framework, discussed in § 703.108(b)(2) of the proposed rule.

provider. The credit union must ensure the external service provider is experienced in auditing derivatives transactions, including, but not limited to, valuation methods and risk management modeling techniques, and is familiar with the credit union's IRR model and the related assumptions and inputs to test for reasonableness.

The scope of the audit must include coverage of the accounting, legal, operating and risk controls. The legal audit section should ensure executed contracts are in place with all counterparties and external service providers used in the derivatives program. The auditors will need to ensure all material contracts have been reviewed by counsel.

Scoping for operating and risk controls should include at a minimum a review of and testing for segregation of duties to ensure no one party or department is responsible for executing, documenting (accounting), and risk reporting of derivatives transactions along with compliance with policies and procedures. In addition, the audit must address collateral management to ensure the credit union is adequately monitoring and valuing its positions with counterparties. This includes independent valuations and review of counterparty pricing reports.

d. Financial Statement Audit

Currently, NCUA only requires financial statement audits for credit unions with assets of $500 million or more.[25] The Board, however, is proposing to require financial statement audits for any credit union with derivatives authority. Financial statement audits express an opinion as to whether the financial statements fairly present the credit union's financial position and the results of the operations and its cash flows in conformity with GAAP. The licensed certified public accountants responsible for the financial statement audit must have experience evaluating derivatives transactions.

Using derivatives exposes credit unions to a variety of risks, including market, counterparty, credit, and liquidity risks. Consequently, the review of written policies, internal controls, financial reporting, and regulatory requirements is imperative. Because accurate financial reporting is paramount to effectively manage risk and make sound business decisions, the Board believes it is prudent to require financial statement audits for all credit unions with approved derivatives authority. This is a new requirement only for those credit unions with assets between $250 million and $500 million. The Board is also proposing a conforming change to part 715 to clarify that credit unions with assets over $500 million and any credit union engaged in derivatives must obtain a financial statement audit.

e. Legal Review

The proposed rule requires a credit union to obtain a legal opinion from qualified counsel before executing any derivatives transaction. Qualified counsel means an attorney with at least five years of experience reviewing derivatives transactions. This attorney may be the credit union's in-house counsel or the credit union may need to retain outside counsel. The Board is proposing this requirement to ensure that any attorney providing a legal opinion on a credit union's derivatives program has the requisite skills and experience to properly evaluate International Swap Dealers Association (ISDA) agreements and compliance.

The legal opinion must conclude that the credit union's ISDA agreements are enforceable and the credit union is in compliance with all applicable laws and regulations relating to its derivatives program. Like the 1998 IRPS, this proposed rule also requires that a credit union ensure any counterparty is authorized to enter into the transaction.

f. Hedge Review [26]

The proposed rule requires a credit union to conduct a hedge review before executing a derivatives transaction. This review entails identifying and documenting the circumstances leading to the decision to hedge, specifying the derivatives strategy, and demonstrating that the derivatives transaction is protecting against the loss it was intended to mitigate. The Board included this requirement to ensure that two conditions are met: (1) A credit union with derivatives authority is using derivatives for their intended purpose, the mitigation of IRR; and (2) the credit union has a well thought out and documented plan of how and why it will hedge particular IRR on its balance sheet. The Board believes this requirement achieves both of these goals.

7. Transaction Management

The proposed rule requires credit unions to have support systems in place to provide accurate and timely transaction processing. The Board believes this requirement will help credit unions ensure that derivatives transactions are executed in a timely manner and in accordance with the policy of the credit union's board of directors. Under this requirement, credit unions should be able to document a derivatives transaction, including the price paid, collateral requirements, identification of the counterparty, life of the transaction, and reason for the hedge. Under the reporting section of the proposed rule, these items must be included in the monthly report to the credit union's board of directors. Further, the Board believes a credit union must be able to accurately account and record a derivatives transaction, just as it would any other transaction.

8. Asset Liability Management (ALM)

The proposed rule describes the management of derivatives as part a credit union's overall ALM. It is critical for the credit union to have staff with sufficient expertise to perform this function. It is equally important for the credit union to have an ALM function in place that is sufficiently well-developed to measure, monitor, and control all aspects of the credit union's statement of financial condition, including the credit union's derivatives activities. A credit union will need to manage the risk of derivatives transactions itself, within a clearly stated ALM strategy, while testing and demonstrating the effectiveness of these transactions in reducing IRR exposure. Therefore, as well as testing past effectiveness, a credit union must assess the likely effectiveness of its derivatives transactions in reducing IRR exposure going forward under a range of stressed rate and statement of financial condition scenarios. The credit union will also need to consider a variety of alternative strategies to reduce IRR in order to perform this function successfully.

The proposed rule identifies a number of ALM process elements that are necessary to successfully manage derivatives activity. Clear, comprehensive reporting by senior management to the credit union's board of directors is essential to identify any policy exceptions and to ensure that management of derivatives is clear and transparent at the highest level. The credit union should state individual and aggregate derivatives exposure within the context of the overall balance sheet of the credit union. The credit union should clearly capture, monitor, and report the cost of these transactions. Appropriate separation of duties is necessary to maintain accurate review and disclosure. The credit union will

[25] 12 CFR § 715.5.

[26] Hedge review means an analysis of the specific derivatives transaction a credit union is considering, to ensure that the transaction will mitigate IRR on the credit union's balance sheet.

need ALM systems that are able to identify the value of any of its derivatives transactions, and must have the capacity to state this value as part of a net economic value calculation of the credit union's balance sheet.

9. External Service Providers

The Board believes external service providers (ESPs) [27] can play a vital role in the overall success of a derivatives program. The Board, however, is concerned that overreliance on ESPs in the complex area of derivatives may lead to additional risk to the credit union. Potential conflicts exist because external parties do not share the same fiduciary responsibility as the credit union and they have financial objectives and incentives that are different as well. The Board, therefore, is proposing to allow credit unions to utilize ESPs in limited ways, provided that credit unions meet certain conditions and restrictions. In addition, the Board is proposing differing levels of ESP involvement for credit unions with Level I and Level II authority. As noted above, credit unions with Level II authority must have a higher degree of infrastructure and experience to obtain a higher level of authority. Behind this requirement is the idea that these credit unions should have more internal capacity, and, therefore, less reliance on ESPs, than credit unions with Level I authority.

First, the proposed rule prohibits credit unions from using ESPs that are principals or agents to derivatives transactions involving the credit union. NCUA is aware that some credit unions have ESP relationships with firms that provide services and act as agents or principals for securities trades. Unlike securities, derivatives transactions are unique agreements between two parties and pricing transparency is typically considerably more limited. This limited transparency makes it harder for a credit union to determine what fees are being charged to execute the transaction. Additionally, principals or agents may have an incentive to enter into derivatives trades to generate income for themselves. The potential conflicts of interest and the limited transparency are the primary reasons for the prohibition on ESPs being principals or agents in derivative transactions. The Board further believes that credit unions have sufficient alternatives for ESPs beyond principals or agents in derivative transactions.

Second, the Board believes that credit unions can make responsible use of contractual services provided by independent ESPs, as part of an effective derivatives and balance sheet management process. Responsible use of ESPs requires a credit union to have the internal capacity, experience and skills to oversee and manage any ESP activities. More generally, a credit union must retain responsibility and control over the derivatives and balance sheet management process and decision making. The credit union is responsible for managing ESP work products and must have a full understanding of ESPs' activities.

While the Board supports the use of ESPs, there are some activities that the Board believes are so central to demonstrating effective managerial control that the credit union must conduct them.[28] The Board is proposing to allow Level II credit unions more restricted use of ESPs because it believes that institutions able to take greater risks must have greater in-house risk-management capabilities.

The proposed rule classifies a number of activities into two categories of permissible use of contractual services and support. The functions in each classification vary between Level I and Level II authority. The two classifications are:

Support: A credit union is required to conduct the functions in this category. ESPs can provide assistance and input, but a credit union is prohibited from allowing an ESP to conduct the function or activity in lieu of the credit union.

Conduct: A credit union may contract with an ESP to conduct a function or activity in this category as part of the management and internal controls structure. While a credit union is responsible for managing an ESP's work quality and must have full understanding of all ESP activities and work products, it is not required to maintain in-house capacity for the function or activity. The table below summarizes the permissible uses of ESPs outlined in the proposed rule.

Function	Level I		Level II	
	Support	Conduct	Support	Conduct
Asset Liability Management	X		X	
Accounting and Reporting		X		X
Credit Risk	X		X	
Counterparty Exposure Management		X	X	
Collateral Management		X	X	
Liquidity Risk	X		X	
Trade Execution		X		X
Transaction Management		X	X	
Financial Statement Auditing		X		X
Legal Services		X		X

10. Limits

a. Interest Rate Swaps and Interest Rate Caps

The proposed rule includes limits for Level I and Level II authorities on the amount of derivatives exposure a credit union may take. These limits are intended to provide credit unions with sufficient tools to manage IRR based on the credit union's ability to independently manage its derivatives program. The Board, in establishing the limits, is also trying to limit the amount of potential loss exposure derivatives transactions may cause the credit union and NCUSIF. Derivatives exposure limits are measured differently for interest rate caps and interest rate swaps. The Board chose relatively simple measurement tools and acknowledges they may not fully capture all risks associated with derivative exposure. However, the

[27] An external service provider is any entity that provides services to assist a credit union in carrying out its derivatives program and the requirements of this rule. An external service provider does not include a credit union service organization that is wholly owned by the credit union receiving the services.

[28] For purposes of this rule, a wholly owned credit union service organization may perform these functions for the credit union that wholly owns it. If the CUSO provides services to other credit unions, it will be an ESP and subject to the restrictions in the proposed rule.

Board is comfortable that the methodology limits loss exposure, is easy to understand, and will allow credit unions to manage their IRR exposure. In addition, the Board chose these proposed limits with the intent that derivatives would not provide every credit union with complete IRR mitigation. Rather, the Board intends derivatives to be one part of an overall IRR mitigation strategy.

The proposed limit on interest rate caps is measured by the exposure of book value to net worth. The Board chose book value as the limit's measurement basis since it measures the amount of net worth at risk if the cap becomes worthless through the event of a default by the counterparty. Interest rate caps are typically purchased with strike rates [29] above current rates and pay the purchaser when interest rates increase above the strike rate. The premium that a purchaser pays at inception of the interest rate cap represents the maximum amount of potential loss to net worth on day one of the transaction. This premium will fluctuate over time, and value changes are reflected through changes in the income statement. GAAP hedge accounting treatment dictates whether the premium can be amortized or is subject to changes in fair value. The Board considered using notional value as a limitation, but decided book value was a more appropriate measurement because it accurately captures the risk associated with interest rate caps without unreasonably limiting a credit union's ability to mitigate IRR. The Board specifically requests that interested stakeholders provide suggestions of alternative methodologies to measure and limit cap exposure for credit unions and explain why the alternative is better than book value. The Board requests that any alternative measurement for credit unions to measure and report be straightforward.

The proposed limit on interest rate swaps is measured using notional exposure and fair value loss. Both measurements use the credit union's net worth as the basis. The Board chose two separate types of limitations for interest rate swaps based on lessons learned from the corporate credit union crisis. Unlike interest rate caps, an interest rate swap can result in the credit union owing the counterparty if rates move the opposite way from which the credit union is hedging. This loss can be magnified if the value of the hedged assets declines. Therefore, the Board is proposing to limit the notional amount of swap exposure a credit union may have regardless of whether the credit union is in a fair value gain or loss position. Further, the Board is proposing fair value loss limits that trigger a suspension of derivatives transactions and the submission of a corrective action plan if the credit union reaches certain levels of losses. As noted above, the proposed rule contains different loss limits for Level I and Level II.

The proposed rule allows credit unions with Level I authority to have book value of up to 10% of net worth in caps and up to a notional value of 100% of net worth in swaps exposure with a total fair value loss limit on swaps of 10% of net worth. A credit union with Level I authority using both interest rate swaps and interest rate caps will be subject to a combined limit. The combined limit requires that the sum of the percentage utilization of the interest rate swaps limit and interest rate caps limit is less than or equal to 100%. For example, consider a credit union that holds interest rate swaps with a notional balance equal to 75% of net worth (or 75% of the interest rate swaps limit) and interest rate caps with an aggregate book value equivalent 2.5% of net worth (or 25% of the interest rate caps limit). Combining the interest rate caps and interest rate swaps limits utilization percentages (75% + 25%) equals 100%. Therefore this credit union is at the limit and unable to add additional derivative positions.

Both the interest rate swaps limit and the interest rate caps limit are designed to make identifying and tracking exposure easy for credit unions. The Board believes these limits are appropriate given the risks, personnel, and systems required under the proposed rule for Level I authority, which are discussed above. The Board also believes these limits are sufficient for credit unions with lower levels of IRR and infrastructure to adequately use derivatives as an additional IRR mitigation tool.

The proposed rule allows credit unions with Level II authority to have book value of up to 25% of net worth in interest rate caps and up to a notional value of 250% of net worth in interest rate swaps exposure with a total fair value loss limit on interest rate swaps of 25% of net worth. NCUA will establish a combined limit for credit unions with Level II authority up to the maximum limit for caps and swaps. NCUA will establish this limit during the approval process based on the resources and need of the applying credit union. The Board believes these higher limits, in contrast to those for Level I, are appropriate given the added requirements for Level II credit unions. These higher limits will allow a credit union with considerably more infrastructure and experience to utilize additional derivatives to mitigate higher levels of IRR.

As identified in the discussion of the Level I and Level II limits on swaps, the proposed rule includes limits on a credit union's loss on swaps. The Board believes it is appropriate to include this additional limit on swaps given their riskier nature and the potential for losses. The Board's goal is to ensure the financial health of a credit union is not jeopardized by the declining value of swaps positions. The difference in the individual limits in this area reflects a higher level of experience and derivatives management capability at Level II credit unions, as well as a higher level of regulatory due diligence at the time NCUA reviews a credit union applying for Level II authority.

b. Maturity

In addition to the limits discussed above, the proposed rule includes limits on the individual maturities of derivatives transactions and the combined weighted average life of derivatives transactions for both Level I and Level II. Unlike exposure limits, these limits are applied equally to interest rate caps and interest rate swaps and are based on the notional amount. The Board notes that, like bonds, the risk of derivatives transactions increases as the maturity length increases. The Board believes that limiting the term of individual transactions and the weighted average life of the portfolio is an additional way to limit losses for a credit union and the NCUSIF, while not hindering a credit union's ability to mitigate IRR.

The proposed rule prohibits a credit union with Level I derivatives authority from having individual derivatives transactions that exceed a maturity of seven years. Further, the weighted average life of all derivatives in the credit union's portfolio cannot exceed five years. The Board believes these limits are appropriate given the risks, personnel, and systems required for Level I authority.

Conversely, the proposed rule prohibits credit unions with Level II derivatives authority from having derivatives transactions that have a maturity longer than ten years or a weighted average life of all derivatives in its portfolio greater than seven years. These longer maturities reflect the increased requirements for and supervision of a credit union with Level II authority.

[29] Strike rate means the interest rate that triggers payments to the credit union under the contract.

The following table illustrates the differing limits between Level I and Level II:

Authority	Level I	Level II
Interest Rate Caps	Book value of up to 10% of net worth	Book value of up to 25% of net worth.
Interest Rate Swaps	• Notional value of up to 100% of net worth • Must suspend derivative activity if total fair value of swap loss position exceeds 10% of net worth.	• Notional value of up to 250% of net worth. • Must suspend derivative activity if total fair value of swap loss position exceeds 25% of net worth.
Combined Limits	A weighting between both limits to equal 100%. For example, 50% of cap limit would allow for 50% of swap limit.	Determined during approval process.
Tenor Limits	• Derivative portfolio weighted average life limit of 5-years. • Single transaction maturity limit of 7-years	• Derivative portfolio weighted average life limit of 7-years. • Single transaction maturity limit of 10-years.

G. Application Procedures and Content and Review

The Board is proposing an application process that requires an applying credit union to demonstrate the requisite systems and expertise to support derivatives. In accordance with the increased levels for a credit union applying for Level II authority, the application process for this authority will be more thorough and will include an NCUA on-site review of the derivatives program infrastructure.

1. Application Content

The application process begins with the credit union submitting comprehensive documentation demonstrating that it meets the requirements for the level of authority it is applying for. The Board considers derivatives authority as an advanced ALM tool and expects a credit union's infrastructure to sufficiently support the activity. Application requirements represent items the Board regards as necessary components of enhanced ALM and critical derivatives program functions.

A credit union applying for either level must provide an IRR mitigation plan, which demonstrates how derivatives fit within that plan. The Board notes that while the need to mitigate IRR may be a prospective need, a credit union may not use derivatives to speculate. A credit union's plan should show that derivatives are an effective part of a credit union's IRR mitigation plan and that the credit union has other tools it is using to mitigate IRR. In addition to this requirement, a credit union applying for Level II authority must demonstrate why the limits in Level I are insufficient for its IRR mitigation needs. A credit union should be able to show in its application that even after employing other mitigation strategies it still has a need for derivatives limits that are higher than under Level I.

A credit union's senior executive officers and board of directors must understand how derivatives fit within the credit union's business model and balance sheet and be able to articulate how they intend to use ESPs. A credit union applying for Level I must demonstrate how it plans to acquire and employ the necessary systems, personnel and infrastructure, and do so before transacting in derivatives. A credit union, however, applying for Level II authority must have these in place before it applies. This requirement for Level II ensures that NCUA can adequately evaluate all of the components of the proposed derivatives program during its onsite review.

2. Application Review

After a credit union has compiled all of the information for its application, it must submit it to NCUA, or its SSA in the case of a FISCU. An SSA will evaluate an application and send its decision to NCUA for concurrence. Once the Field Director receives a complete application or a decision from an SSA, as applicable, NCUA will begin its review process. The Board notes that NCUA will not begin its review of an application until the appropriate Field Director determines that the application is complete and in compliance with the regulation and any applicable supervisory guidance. The proposed rule requires that a Field Director make this determination within 30 days of the date it receives an application from a credit union. NCUA will use its best efforts to review every application as quickly as possible.

The proposed rule provides that NCUA will approve or deny a credit union's application within 90 days for Level I and 120 days for Level II. These time limits begin when a Field Director determines it has a complete application from an FCU or a decision from an SSA for FISCU applicants.

Given the complex nature of derivatives and the level of due diligence the agency must perform to ensure derivatives programs are safe and sound, the Board believes these time frames are reasonable. The Board recognizes that a review of a derivatives program will vary between credit unions and the Board wants to ensure field staff has adequate time to conduct a thorough review. In addition, while not required under the proposed rule, it may be necessary for NCUA to conduct an onsite review of a credit union applying for Level I authority.

3. Appeals

The proposed rule also permits a credit union that has had its application denied by a Field Director to appeal to NCUA's Supervisory Review Committee within 60 days from the date of denial. For any final rule that becomes effective, the Board would make a corresponding change to IRPS 11–1, which lists the issues that credit unions may appeal to NCUA's Supervisory Review Committee.

H. Pilot Program Participants and FISCUs With Derivatives

The Board recognizes that current participants in the various derivatives pilot programs and FISCUs with active positions may not meet the requirements of a final rule promulgated by the Board. The Board wants to provide these credit unions with sufficient time to bring their programs into compliance with a final rule. This proposed rule, therefore, includes a section addressing this goal.

Specifically, the proposed rule provides that any credit union that, as of January 1, 2013, is holding derivatives under an NCUA derivatives pilot program or state law has 12-months from the effective date of a final rule to come into compliance with the rule's requirements. The Board set a date of January 1, 2013, to ensure that only credit unions with active positions before publication of this proposed rule could take advantage of the 12-month

grace period. Compliance would include submitting an application for review under the provisions of the rule. During this 12-month period, a pilot participant is permitted to continue operating its derivatives program in accordance with its pilot program terms and conditions. A FISCU may also continue to operate its derivatives program under the applicable state law during this time period.

If a credit union fails to meet the requirements of the rule after 12 months, the rule requires that the credit union immediately cease entering into new derivatives transactions and within 30 days present a corrective action plan to NCUA (and SSA, in the case of a FISCU) outlining how and when it will cure any deficiencies or how it will unwind its derivatives program. A credit union under a corrective action plan is not permitted to enter into any new derivatives transactions until notified by NCUA.

A credit union that is otherwise in compliance with the rule, but is holding active positions it purchased prior to January 1, 2013, will not be subject to the corrective action plan requirements discussed above. Rather, the credit union will be required to inform NCUA and the SSA, in the case of a FISCU, how it will handle these active positions.

I. Regulatory Violation

The proposed rule provides a system of corrective action if a credit union with derivatives authority fails to comply with the rule, has safety or soundness concerns identified by NCUA, or fails to employ the resources, policies, processes, and competencies that it identified in its application for approval. If NCUA determines a credit union has failed any of these aspects, the credit union must immediately cease entering into any new derivatives transactions and must also present a corrective action plan to NCUA and the SSA, in the case of a FISCU, within 30 days.

A credit union's corrective action plan must address the deficiencies identified by NCUA and how the credit union will promptly fix these deficiencies. NCUA will evaluate all corrective action plans to determine if they are realistic and sufficient to remedy the deficiencies. In the case of a FISCU, this plan must also be approved by the applicable SSA. If NCUA, and the SSA, if applicable, approve a credit union's corrective action plan, NCUA will also notify the credit union when it is permitted to begin entering into new derivatives transactions.

In addition to or in lieu of a corrective action plan, NCUA may terminate a credit union's derivatives authority based on a violation of NCUA's regulations or safety and soundness concerns. NCUA will only require divestiture if it determines that doing so would not pose additional risks to the credit union.

J. Application Fees

The Board is considering instituting a fee structure for those credit unions that apply for derivatives authority. As discussed above, NCUA's application review process and ongoing enhanced supervision is labor and resource intensive. Rather than pass this cost on to the credit union industry as a whole, the Board believes it may be prudent to pass this cost directly to the credit unions seeking approval. Application fees may also serve as a deterrent to credit unions that are unsure whether or not they can meet all of the qualifications required to implement a safe and sound derivatives program.

The Board is considering a Level I application fee with amounts starting at $25,000 and a Level II application fee with amounts ranging from $75,000 to $125,000 based on the complexity of the application. The Board would set this fee in periodic guidance based on the evolving costs of processing an application.

In addition, the Board will maintain authority to modify the Level II application fee if the credit union operates under Level I authority for a period of time. The Board notes that NCUA will expend fewer resources to review the Level II application of a Level I credit union due to familiarity with the credit union's current practices. This situation may warrant a reduced Level II application fee. This reduction in application fee would largely depend on the length of time a credit union operates under Level I authority before applying for Level II authority. The Board also notes that this application fee would be in addition to any fees charged by an SSA for an application by a FISCU. The Board is interested in comments on this approach.

K. Supervision and/or Examination Fees

In addition to application fees, the Board is seeking comments on the pros and cons of recovering the costs of ongoing supervision of credit unions engaged in derivatives. The Board is particularly interested in comments as to whether annual NCUA costs for staff, contractors, and/or examination hours should be borne entirely by the credit unions engaged in derivatives.

For example:

- Should NCUA charge an annual licensing fee to the credit unions approved to engage in derivatives?
- Should NCUA charge credit unions that have purchased derivatives for examination time spent evaluating their derivatives activity?
- How would NCUA isolate and determine the staff hours involved in supervision of derivatives activity?
- Would an annual licensing fee or additional yearly charge act as a deterrent to qualified credit unions from using derivatives to mitigate IRR?

In responding to the above questions, it should be noted that the Board would not intend for any annual charges to act as a deterrent to qualified credit unions but rather as a more equitable way of assessing the cost of the derivatives program. The Board intends to encourage qualified credit unions to purchase risk-mitigating derivatives.

Commenters might want to consider who would benefit if more credit unions engage in risk-mitigating derivatives and if NCUA enhances derivatives supervision:

- Would credit unions that purchase derivatives and successfully mitigate IRR benefit directly from a reduction in potential losses?
- Would that reduction in potential losses at credit unions with more than $250 million in assets benefit the NCUSIF?
- Would all federally insured credit unions benefit indirectly from NCUA's enhanced supervision of derivatives?

L. Changes to Part 715

As noted above, the Board is also proposing a change to § 715.2 to clarify the financial statement audit requirement. Currently, this section only requires a credit union over $500 million in assets to obtain a financial statement audit. The proposed change clarifies that this requirement is in addition to the requirement in this rule that any credit union with derivatives authority, regardless of size, must obtain a financial statement audit.

M. Changes to Part 741

Subpart B of part 741 contains a list of regulations that, by their terms, apply only to FCUs but that NCUA has determined, for safety and soundness reasons, apply to FISCUs. Section 219 of part 741 addresses investments, providing that FISCUs must follow the requirements in part 703 regarding purchasing shares or deposits in corporate credit unions.[30] The proposed rule designates that provision as

[30] 12 CFR 741.219.

paragraph (a) of section 219 and adds a new paragraph (b) which requires FISCUs, which are permitted by state law to engage in derivatives transactions, to follow the requirements in subpart B of part 703.

III. Regulatory Procedures

a. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis of any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $50 million in assets).[31] The proposed rule allows credit unions to enter into certain derivatives transactions to reduce IRR. Since the proposed rule requires credit unions seeking derivatives authority to have at least $250 million in assets, it will not have a significant economic impact on a substantial number of small credit unions.

b. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.[32] For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. The proposed changes to part 703 impose new information collection requirements. As required by the PRA, NCUA is submitting a copy of this proposal to OMB for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed rule should submit them to OMB at the address noted below.

1. Estimated PRA Burden

For the purposes of calculating the PRA burden, NCUA estimates that 150 credit unions will apply for and be granted derivatives authority. NCUA further estimates that approximately 75 percent of this number, or 113, will be Level I credit unions and 25 percent, or 37, will be Level II credit unions.

Section 703.104 of the proposed rule requires a credit union to operate according to written, comprehensive policies and procedures for control, measurement, and management of derivatives transactions. To do so, a credit union must first develop such policies and procedures. NCUA estimates that it will take a credit union seeking Level I derivatives authority an average of 40 hours to develop appropriate policies and procedures and a credit union seeking Level II authority 80 hours to do so. This is a one-time recordkeeping burden.

Section 703.104(b) of the proposed rule requires a credit union's board of directors to review the derivatives policies and procedures annually and update them when necessary. NCUA estimates this ongoing recordkeeping burden will take an average of 10 hours per year per Level I or Level II respondent.

Section 703.107 of the proposed rule requires a credit union's senior executive officers to provide a monthly, comprehensive derivatives report to the credit union's board of directors. NCUA estimates this ongoing recordkeeping burden will take an average of 2 hours per month (24 hours per year) per Level I or Level II respondent.

Section 703.108(a)(1) of the proposed rule requires that a credit union retain evidence of annual derivatives training for its board of directors. NCUA estimates this ongoing recordkeeping requirement will take an average of 4 hours per year per Level I or Level II respondent.

Section 703.108(b)(2) of the proposed rule requires that a credit union maintain a written and schematic description of the derivatives decision process. NCUA estimates that the one-time recordkeeping burden of creating the description will take 10 hours per Level I respondent and 20 hours per Level II respondent. The ongoing burden of maintaining the description will take 2 hours per year per Level I or II respondent.

Section 703.108(b)(4) of the proposed rule requires a credit union engaging in derivatives transactions to obtain an annual financial statement audit by a certified public accountant. Section 715.5(a) of NCUA's Regulations already requires FCUs with assets of $500 million or greater to obtain an annual financial statement audit. Currently, approximately 60 credit unions with assets between $250 million and $500 million that meet the proposed CAMEL ratings requirements do not obtain annual financial statement audits. Due to the overhead costs associated with derivatives activity, NCUA estimates that 20 percent, or 12, of these credit unions will apply for and be granted derivatives authority. NCUA further estimates that a financial statement audit for a credit union of this size would cost approximately $50,000.

Section 703.108(b)(6) of the proposed rule requires a credit union, before executing a derivatives transaction, to identify and document the circumstances leading to the decision to hedge, specify the derivatives strategy the credit union will employ, and demonstrate the economic effectiveness of the hedge. NCUA estimates a credit union will execute an average of 2 transactions per year and that it will take an average of 2 hours per transaction to complete the pre-execution analysis. This results in an ongoing recordkeeping burden of 4 hours per year per respondent.

Sections 703.111 and 703.112 of the proposed rule require a credit union seeking Level I or Level II derivatives authority to submit a detailed application to NCUA. NCUA estimates that this one-time recordkeeping burden will take an average of 50 hours per respondent to prepare. This estimate does not include developing policies and procedures for operating a derivatives program and creating and maintaining a written and schematic description of the derivatives decision process, as those recordkeeping requirements are already accounted for above.

Section 703.117 of the proposed rule requires a credit union that no longer meets the requirements of subpart B of part 703 to submit a corrective action plan to NCUA. NCUA estimates that 6 credit unions may have to submit an action plan each year and that a plan will take an average of 10 hours to prepare.

Summary of Collection Burden

Written policies and procedures:
113 Level I credit unions × 40 hours = 4520 hours (one-time burden).
37 Level II credit unions × 80 hours = 2960 hours (one-time burden).

Board review of policies and procedures:
150 credit unions × 10 hours = 1500 hours.

Monthly derivatives report:
150 credit unions × 24 hours = 3600 hours.

Evidence of Board training:
150 credit unions × 4 hours = 600 hours.

Derivatives process description:
113 Level I credit unions × 10 hours = 1130 hours (one-time burden).
37 Level II credit unions × 20 hours = 740 hours (one-time burden).
150 credit unions × 2 hours = 300 hours.

Financial statement audit:
12 credit unions × $50,000 = $600,000.

Pre-execution analysis:
150 credit unions × 4 hours = 600 hours.

Application:
150 credit unions × 50 hours = 7500 hours (one-time burden).

[31] 5 U.S.C. 603(a).

[32] 44 U.S.C. 3507(d); 5 CFR part 1320.

Corrective action plan:
6 credit unions × 10 hours = 60 hours.
Total Annual Hours Burden:
23,510 (16,850 one-time only).
Total Annual Cost Burden:
$600,000.

2. Submission of Comments

NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to NCUA on the substantive aspects of the proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

c. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The proposed rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. While the Board notes that this proposed rule applies to certain FISCUs, the Board does not believe that this rule rises to the level of a regulation ''that has 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 rule does not grant any authority to FISCUs that has not been granted by applicable state law. In addition, any FISCU applying must apply to its state first and NCUA must concur with the state's determination. NCUA has, therefore, determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

d. Assessment of Federal Regulations and Policies on Families

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

e. Agency Regulatory Goals

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. The Board requests comments on whether this rule is understandable and minimally intrusive.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 715

Audits, Credit unions, Supervisory committees.

12 CFR Part 741

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

By the National Credit Union Administration Board, on May 16, 2013.

Mary F. Rupp,
Secretary of the Board.

For the reasons discussed above, the National Credit Union Administration proposes to amend parts 703, 715, and 741 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

■ 2. Existing sections §§ 703.1 through 703.20 are redesignated under the following subpart A heading:

Subpart A—General Investment and Deposit Activities

* * * * *

■ 3. Amend § 703.2 by revising the definitions of ''derivatives'' and ''fair value'' and adding definitions of ''forward sales commitment'' and ''interest rate lock commitment'' to read as follows:

§ 703.2 Definitions.

* * * * *

Derivatives means an instrument that has its price based on or derived from one or more underlying assets.

* * * * *

Fair value means the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, as defined by GAAP.

* * * * *

Forward sales commitment means an agreement to sell a property at a price and future date specified in the agreement.

* * * * *

Interest rate lock commitment means an agreement by a credit union to hold a certain interest rate and points for a specified amount of time while a borrower's application is processed.

* * * * *

■ 4. Add paragraph (k) to § 703.14 to read as follows:

§ 703.14 Permissible investments.

* * * * *

(k) *Derivatives.* A federal credit union may only enter into in the following derivatives transactions:

(1) Any derivatives permitted under § 701.21(i) of this chapter, § 703.14(g), or subpart B of this part;

(2) Embedded options not required under generally accepted accounting principles (GAAP) adopted in the United States to be accounted for separately from the host contract; and

(3) Interest rate lock commitments or forward sales commitments made in connection with a loan originated by a federal credit union.

§ 703.16 [Amended]

■ 5. Remove paragraph (a) of § 703.16 and redesignate paragraphs (b), (c), (d), as (a), (b), (c), respectively.

■ 6. Add subpart B to read as follows:

Subpart B—Derivatives Authority

Sec.

703.100 Purpose and Scope.
703.101 Definitions.
703.102 Permissible derivatives transactions.
703.103 Eligibility.
703.104 Policies and procedures for operating a Level I or Level II program.
703.105 Collateral requirements for operating a Level I or Level II program.
703.106 Counterparty requirements for operating a Level I or Level II program.
703.107 Reporting requirements for operating a Level I or Level II program.
703.108 Systems, processes, and personnel requirements for operating a Level I or Level II derivatives program.
703.109 Specific Level I limits and requirements.
703.110 Specific Level II limits and requirements.
703.111 Applying for Level I or Level II authority.
703.112 Application content.
703.113 Application review by regulators.
703.114 Pilot program participants and FISCUs with active derivatives positions.
703.115 Regulatory violation.

Authority: 12 U.S.C. 1757(7), 1757(8), 1757 (15).

Subpart B—Derivatives Authority

§ 703.100 Purpose and Scope.

(a) *Application of this subpart.* Unless explicitly specified otherwise, the requirements of this subpart apply to:

(1) Federal credit unions; and

(2) Federally insured, state-chartered credit unions that are permitted to engage in derivatives transactions under applicable state law.

(b) Sections 703.101–703.109 and 703.111–703.116 apply to a Level I derivatives program. Sections 703.101–703.108 and 703.110–703.116 apply to a Level II derivatives program.

(c) *Purpose.* This subpart allows credit unions to purchase interest rate caps and enter into interest rate swap transactions exclusively for the purpose of reducing their interest rate risk exposure.

§ 703.101 Definitions.

For purposes of this subpart:

(a) *Book value means* the value at which the derivative is carried on a statement of financial condition prepared in accordance with GAAP;

(b) *Counterparty* means the other party that participates in a derivatives transaction;

(c) *Derivative* means an instrument that has its price based on or derived from one or more underlying assets;

(d) *Economic effectiveness* means the extent to which a derivatives transaction results in offsetting changes in the interest rate risk that the transaction was, and is, intended to provide;

(e) *External service provider* means any entity that provides services to assist a credit union in carrying out its derivatives program and the requirements of this rule;

(f) *Fair value* has the meaning specified in § 703.2 of subpart A of this part;

(g) *Field Director* means an NCUA Regional Director, the Director of the Office of National Examinations and Supervision, or any other NCUA Director designated to directly supervise credit unions eligible to apply for this authority;

(h) *Hedge* means to enter into a derivatives transaction to protect against loss created by changes in interest rates;

(i) *Interest rate cap* means a contract, based on an interest rate, for payment to the purchaser when the interest rate rises above a level specified in the contract;

(j) *Interest rate risk* means the estimated change in earnings or value of an asset, liability, portfolio, or statement of financial condition as measured in terms of price, net interest income, or net economic valuation change from current levels;

(k) *Interest rate swap* means an agreement to exchange future payments of interest on a notional amount at specific times and for a specified time period, paid in U.S. dollars. The exchange may be fixed to floating or floating to fixed;

(l) *ISDA agreement* means an agreement specified by the International Swaps and Derivatives Association that consists of a master agreement, a schedule, confirmations, definition booklets, and a credit support annex;

(m) *Leveraged derivative* means a derivative with interest rates that change proportionally with the contractual rate or index;

(n) *Major swap participant* has the meaning defined by the Commodity Futures Trading Commission in 17 CFR § 1.3(hhh);

(o) *Minimum transfer amount* means the amount of collateral that can be required per transfer to cover exposure in excess of the collateral threshold;

(p) *Net economic value* means the economic value of assets minus the economic value of liabilities;

(q) *Net worth* has the meaning specified in § 702.2 of this chapter;

(r) *Notional amount* means the predetermined dollar amount on which exchanged interest payments are based;

(s) *Novate* means the substitution of an old obligation with a new one that either replaces an existing obligation with a new obligation or replaces an original party with a new party;

(t) *Structured liability offering* means an offering with contractual option features, such as periodic caps and calls, similar to those found in structured securities or structured notes;

(u) *Senior executive officer* is, for the purposes of this rule, a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (*e.g.,* any assistant president, any vice president or any assistant treasurer/manager), and the chief financial officer (controller) that are directly within the chain of command for the oversight of a credit union's derivatives program, as identified in a credit union's process and responsibility framework, discussed in § 703.108(b)(2) of this subpart;

(v) *Swap dealer* has the meaning defined by the Commodity Futures Trading Commission in 17 CFR 1.3(ggg);

(w) *Threshold amount* means an unsecured credit exposure that the parties are prepared to accept before asking for collateral; and

(x) *Weighted average life* means the weighted average length of time to the final maturity of derivatives contracts, calculated by multiplying the notional amount of each contract by the time to maturity and then adding each of those numbers together and dividing by the total notional amount of the contracts.

§ 703.102 Permissible derivatives transactions.

As part of its regulator approved strategy, a credit union may only purchase interest rate caps or enter into interest rate swap transactions that are:

(a) For the purpose of managing interest rate risk;

(b) Not leveraged;

(c) Based on domestic rates, as defined in § 703.14(a) of subpart A of this part;

(d) Denominated in U.S. dollars;

(e) Except as provided in § 703.14(g) of subpart A of this part, not used to create structured liability offerings for members or nonmembers;

(f) Settled within three business days of entering into the transaction; and

(g) Interest rate swaps that do not have fluctuating notional amounts.

§ 703.103 Eligibility.

(a) A credit union may apply for Level I or Level II derivatives authority if it meets the following criteria:

(1) It provides an interest rate risk mitigation plan, which includes derivatives and shows how derivatives are one aspect of its overall interest rate risk mitigation strategy;

(2) Its most recent composite CAMEL code rating assigned by NCUA is 1, 2, or 3 with a management component of 1 or 2; and

(3) It has assets of at least $250 million, as of its most recent call report.

(b) A credit union seeking Level II authority must also show why the limits under Level I authority are insufficient for it to effectively mitigate interest rate risk.

§ 703.104 Policies and procedures for operating a Level I or Level II program.

A credit union must operate according to written, comprehensive policies and procedures for control, measurement, and management of derivatives transactions.

(a) At a minimum, the policies and procedures must cover:

(1) Managerial oversight and responsibilities;

(2) Scope of activities;

(3) Approved counterparties;

(4) Risk management (market, credit, liquidity, settlement, and operations);

(5) Legal issues;

(6) Accounting and financial reporting in accordance with GAAP;

(7) Derivatives limits;

(8) Aggregate counterparty exposure;

(9) A limit on the amount of exposure the credit union will have to any single counterparty, expressed as a percentage of net worth;

(10) Margin requirements; and

(11) Reporting requirements.

(b) A credit union's board of directors must review the derivatives policies and procedures annually and update them when necessary.

§ 703.105 Collateral requirements for operating a Level I or Level II program.

(a) A credit union's collateral arrangements must be supported by a bilateral ISDA credit support annex and comply with all applicable requirements of the Commodity Futures Trading Commission.

(b) A credit union may only accept collateral to secure a derivatives transaction that is permissible for a credit union to hold as enumerated in the Federal Credit Union Act, subpart A of this part, and its investment policies. Acceptable collateral is limited to cash, Treasury securities, fixed-rate non-callable agency debentures, and zero-coupon non-callable agency debentures.

(c) Daily, a credit union must price derivatives positions and calculate its fair value exposure.

(d) Daily, a credit union must be collateralized for all transactions to at least 100 percent of the transactions, based on the risk of the collateral.

(e) A credit union must set threshold amounts to zero.

(f) A counterparty to a derivatives transaction cannot hold or be the custodian of the collateral, except for affiliates of the counterparty that are separate legal entities. In any custodial arrangement, the custodian must: be organized and doing business under the laws of the United States or any state thereof; authorized under such laws to exercise corporate trust or custodial powers; have equity of at least $50,000,000; and be subject to supervision or examination by a federal or state authority.

(g) The minimum transfer amount must be less than or equal to $250,000.

(h) A credit union using collateral netting arrangements must have the ability to disaggregate and report individual exposures within and across all counterparties.

(i) A credit union may agree to provide additional collateral to a counterparty in a credit support annex so long as the credit union complies with all other collateral provisions in this subpart.

(j) A credit union must have systems in place to effectively manage collateral.

(1) A credit union's collateral management process must monitor its collateral daily and ensure that its derivatives positions are collateralized at all times in accordance with the collateral requirements of this subpart and the credit union's ISDA agreement with its counterparty. This includes the posting, tracking, valuing, and reporting of collateral to state positive and negative exposure using a daily fair value.

(2) A credit union must have the ability to analyze and measure potential liquidity needs related to its derivatives program and stemming from additional collateral requirements due to changes in interest rates. It must also be able to calculate and track contingent liquidity needs in the event a derivatives transaction needs to be novated or terminated. A credit union's senior executive officers must establish effective controls for liquidity exposures arising from both market or product liquidity and instrument cash flows.

§ 703.106 Counterparty requirements for operating a Level I or Level II program.

(a) A credit union must have an ISDA agreement in place to establish a credit relationship with any counterparty.

(b) Any derivatives counterparty must be either a ''swap dealer'' or ''major swap participant,'' and:

(1) Organized and doing business under the laws of the United States or any state thereof; or

(2) A United States branch of a foreign depository institution, licensed to do business under the laws of the United States or any state thereof.

(c) A credit union must calculate and manage individual counterparty exposure by book value and fair value. A credit union must conduct stress tests of counterparty exposures.

(d) A credit union must analyze counterparty credit risks, including, but not limited to: counterparty exposures, concentrations, credit exceptions, and nonperforming contracts. The credit union's board of directors must receive monthly, detailed reports addressing aggregate counterparty credit exposures.

§ 703.107 Reporting requirements for operating a Level I or Level II program.

At least monthly, a credit union's senior executive officers must deliver to the credit union's board of directors, separately or as part of the standard funds management or asset/liability report, a comprehensive derivatives report. At a minimum, this report must include:

(a) Identification of any areas of noncompliance with any provision of this subpart or the credit union's policies;

(b) Utilization of the limits in § 703.109 or § 703.110, as applicable, and the limits in the credit union's policies;

(c) An itemization of the credit union's individual positions and aggregate fair and book values;

(d) A comprehensive view of the credit union's statement of financial condition, including, but not limited to, net economic value calculations for the credit union's statement of financial condition done with derivatives included and excluded; and

(e) The cost of executing new derivatives transactions. A credit union can express this cost through a comparison with observed market quotes and/or offering levels from other counterparties. Observed market quotes can include swap rates or external service provider modeled cap prices.

§ 703.108 Systems, processes, and personnel requirements for operating a Level I or Level II derivatives program.

(a) *Required experience and competencies.* A credit union operating a derivatives program must internally possess the following experience and competencies:

(1) *Board.* Before entering into any derivatives transactions, and annually thereafter, a credit union's board members must receive training to provide a general understanding of derivatives and knowledge to provide strategic oversight of the credit union's derivatives program. This includes understanding how derivatives fit into the credit union's business model and risk management process. The credit union must maintain evidence of this training, in accordance with its

document retention policy, until its next NCUA or state supervisory authority examination.

(2) *Senior executive officers.* A credit union's senior executive officers must have sufficient knowledge and experience to understand, approve, and provide oversight for the derivatives activities commensurate with the complexity of the derivatives program. These individuals must have a comprehensive understanding of how derivatives fit into the credit union's business model and risk management process. A credit union must immediately notify NCUA (and, if applicable, the appropriate SSA) when a senior executive officer position as defined in this rule becomes vacant. A credit union must also immediately provide NCUA (and, if applicable, the appropriate SSA) with documentation evidencing knowledge and experience for any person who becomes a senior executive officer as defined in this rule while the credit union has derivatives authority.

(3) *Qualified derivatives personnel.* To engage in derivatives transactions with Level I authority, a credit union must have knowledgeable and experienced employees that, except as provided in § 703.110(f) of this subpart for Level II authority, have at least three years of direct transactional experience in the trading, structuring, analyzing, monitoring, or auditing of financial derivatives transactions at a financial institution, a risk management advisory practice, or a financial regulatory organization. Staff must also have the demonstrated expertise in the statement of financial condition analysis described in § 703.107(d) of this subpart. These employees must, at a minimum, accomplish the following:

(i) *Asset/liability risk management.* Staff must be qualified to understand and oversee asset/liability risk management including the appropriate role of derivatives. This includes identifying and assessing risk in transactions, developing asset/liability risk management strategies, testing the effectiveness of asset/liability risk management, determining the effectiveness of managing interest rate risk under a range of stressed rate and statement of financial condition scenarios, and evaluating the relative effectiveness of alternative strategies;

(ii) *Accounting and financial reporting.* Staff must be qualified to understand and oversee appropriate accounting and financial reporting for derivatives transactions in accordance with GAAP;

(iii) *Trade execution and oversight.* Staff must be qualified to undertake or oversee trade executions; and

(iv) *Credit, collateral, and liquidity management.* Staff must be qualified to evaluate credit risk, manage collateral, and evaluate liquidity risk, as described in §§ 703.105 and 703.106 of subpart B of this part.

(b) *Required management and internal controls structure.* To effectively manage its derivatives activities, a credit union must allocate resources sufficient to support the scope and complexity of its derivatives activities. An effective management and internal controls structure includes, at a minimum, the following:

(1) *Separation of duties.* A credit union's process, whether conducted internally or by an external service provider, must have appropriate separation of duties for the following functions:

(i) Derivatives execution and oversight;

(ii) Accounting for and confirmation of the derivatives transactions;

(iii) Asset/liability risk management; and

(iv) Credit, collateral, and liquidity management.

(2) *Process and responsibility framework.* A credit union must maintain, in its derivatives policies and procedures, a written and schematic (*e.g.* flow chart or organizational chart) description of the derivatives decision process. The process must include the roles of staff, external advisors, senior executive officers, the board of directors, and any others involved in the derivatives program and demonstrate separation of duties, independent risk management, and effective oversight.

(3) *Internal controls review.* A credit union must have an internal controls audit at least annually that ensures the timely identification of weaknesses in internal controls, modeling methodologies, and the risk oversight process. This internal controls review must be performed by external individuals qualified to evaluate the attributes of a derivatives program. An internal controls audit must incorporate an evaluation of the effectiveness of internal controls relevant to measuring, monitoring, reporting, and limiting risks. The scope of the internal controls review must also include coverage of the accounting, legal, operating, and risk controls.

(4) *Financial statement audit.* A credit union must obtain an annual financial statement audit, as defined in § 715.2(d) of this chapter, by an independent state-licensed certified public accountant with at least two years of experience evaluating derivatives transactions.

(5) *Legal review.* Before executing any transactions under this subpart, a credit union must receive a legal opinion from qualified counsel stating that the credit union's ISDA agreements are enforceable and that the credit union is complying with applicable laws and regulations relating to operating a derivatives program. Qualified counsel means an attorney with at least five years of experience reviewing derivatives transactions. A credit union must also ensure any counterparty is authorized to enter into such transactions.

(6) *Hedge review.* Before executing any derivatives transaction, a credit union must identify and document the circumstances leading to the decision to hedge, specify the derivatives strategy the credit union will employ, and demonstrate the economic effectiveness of the hedge.

(c) *Transactions management.* A credit union must have support systems in place to provide accurate and timely transaction processing.

(d) *Asset/liability risk management.* A credit union must have the systems and operational capacity to derive net economic value and understand interest rate risk.

(e) *Use of external service providers.* As specified in § 703.109 and § 703.110, as applicable, a credit union may use external service providers to support or conduct certain aspects of its derivatives program, provided:

(1) The external service provider, including affiliates, cannot:

(i) Be a counterparty to any derivatives transactions involving the credit union;

(ii) Be a principal or agent in any derivatives transaction involving the credit union; or

(iii) Have discretionary authority to execute any of the credit union's derivatives transactions.

(2) The credit union has the internal capacity, experience, and skills to oversee and manage any external service providers it uses; and

(3) The credit union documents the specific uses of external service providers in its process and responsibility framework, as described in § 703.108(b)(2) of this subpart.

§ 703.109 Specific Level I limits and requirements.

A credit union with Level I derivatives authority must comply with the following specific limits and requirements:

(a) A credit union approved only to enter into interest rate swaps must

restrict the aggregate notional amount of its interest rate swap transactions to 100 percent of net worth.

(b) A credit union approved only to purchase interest rate caps must restrict the aggregate book value of its interest rate cap transactions to 10 percent of net worth.

(c) A credit union approved to transact interest rate swaps and purchase interest rate caps may not exceed a combined limit of 100 percent of the aggregate amount of each limit the credit union used under paragraphs (a) and (b) of this section. For example, a credit union may hold 80 percent of the limit for interest rate caps and 20 percent of the limit for interest rate swaps, but cannot hold 100 percent of the limit for each. This combined limit can be represented as:

$$100*\left[\frac{Notional_amount_of_swaps}{Net_Worth}\right]\Big/100 + 100*\left[\frac{Book_value}{Net_Worth}\right]\Big/10 \leq 100$$

(d) The aggregate fair value loss of all swap positions into which the credit union has entered cannot exceed 10 percent of net worth.

(e) The maximum permissible weighted average life on all derivatives positions may not exceed five years and the maximum permissible maturity for any single derivatives position may not exceed seven years.

(f) *Use of external service providers.* A credit union may use external service providers to support or conduct certain processes, subject to the following restrictions:

(1) *Support.* A credit union must internally and independently carry out and conduct the following functions, but may obtain assistance and input from an external service provider, provided the external service provider does not conduct the functions in lieu of the credit union:

(i) Evaluating credit risk management;

(ii) Evaluating liquidity risk; and

(iii) Asset/liability management.

(2) *Conduct.* Provided a credit union maintains responsibility for the following activities and an understanding of all of an external service provider's activities and work product, a credit union may contract with an external service provider to conduct these functions in lieu of the credit union:

(i) Accounting and financial reporting;

(ii) Counterparty exposure management;

(iii) Trade execution;

(iv) Transaction management;

(v) Legal services;

(vi) Collateral management; and

(vii) Financial statement audit.

§ 703.110 Specific Level II limits and requirements.

A credit union with Level II derivatives authority must comply with the following specific limits and requirements:

(a) For a credit union approved only to enter into interest rate swaps, NCUA will establish the aggregate notional amount of its interest rate swap transactions at an amount not to exceed 250 percent of net worth.

(b) For a credit union approved only to purchase interest rate caps, NCUA will establish the aggregate book value of its interest rate cap transactions at an amount not to exceed 25 percent of net worth.

(c) For a credit union approved to transact interest rate swaps and interest rate caps, NCUA will establish the appropriate cumulative limit not to exceed individual limits in paragraphs (a) and (b) of this section.

(d) The aggregate fair value loss of all swap positions into which the credit union has entered cannot exceed 25 percent of net worth.

(e) The maximum permissible weighted average life on all derivatives positions may not exceed seven years and the maximum permissible maturity for any single derivatives position may not exceed ten years.

(f) The qualified derivatives personnel described in § 703.108(a)(3) must have at least five years of direct transactional experience in the trading, structuring, analyzing, monitoring, or auditing of financial derivatives transactions at a financial institution, a risk management advisory practice, or a financial regulatory organization. In addition to the activities the qualified derivatives personnel are required to conduct in § 703.108(a)(3), they must also price options and undertake statement of financial condition simulations under multiple interest rate scenarios.

(g) The exposure by notional amount to any single derivatives counterparty cannot exceed 100 percent of net worth for interest rate swaps and the book value may not exceed ten percent of net worth for interest rate caps.

(h) *Use of external service providers.* A credit union may use external service providers to support or conduct certain processes, subject to the following restrictions:

(1) *Support.* A credit union must internally and independently carry out and conduct the following functions, but may obtain assistance and input from an external service provider, provided the external service provider does not conduct the functions in lieu of the credit union:

(i) Asset/liability risk management;

(ii) Evaluating credit risk;

(iii) Counterparty exposure management;

(iv) Evaluating liquidity risk;

(v) Collateral management; and

(vi) Transaction management.

(2) *Conduct.* Provided a credit union maintains responsibility for the following activities and an understanding of all of an external service provider's activities and work product, the credit union may contract with an external service provider to conduct these functions in lieu of the credit union:

(i) Accounting and financial reporting;

(ii) Trade execution;

(iii) Financial statement audit; and

(iv) Legal services.

§ 703.111 Applying for Level I or Level II authority.

An eligible credit union must submit a request for Level I or Level II authority and a detailed application, consistent with this subpart, before engaging in any derivatives transactions. The application must include draft policies and procedures, the process and responsibility framework, and the proposed systems and personnel needed to efficiently and effectively manage the credit union's derivatives activities. A credit union must submit its application to:

(a) The applicable Field Director, in the case of an FCU; or

(b) The applicable state supervisory authority, in the case of a FISCU.

§ 703.112 Application content.

A credit union applying for derivatives authority must demonstrate all of the following in its application:

(a) An interest rate risk mitigation plan, which includes derivatives and shows how derivatives are one aspect of its overall interest rate risk mitigation strategy. A credit union applying for Level II authority must also show why the limits under Level I authority are not sufficient for it to mitigate interest rate risk.

(b) How it plans to acquire, employ, and/or create the resources, policies, processes, systems, internal controls, modeling, and competencies to meet the requirements of this subpart. A credit union applying for Level II authority must have the systems and personnel required under this subpart in place before submitting its application.

(c) That it has senior executive officers and a board of directors that understand the role derivatives play in the credit union's interest rate risk management and the risk inherent in derivatives activities.

(d) How it intends to use external service providers as part of its derivatives program.

§ 703.113 Application review by regulators.

(a) *State supervisory authority review.* A state supervisory authority will review an application submitted under this subpart and forward its decision to the applicable Field Director for concurrence.

(b) *NCUA review.* After receiving an FCU's application or a state supervisory authority's decision, within 30 days from the date of its receipt, the Field Director will determine if the application is complete and meets the requirements of this subpart. The Field Director will notify the credit union within the following time frames if NCUA has approved or denied its application and the reason(s) for any denial:

(1) *Level I.* 90 days from the date the appropriate Field Director determines a credit union's application is complete or, in the case of a FISCU, receives a decision from the applicable SSA; or

(2) *Level II.* 120 days from the date the appropriate Field Director determines a credit union's application is complete or, in the case of a FISCU, receives a decision from the applicable SSA.

(c) *Right to appeal.* Within 60 days from the date of denial by the Field Director, a credit union may submit a written appeal to NCUA's Supervisory Review Committee.

§ 703.114 Pilot program participants and FISCUs with active derivatives positions.

(a) A credit union that, as of January 1, 2013, is holding derivatives under NCUA's derivatives pilot program or applicable state law must comply with the requirements of this subpart, including the application procedures, within 12 months from the effective date of this subpart. During the 12-month interim period, the credit union may continue to operate its derivatives program in accordance with its pilot program terms and conditions or applicable state law.

(b) A credit union holding derivatives under NCUA's derivatives pilot program or state law that does not comply with the requirements of this subpart within 12 months or does not want to continue engaging in derivatives transactions must:

(1) Stop entering into new derivatives transactions; and

(2) Within 30 days, present a corrective action plan to the appropriate Field Director (and SSA in the case of a FISCU) describing how it will cure any deficiencies or unwind its derivatives program.

(c) A credit union that is otherwise compliant with this subpart except that it is holding impermissible active derivatives positions it entered into before January 1, 2013, may enter into new derivatives transactions in accordance with this subpart, provided it provides NCUA (or NCUA and the SSA, in the case of a FISCU) with a plan accounting for the active positions in violation of this subpart.

§ 703.115 Regulatory violation.

(a) A credit union engaging in derivatives transactions that no longer meets the requirements of subpart B of this part; fails to fully comply with its approved strategy, including employing the resources, policies, processes, and competencies that formed the basis for the approval; or has safety and soundness concerns identified by NCUA:

(1) Must present a corrective action plan to the appropriate Field Director (and state supervisory authority in the case of a FISCU) within 30 days of the determination of the violation; and

(2) May not enter into any new derivatives transactions until the Field Director (and state supervisory authority in the case of a FISCU) approves the corrective action plan.

(b) NCUA may revoke a credit union's derivatives authority at any time for failure to comply with the requirements of this section or for any other safety and soundness reasons. Revocation will prohibit a credit union from entering into any new derivatives transactions. Revocation will not require the credit union to terminate existing derivatives transactions if, at the discretion of the Field Director (and state supervisory authority in the case of a FISCU), doing so would not be practicable or deemed unsafe or unsound. The Field Director (and state supervisory authority in the case of a FISCU) may require a credit union to terminate existing derivatives transactions if doing so would not pose a safety and soundness concern.

(c) Within 60 days of NCUA's written notice of revocation of a credit union's derivatives authority, a credit union may appeal this decision to the NCUA Board. During the appeals process, the credit union does not have to terminate existing derivatives transactions, but it may not enter into any new derivatives transactions.

PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

■ 7. The authority citation for part 715 continues to read as follows:

Authority: 12 U.S.C. 1761(b), 1761(d), 1782(a)(6).

■ 8. Revise paragraph (a) of § 715.5 to read as follows:

§ 715.5 Audit of Federal Credit Unions.

(a) Total assets of $500 million or greater. To fulfill its Supervisory Committee audit responsibility, a federal credit union having total assets of $500 million or greater, except as provided in § 703.108(b)(4) of this chapter, must obtain an annual audit of its financial statements performed in accordance with Generally Accepted Auditing Standards by an independent person who is licensed to do so by the State or jurisdiction in which the credit union is principally located.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

■ 9. The authority citation for part 741 is revised to read as follows:

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

■ 10. Revise § 741.219 to read as follows:

§ 741.219 Investment requirements.

(a) Any credit union which is insured pursuant to title II of the Act must adhere to the requirements stated in part 703 of this chapter concerning transacting business with corporate credit unions.

(b) *Derivatives.* Any credit union which is insured pursuant to Title II of the Act and permitted by its state law to engage in derivatives must follow the

requirements of subpart B of part 703 of this chapter.

[FR Doc. 2013–12638 Filed 5–28–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0345; Airspace Docket No. 13–AEA–6]

Proposed Amendment of Class E Airspace; Factoryville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Factoryville, PA, as the Lake Henry VORTAC has been decommissioned, requiring airspace redesign at Seamans Field Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 15, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0345; Airspace Docket No. 13–AEA–6, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0345; Airspace Docket No. 13–AEA–6) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0345; Airspace Docket No. 13–AEA–6.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Seamans Field Airport, Factoryville, PA. Airspace reconfiguration within an 8.2-mile radius of the airport is necessary due to the decommissioning of the Lake Henry VORTAC, and for continued safety and management of IFR operations at the airport.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Seamans Field Airport, Factoryville, PA.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Factoryville, PA [Amended]

Seamans Field Airport, PA
(Lat. 41°35′22″ N., long. 75°45′22″ W.)

That airspace extending upward from 700 feet above the surface within a 11-mile radius of Seamans Field Airport.

Issued in College Park, Georgia, on May 21, 2013.

Jackson Allen,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–12709 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0359; Airspace Docket No. 13–AEA–7]

Proposed Amendment of Class E Airspace; Bedford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Bedford, PA, as the St. Thomas VORTAC has been decommissioned, requiring airspace redesign at Bedford County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport.

DATES: Comments must be received on or before July 15, 2013.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2013–0359; Airspace Docket No. 13–AEA–7, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0359; Airspace Docket No. 13–AEA–7) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2013–0359; Airspace Docket No. 13–AEA–7.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Bedford County Airport, Bedford, PA. Airspace reconfiguration to within a 12.5-mile radius of the airport is necessary due to the decommissioning of the St. Thomas VORTAC, and for continued safety and management of IFR operations at the airport. The geographic coordinates of the airport would be adjusted to coincide with the FAAs aeronautical database.

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

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant

regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Bedford County Airport, Bedford, PA.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005. Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Bedford, PA [Amended]

Bedford County Airport, PA
(Lat. 40°05′10″ N., long. 78°30′49″W.)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Bedford County Airport.

Issued in College Park, Georgia, on May 21, 2013.

Jackson Allen,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–12707 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113; Docket ID: BIA–2013–0005]

RIN 1076–AF15

Land Acquisitions: Appeals of Land Acquisition Decisions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises a section of regulations governing decisions by the Secretary to approve or deny applications to acquire land in trust under this part. This rule is appropriate to address changes in the applicability of the Quiet Title Act as interpreted by a recent United States Supreme Court decision. This rule revises a regulatory provision the Department added in 1996 to ensure that interested parties had the opportunity to timely seek judicial review of decisions when available under the Administrative Procedure Act. The Department had determined the provision was necessary because, consistent with Federal court decisions at the time, once the Secretary acquired title, the Quiet Title Act precluded judicial review of the Secretary's decision to take the land into trust. The Supreme Court has since held that the Quiet Title Act does not preclude timely Administrative Procedure Act challenges to agency decisions to acquire land in trust unless the aggrieved party claims an ownership interest in the property at issue. This rule revises the regulation to reflect this change in the law and to make other revisions to codify the current process for issuing decisions approving or denying requests to acquire land in trust under this part. It also broadens and clarifies the notice of decisions to acquire land in trust under this part, including broadening notice of any right to file an administrative appeal.

DATES: Comments on this rule must be received by July 29, 2013.

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

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2013–0005.

—*E-Mail: consultation@bia.gov.* Include the number 1076–AF15 in the subject line of the message.

—*Mail:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW. Include the number 1076–AF15 in the submission.

—*Hand Delivery:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW. Include the number 1076–AF15 in the submission.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Acting Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule

Section 5 of the Indian Reorganization Act (IRA) (25 U.S.C. 465) authorizes the Secretary of the Interior to acquire land in trust for individual Indians and Indian tribes. The Department of the Interior's regulations at 25 CFR part 151 implement this statutory provision, as well as other statutes authorizing the acquisition of land in trust for individual Indians and Indian tribes. In 1996, the Department revised part 151 by procedural rulemaking. That procedural rule added a paragraph (b) to § 151.12, which established a 30-day waiting period following publication of notice in the **Federal Register** or in a newspaper of general circulation serving the affected area announcing the final agency determination to take the subject

land into trust. Paragraph (b) was intended to ensure that interested parties had the opportunity to seek judicial review under the Administrative Procedure Act (APA) (5 U.S.C. 704) before the Secretary acquired title to land in trust. *See* 61 FR 18082 (Apr. 24, 1996). The Department had determined such rule was necessary because, at that time, prevailing Federal court decisions found that the Quiet Title Act (QTA), 28 U.S.C. 2409a, precluded judicial review of the decision after the United States acquired title. *See, e.g., Neighbors for Rational Dev., Inc.* v. *Norton,* 379 F.3d 956 (10th Cir. 2004); *Metro Water Dist. of S. Cal.* v. *United States,* 830 F.2d 139 (9th Cir. 1987); *Florida Dep't of Bus. Regulation* v. *Dep't of the Interior,* 768 F.2d 1248 (11th Cir. 1985).

The legal landscape changed, however, on June 18, 2012, when the Supreme Court issued its decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak,* 132 S. Ct. 2199 (2012). In that decision, the Supreme Court held that the QTA is not a bar to APA challenges to the Secretary's decision to acquire land in trust after the United States acquires title to the property unless the aggrieved party asserts an ownership interest in the land as the basis for the challenge. Following *Patchak,* the 1996 procedural rule establishing a 30-day waiting period before taking land into trust to allow for APA review is no longer needed because, if judicial review under the APA is not precluded on some other basis, such as standing, timeliness, or a failure to exhaust administrative remedies, judicial review of the Secretary's decision is available under the APA even after the Secretary has acquired title to the property.

This rule effectively repeals the 1996 procedural provision by revising section 151.12 to:

- Clarify the process depending upon whether the Assistant Secretary—Indian Affairs or a Bureau of Indian Affairs official issues the decision;
- Clarify how decisions under this part become final for the Department;
- Ensure public notice of a BIA official decision to acquire land into trust:
  - All interested parties who have made themselves known in writing to the BIA official, as well as State and local governments having regulatory jurisdiction over the land to be acquired, must receive actual notice of the decision and the right to file an administrative appeal, if any;
  - All parties who have not made themselves known in writing to the BIA official will receive notice of the decision and right to appeal, if any, through publication in a newspaper of general circulation serving the affected area.
- Make other changes to reflect more accurately the process for issuing approval and denial decisions under this part.

II. Background on Challenges to Land-Into-Trust Decisions

A decision to acquire land in trust may be issued by the Assistant Secretary—Indian Affairs (AS–IA) or by the BIA Director or other BIA official with delegated authority to issue the decision. The means and timelines for challenging the decision differ depending on whether the decision is issued by the AS–IA or whether the decision is issued by a BIA official.

- If the AS–IA issues the decision under this part, then the decision is a ''final agency determination,'' and the decision is final for the Department. *See* 25 CFR 2.6(c). Decisions made by the AS–IA are not subject to administrative review by the Interior Board of Indian Appeals (IBIA).
- If a BIA official decides to acquire land in trust, such decision is not yet a ''final agency determination'' because interested parties may appeal the decision under the administrative review process set forth in 25 CFR part 2. Under part 2, interested parties have a 30-day period in which to file an appeal of the BIA official's decision. *See* 25 CFR 2.9. If no appeal is filed within the 30-day administrative appeal period, then the BIA official's decision becomes final for the Department. If an administrative appeal of a BIA official's decision is timely filed and effective with the IBIA, then only after the IBIA issues a final decision affirming the BIA official's decision does such decision become final for the Department.
- Once a decision is final for the Department, it is subject to judicial review under the APA, as available. APA challenges must be brought within the six year statute-of-limitations period applicable to the APA. *See* 28 U.S.C. 2401(a).

III. Detailed Explanation of Rule

This rule revises § 151.12 to remove procedural requirements that are no longer necessary in light of the *Patchak* Supreme Court decision and to increase transparency by better articulating the process for issuing decisions to acquire land in trust under this part. Specifically, this rule deletes the 30-day waiting period for implementation of decisions to acquire land in trust after such decisions are final for the Department, and broadens and clarifies notice of decisions issued by BIA officials to acquire land in trust under this part and the right, if any, of interested parties to appeal such decisions pursuant to part 2 of this title.

A. Deleting the 30-Day Waiting Period

The current rule at § 151.12 states that the Secretary of the Interior shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to 25 CFR part 2. Following completion of the Title Examination provided in § 151.13 and the exhaustion of any administrative remedies, the Secretary shall publish in the **Federal Register**, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.

As noted above, paragraph (b) was added in 1996 to add, after decisions to acquire land in trust became final for the Department, a 30-day waiting period before the Secretary could acquire title to the property to allow parties to seek judicial review of the Secretary's decision under the APA. *See* 61 FR 18082 (Apr. 24, 1996). The stated reason for adding this waiting period was because the United States' position at the time was that the QTA precluded judicial review of the Secretary's decision after the United States acquired title to the land at issue. *Id.* The Supreme Court has since held that the QTA itself is not a bar to judicial review under the APA unless the aggrieved party asserts an ownership interest in the property. Following the *Patchak* decision, this 30-day waiting period is now unnecessary because parties may seek, to the extent it is available, judicial review of the Secretary's decision under the APA even after the land is acquired by the United States in trust. Accordingly, the proposed rule provides that the Secretary shall, on or promptly after the decision to acquire land in trust is final for the Department, complete the trust acquisition pursuant to 25 CFR 151.14 after fulfilling the requirements of 25 CFR 151.13 and any other Departmental requirements.

The *Patchak* decision is consistent with federal court cases that preceded the decision holding that the QTA bars judicial review by aggrieved parties seeking to quiet title to the property in themselves. Because no change in the law has occurred in connection with these parties, the proposed rule makes no changes to such parties' rights under this part. Consistent with the Department's prior practice, the Department will continue to conduct an exhaustive title examination process in connection with decisions to acquire land in trust under this part. This process identifies adverse landowners prior to the decision so that their interests are addressed before the Secretary issues a decision on the application. Therefore, the changes proposed by this rule should have no effect on the rights of these parties.

B. Requiring Notification of Known and Unknown Interested Parties of the Decision and Administrative Appeal Rights

Under existing regulations, BIA officials who issue decisions under this part are required to provide known interested parties with written notice of such decisions. *See* 25 CFR 2.7(a). The proposed rule requires interested parties, as that term is currently defined in the part 2 regulations, to make themselves known to the BIA official in writing in order to require the BIA official to provide this written notice to them. For example, a party that submits written comments to the BIA official in connection with a pending application has made itself ''known'' to the BIA official and will be provided written notice of the decision when issued. If a BIA official's decision is subject to administrative review by another BIA official, parties must make themselves known in writing at each stage of administrative review. For example, a party that makes itself known in writing to a BIA Superintendent with the delegated authority to issue decisions under this part must also make itself known to the BIA Regional Director if the BIA Superintendent's decision has been appealed to the Regional Director by another party. Notifications of decisions issued by BIA officials will continue to include information concerning administrative appeal rights, consistent with 25 CFR 2.7. Please note, however, that inclusion of such information in the notice of decision does not confer upon the recipient a right to a decision on the merits of their claims. The right to a decision on the merits of a BIA official's decision is still subject to standing, timeliness, and other requirements limiting IBIA review of BIA officials' decisions.

With regard to notice to unknown interested parties, the revised rule requires that, where the AS–IA issues the decision, a notice of such decision will be published in the **Federal Register**. When a BIA official issues a decision, a notice of such decision and a statement of the right to an administrative appeal will be published in a newspaper of general circulation addressing the affected area. The newspaper notice will contain the same statement that is included in the written notice of decision provided to known interested parties regarding the right to appeal, if any. The time for unknown interested parties to file a notice of appeal begins to run upon first publication of such newspaper notice.

Lastly, the proposed rule also clarifies regulatory notice requirements to require the BIA official to notify, by mail or personal delivery, State and local governments having regulatory jurisdiction over the land to be acquired and any right to appeal.

Consistent with 25 CFR 2.7(b), in the event the BIA official fails to notify parties entitled to written notice of the decision, such failure does not affect the validity of the decision; instead, the time for filing a notice of appeal of the decision will not begin to run for such parties until written notice has been provided.

C. Exhaustion of Administrative Remedies

When a BIA official issues the decision to acquire land in trust, administrative remedies are available (as set forth in 25 CFR part 2) and interested parties must first exhaust them before seeking judicial review under the APA. Under 25 CFR part 2, interested parties have a specific time period to appeal the BIA's decision to acquire land in trust to the IBIA. Currently, that time period is 30 days. If interested parties who have received written notice or notice by newspaper publication fail to appeal within that timeframe, such parties are precluded from seeking any judicial review available under the APA because they failed to exhaust administrative remedies.

When the AS–IA issues decisions to acquire land in trust under this part there are no administrative remedies to exhaust; such decisions are final for the Department.

D. Summary of All Revisions to 151.12

Other changes to § 151.12 are designed to increase transparency and better reflect the current process for approving and denying requests to take land into trust. The following table details all revisions this proposed rule would make to § 151.12.

Current 25 CFR §	Current provision	Proposed 25 CFR §	Description of change	Reason for change
151.12(a)	''The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision.''	151.12(a)	Moves provision regarding promptly notifying the applicant in writing of the decision to (c) and (d).	The revised version describes the process of the Assistant Secretary issuing a decision in paragraph (c), and the process of a BIA official issuing a decision in paragraph (d)
151.12(a)	''The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision.''	151.12(a)	No substantive change	N/A.

Current 25 CFR §	Current provision	Proposed 25 CFR §	Description of change	Reason for change
151.12(a)	''If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to part 2 of this title.''	151.12(b)	States generally that the Secretary's decision will be in writing and state the reasons for the decision, so this requirement applies regardless of whether the decision was an approval or denial. Moves the provision regarding notification of appeal rights to (d)(1) (denial decision by BIA official) and (d)(2)(ii) and (d)(2)(iii) (approval decision by BIA official).	This addition reflects current practice, whereby the decision and basis for the decision are in writing for the record. Clarifies that only decisions from BIA officials may be appealed under part 2. Decisions by the Assistant Secretary are final for the Department.
151.12(b)	''Following completion of the Title Examination provided in § 151.13 of this part . . .''	152.12(c) & (d)	The requirement for a title examination has been moved to (c)(2)(iii) and (d)(2)(iv)(B).	The revised version places the requirement for title examination in paragraphs relating to an approval decision by the Assistant Secretary and an approval decision by the BIA official.
151.12(b)	''. . . and the exhaustion of any administrative remedies . . .''	152.12(d)	The requirement for exhaustion of administrative remedies has been moved to (d), which is applicable only to decisions issued by a BIA official.	Clarifies that only decisions from BIA officials may be appealed under part 2. Decisions by the Assistant Secretary are final for the Department.
151.12(b)	''. . . the Secretary shall publish in the **Federal Register**, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part.''	151.12(c)(2)(ii) & (d)(2).	The requirement to publish in the **Federal Register** has been moved to (c)(2)(ii) (decisions by the Assistant Secretary). The requirement to publish in a newspaper has been moved to (d)(2)(iii) (decisions by a BIA official) and clarifies that any appeal period begins to run upon first publication. Also adds a requirement for actual notice to known interested parties and State and local governments with jurisdiction over the land to be acquired of a BIA official's decision to take land into trust.	The addition of the requirement for actual notice to known interested parties and State and local governments with jurisdiction is to ensure that all known interested parties receive the notice necessary for the administrative appeal period to begin to run. This supplements 25 CFR 2.7 by providing that, for unknown interested parties, the time for appeal begins to run upon publication in the newspaper. This exception is necessary because notice by mail or personal service is not possible for parties not known to the BIA official.
151.12(b)	''The notice will state that a final agency determination to take land in trust has been made and . . .''	151.12(c)	States that a decision issued by the Assistant Secretary is final for the Department.	The current rule's statement that the decision is a ''final agency determination'' does not reflect those cases where the decision is made by a BIA official, which is not a ''final agency determination'' at the time of issuance and may be appealed through the Department's administrative appeals process.
151.12(b)	''. . . that the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published.''	151.12(c)(2)(iii) & (d)(2)(iv).	Deletes statement that the Secretary will acquire title no sooner than 30 days after the notice is published. Instead, provides that the Assistant Secretary will ''promptly'' acquire land into trust at (c)(2)(iii) and that the BIA official will ''promptly'' acquire land into trust when the decision is final, after the administrative appeal period expires or the appeal is decided or dismissed.	Deleting the 30-day waiting period means the decision to take land into trust may now be implemented as soon as such decision becomes final. This is true regardless of how the decision becomes final for the Department, whether because the Assistant Secretary issues the decision, the IBIA issues a final decision affirming the BIA official's decision, or following expiration of the administrative appeal period for which no administrative appeals are filed.

Upon finalization of the rule, revisions to the Fee-to-Trust Handbook will be made to comport with the new notice procedures in this rule, including the addition of broader notice requirements of decisions issued by Bureau officials.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

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

E.O. 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 E.O. 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. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

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

C. 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. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to appeals of acquisitions of Indian land.

D. Unfunded Mandates Reform Act

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. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no 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. This rule ensures notification to State and local governments of a BIA official's decision to take land into trust and the right to administratively appeal such decision.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. During development of the rule, the Department discussed the rule with tribal representatives and will engage in further consultation as it reviews public comments.

I. Paperwork Reduction Act

This rule does not contain any information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature.

K. Effects on the Energy Supply (E.O. 13211)

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

L. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 151

Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs,

proposes to amend part 151 in Title 25 of the Code of Federal Regulations as follows:

PART 151—LAND ACQUISITIONS

■ 1. The authority citation for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat.1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

■ 2. Revise § 151.12 to read as follows:

§ 151.12 Action on requests.

(a) The Secretary shall review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary's decision to approve or deny a request shall be in writing and state the reasons for the decision.

(c) Decisions made by the Assistant Secretary—Indian Affairs are final agency actions under the Administrative Procedure Act (5 U.S.C. 704) upon issuance.

(1) If the Assistant Secretary denies the request, the Assistant Secretary shall promptly provide the applicant with the decision.

(2) If the Assistant Secretary approves the request, the Assistant Secretary shall:

(i) Promptly provide the applicant with the decision;

(ii) Publish in the **Federal Register** a notice of the decision to acquire land in trust under this part; and

(iii) Promptly acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(d) Decisions made by a Bureau of Indian Affairs official are not final for the Department under part 2 of this title until administrative remedies are exhausted or until the time for filing a notice of appeal has expired and no appeal was filed.

(1) If the official denies the request, the official shall promptly provide the applicant with the decision and notification of any right to file an administrative appeal under part 2 of this title.

(2) If the official approves the request, the official shall:

(i) Promptly provide the applicant with the decision;

(ii) Provide written notice of the decision by mail or personal delivery to

(A) Interested parties who have made themselves known, in writing, to the official who made the decision; and

(B) The State and local governments having regulatory jurisdiction over the land to be acquired. The notices sent pursuant to paragraphs (d)(2)(ii)(A)–(B) of this section shall also inform the addressee of the right, if any, to file an administrative appeal of such decision pursuant to part 2 of this title;

(iii) Publish a notice in a newspaper of general circulation serving the affected area of the decision to acquire land in trust under this part and any right of other interested parties to file an administrative appeal under part 2 of this title. For purposes of calculating the appeal period, the date of first publication of the notice shall be deemed the date of receipt of the decision for interested parties who did not make themselves known, in writing, to the official who made the decision;

(iv) Take the following actions to finalize the trust acquisition:

(A) If no administrative appeal is filed, the BIA official will promptly take the land into trust under § 151.14 after expiration of the time for filing a notice of appeal and after fulfilling the requirements of § 151.13 and any other Departmental requirements.

(B) If an administrative appeal is filed, the BIA official will take the land into trust under § 151.14 promptly following an IBIA decision affirming the decision, or dismissing the appeal, and after fulfilling the requirements of § 151.13 and any other Departmental requirements.

Dated: May 23, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–12708 Filed 5–24–13; 11:15 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0391]

RIN 1625–AA00

Safety Zone, Temporary Change for Recurring Fifth Coast Guard District Fireworks Displays, Middle River; Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing a temporary change to the enforcement periods and regulated areas of safety zone regulations for a recurring fireworks display within the Fifth Coast Guard District. This regulation applies to a recurring fireworks display event that take place in Baltimore County, MD. Safety zone regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Middle River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before June 28, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include

any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0391] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0391) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

Fireworks display events are frequently held on or adjacent to navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25. The Table to Sec. 165.506, event (b)(3), establishes the enforcement date for the annual Independence Day holiday fireworks event held in Baltimore County, MD. That date is generally the July-Saturday before July 4. The Eastern Yacht Club, which is the sponsor for this event, holds this event annually.

On July 6, 2013, the Eastern Yacht Club will sponsor its annual fireworks event. This event will take place in Baltimore County, MD on the waters of the Middle River. The regulation at 33 CFR 165.506 is enforced annually for this event. Also, a fleet of spectator vessels is expected to gather near the event site to view the fireworks. To provide for the safety of participants, spectators, and transiting vessels, the Coast Guard temporarily restricts vessel traffic in the event area from 8 p.m. to 10:30 p.m. on the date of the event. The regulation at 33 CFR 165.506 will be enforced for the duration of the event. Vessels may not enter the regulated area unless they receive permission from the Coast Guard Captain of the Port Baltimore or the designated on-scene patrol personnel.

C. Discussion of Proposed Rule

This regulation proposes to temporarily change the enforcement period for a safety zone for an annually recurring fireworks event, described at (b)(3) of the Table to 33 CFR 165.506, that is normally scheduled to occur each year on July—Saturday before Independence Day holiday.

This regulation temporarily changes the date for the fireworks event. The date is changed to July—Saturday after Independence Day holiday. The temporary safety zone will be enforced from 8 p.m. to 10:30 p.m. on July 6, 2013, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Captain of the Port Baltimore or the designated on-scene patrol personnel, no person or vessel will be allowed to enter or remain in the regulated area. This regulation is needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

Although this regulation would restrict access to this area, the effect of this proposed rule will not be significant because: (i) the safety zone will only be in effect from 8 p.m. to 10:30 p.m. on July 6, 2013, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to a section of the Middle River, vessel traffic will be able to transit safely around the safety zone.

2. Impact on Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate, transit, or anchor in the specified portions of the Middle River, from 8 p.m. through 10:30 p.m. on July 6, 2013. This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The regulated area is of limited size, (ii) this proposed rule will only be in effect for 2½ hours, and (iii) although the safety zone will apply to a section of the Middle River, vessel traffic will be able to transit safely around the safety zone. Before the enforcement period, the Coast Guard will issue maritime advisories widely available to users of the waterway, to allow mariners to make alternative plans for transiting the affected area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L.

107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.506, in the Table to § 165.506, make the following amendments:

■ a. Under ''(b) Coast Guard Sector Baltimore—COTP Zone,'' suspend number 3, which will be enforced on June 29th.

■ b. Under ''(b) Coast Guard Sector Baltimore—COTP Zone,'' add number 24 on July 6th, to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

* * * * *

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983]

Number	Date	Location	Regulated area
		Coast Guard Sector Baltimore—COTP Zone	
*	*	*	*
24	July 6th	Middle River, Baltimore County, MD, Safety Zone.	All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N, longitude 076°23′49″ W, approximately 300 yards east of Rockaway Beach, near Turkey Point.

* * * * *

Dated: May 15, 2013.

Kevin C. Kiefer,

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

[FR Doc. 2013–12660 Filed 5–28–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0147; FRL–9816–5]

Approval and Promulgation of Implementation Plans; Atlanta, Georgia 1997 8-Hour Ozone Nonattainment Area; Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision, submitted by the State of Georgia, through the Georgia Environmental Protection Division, on October 21, 2009, to address the reasonable further progress (RFP) plan requirements for the Atlanta, Georgia 1997 8-hour ozone national ambient air quality standards (NAAQS) nonattainment area. The Atlanta, Georgia 1997 8-hour ozone nonattainment area (hereafter referred to as the ''Atlanta Area'') is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in Georgia. EPA is also providing the status of its adequacy determination for the motor vehicle emissions budgets (MVEB) for volatile organic compounds and nitrogen oxides that were included in Georgia's RFP plan. Further, EPA is approving these MVEB. In the Final Rules Section of this issue of the **Federal Register**, EPA is approving the State's implementation plan revisions and providing the Agency's adequacy determination for Georgia's MVEB as a direct final rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments.

DATES: Written comments must be received on or before June 28, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0147 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2013–0147,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9061. Ms. Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 12, 2008, EPA issued a revised ozone NAAQS. *See* 73 FR 16436. The current action, however, is being taken to address requirements under the earlier 1997 8-hour ozone NAAQS. Requirements for the Atlanta Area under the 2008 ozone NAAQS will be addressed in the future. For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval of the RFP plan requirements for the 1997 8-hour ozone NAAQS is set forth in the direct final rule as is information related to the adequacy determination. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on the matters being proposed for approval into the Georgia SIP today should do so at this time.

Dated: May 13, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–12463 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, 86, 600, 1036, 1037, 1065, and 1066

[EPA–HQ–OAR–2011–0135; FRL–9818–5]

RIN 2060–A0

Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (''EPA'') is announcing an extension of the public comment period for the proposed rule ''Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards'' (the proposed rule is hereinafter referred to as ''Tier 3''). EPA published a notice of proposed rulemaking, which included a request for comment, in the **Federal Register** on May 21, 2013. The public comment period was to end on June 13, 2013. The purpose of this document is to extend the public comment period an additional 18 days, to July 1, 2013.

DATES: Written comments must be received on or before July 1, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0135, 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. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *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–2011–0135. 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, please refer to the notice of proposed rulemaking (Section XI, Public Participation, of the **SUPPLEMENTARY INFORMATION** section of the proposed rulemaking document).

How can I access the 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.

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– 2011–0135. The EPA has also developed a Web site for the proposed Tier 3 rule, including the notice of proposed rulemaking, at: *http://www.epa.gov/otaq/tier3.htm.* Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

FOR FURTHER INFORMATION CONTACT: JoNell Iffland, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; telephone number: (734) 214–4454; Fax number: (734) 214–4816; Email address: *iffland.jonell@epa.gov.*

SUPPLEMENTARY INFORMATION:

In response to requests for an extension, we are extending the public comment period for the Tier 3 proposed rulemaking through July 1, 2013. This extension will provide the public additional time to provide comment on the proposed rule.

Dated: May 23, 2013.

Christopher Grundler,

Director, Office of Transportation and Air Quality.

[FR Doc. 2013–12749 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2012–0821; 9817–5]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Oklahoma has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to the State of Oklahoma.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless we get written comments which oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by June 28, 2013.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Oklahoma during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533; or Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: May 2, 2013.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2013–12711 Filed 5–28–13; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 13–1136]

Availability of Version 3.1.2 of the Connect America Fund Phase II Cost Model; Additional Discussion Topics in Connect America Cost Model Virtual Workshop

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau announces the next version of the Connect America Cost Model (CAM v3.1.2), which allows Commission staff and interested parties to calculate costs based on a series of inputs and assumptions for Connect America Phase II implementation. The Bureau also announces that it is seeking additional input on a number of issues in the ongoing virtual workshop.

DATES: Comments are due on or before June 18, 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.
- *Virtual Workshop:* In addition to the usual methods for filing electronic comments, the Commission is allowing comments, reply comments, and ex parte comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*
- *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: Katie King, Wireline Competition Bureau at (202) 418–7491 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; DA 13–1136, released May 17, 2013, as well as information posted online in the Wireline Competition Bureau's Virtual Workshop. The complete text of the Public Notice 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.* In addition, the Virtual Workshop may be accessed via the Internet at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.*

1. The Wireline Competition Bureau (Bureau) announces the next version of the Connect America Cost Model (CAM v3.1.2), which allows Commission staff and interested parties to calculate costs based on a series of inputs and assumptions for Connect America Phase II implementation. CAM v3.1.2 builds on version 3.1 of the model (CAM v3.1) by modifying cable coverage to reflect census blocks served by cable providers (based on the National Broadband Map, data as of June 2012) that have reported voice subscriptions on FCC Form 477 (data as of June 2012). Previous versions of the model only provided the capability to filter out cable providers shown on the National Broadband Map as providing broadband service meeting a specified speed—regardless of whether they also provide voice services—when identifying blocks eligible for funding. CAM v3.1.2 also makes minor adjustments to the fixed wireless voice coverage.

2. The Bureau also announces that it is seeking additional input on a number of issues in the ongoing virtual workshop. The Bureau adds a discussion topic to the virtual workshop entitled ''Finalizing Input Values for Connect America Cost Model Cost Estimation Module'' to seek comment on whether the values used in the input collections for the cost estimation module in CAM v3.1.2 are reasonable values to use in the final version of the cost model that the Bureau will ultimately adopt.

3. Among other things, the Bureau seeks focused public input on the

appropriate cost of capital to be utilized in the ACFs. The follow-up question, which appears in the comment section of the ''Setting the Rate of Return for the Connect America Cost Model'' topic, asks whether to assume a cost of capital of eight percent, calculated with a ratio of debt to equity of 45:55, when adopting final ACFs. CAM v3.1.2 enables users to view the impact on cost estimates of using ACFs that assume a cost of capital of nine percent, calculated with a ratio of debt to equity of 25:75 and a cost of debt of seven percent, versus using ACFs that assume a cost of capital of eight percent, calculated with a ratio of debt to equity of 45:55 and a cost of debt of 6.19 percent.

4. The Bureau also adds two additional discussion topics to the virtual workshop relevant to finalizing support amounts entitled ''Support Thresholds'' and ''Connect America Fund-Intercarrier Compensation Recovery Mechanism Set Aside Amount.'' Finally, the Bureau adds an additional follow-up question to the comment section of the ''Determining the Fraction of Supported Locations That Will Receive Speeds of 6 Mbps/1.5 Mbps or Greater'' topic.

5. To the extent the public believes that there are additional issues that should be addressed in the virtual workshop before finalizing the cost model, they are encouraged to notify the Bureau as quickly as possible.

6. Responses should be submitted in the virtual workshop no later than June 18, 2013. Parties can participate in the virtual workshop by visiting the Connect America Fund Web page, *http://www.fcc.gov/encyclopedia/connecting-america*, and following the link to the virtual workshop.

7. Comments from the virtual workshop will be included in the official public record of this proceeding. The Bureau will not rely on anonymous comments posted during the workshop in reaching decisions regarding the model. Participants should be aware that identifying information from parties that post material in the virtual workshop will be publicly available for inspection upon request, even though such information may not be posted in the workshop forums.

I. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Bureau prepared an Initial Regulatory Flexibility Analysis (IRFA), included as part of the *Model Design PN,* 77 FR 38804, June 29, 2012, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in these Public Notices and the information posted online in the Virtual Workshops. We have reviewed the IRFA and have determined that is does not need to be supplemented.

B. Paperwork Reduction Act

9. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified 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).

C. Filing Requirements

10. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates 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. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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.

11. *Virtual Workshop.* In addition to the usual methods for filing electronic comments, the Commission is allowing comments in this proceeding to be filed by posting comments at *http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012.* Persons wishing to examine the record in this proceeding are encouraged to examine the record on ECFS and the Virtual Workshop. Although Virtual Workshop commenters may choose to provide identifying information or may comment anonymously, anonymous comments will not be part of the record in this proceeding and accordingly will not be relied on by the Commission in reaching its conclusions in this rulemaking. The Commission will not rely on anonymous postings in reaching conclusions in this matter because of the difficulty in verifying the accuracy of information in anonymous postings. Should posters provide identifying information, they should be aware that although such information will not be posted on the blog, it will be publicly available for inspection upon request.

12. *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).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Federal Communications Commission.

Kimberly A. Scardino,

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–12757 Filed 5–28–13; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 78, No. 103

Wednesday, May 29, 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

Agricultural Marketing Service

[Doc. No. AMS–LPS–13–0021]

Poultry Market News Reports; Request for Extension and Revision of the Currently Approved Information Collection and To Merge the Collections of Livestock, Poultry, Meat, Grain, and Their Related Products Used as Market News Information

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this document announces Agricultural Marketing Service (AMS) intention to revise three previously approved collections by merging them into a single information collection. AMS recently merged its Livestock and Grain Market News Division with the Poultry Market News Division, creating the Livestock, Poultry and Grain Market News Division (LPGMN). Due to this organizational merger, AMS intends to combine the following collections, 0581–0033 ''Poultry Market News Reports'', 0581–0005 ''Grain Market News'', and 0581–0154 ''Livestock and Meat Market News.'' These collections will be combined into a single collection re-titled 0581–0033 ''Livestock, Poultry, Meat, and Grain Market News Reports.'' Finally, this document announces AMS intention to request approval for an extension to the re-titled collection 0581–0033 ''Livestock, Poultry, Meat, and Grain Market News Reports.'' LPGMN provides a timely exchange of accurate and unbiased information on current marketing conditions affecting trade in livestock, poultry, eggs, meats, grain, and wool.

DATES: Comments on this document must be received by July 29, 2013 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this information collection document. Comments should be submitted online at *www.regulations.gov* or sent to Kim Harmon, Assistant to the Director, Livestock, Poultry and Grain Market News Division, Livestock, Poultry and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. S. W., Room 2619–S Washington, DC, 20250–0252, or by facsimile to (202) 690–3732. All comments should reference the document number (AMS–LPS–13–0021), the date, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, online at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kim Harmon at the above physical address, by telephone (202) 720–8054, or by email at *Kim.Harmon@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Poultry Market News Reports.

OMB Number: 0581–0033.

Expiration Date of Approval: December 31, 2013.

Type of Request: Revision and Extension of approval of an information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) as amended authorizes AMS, Market News Divisions to provide up-to-the-minute nationwide coverage of prices, supply, demands, trends, movement, and other pertinent information affecting the trading of livestock, poultry, meat, eggs, grain, and their related products. AMS recently merged the Livestock and Seed Program with the Poultry Programs. The newly combined program is called the Livestock, Poultry and Seed Program. Subsequently, the two respective market news divisions were also merged to form the LPGMN Division. The market reports compiled and disseminated by the LPGMN Division provide current, unbiased, and factual information to all members of the Nation's agricultural industry. Market news reports assist producers, processors, wholesalers, retailers, and others in making informed production, purchasing, and sales decisions. LPGMN reports also promote orderly marketing by placing buyers and sellers on a more equal negotiation basis.

LPGMN reporters communicate with buyers and sellers of livestock, poultry, meat, eggs, grain, and their respective commodities on a daily basis in order to accomplish the Program's mission. This communication and information gathering is accomplished through the use of telephone conversations, facsimile transmissions, face to face meetings, and electronic mail messages. The information provided by respondents initiates market news reporting, which must be timely accurate, unbiased, and continuous if it is to be meaningful to the industry. AMS will collect information on price, supply, demand, trends, movement, and other information of livestock, poultry, meat, grain, eggs, and their respective commodities. LPGMN uses one OMB approved form, PY–90: ''Monthly Dried Egg Solids Stocks Report'', to collect inventory information from commercial dried egg products plants throughout the United States. Cooperating firms voluntarily submit this form to LPGMN primarily via electronic mail and facsimile transmissions.

With this revision, LPGMN is including information collection requirements currently approved by OMB control number 0581–0033 ''Poultry Market News Reports'' (Expires 12/31/2013), 0581–0005 ''Grain Market News'' (Expires 09/30/2014), and 0581–0154 ''Livestock and Meat Market News'' (Expires 06/30/2014) into one collection. After OMB approves and combines the burden for the collection under a single collection retitled ''Livestock, Poultry, Meat, and Grain Market News Reports'' (0581–0033), the Department will retire numbers 0581–0005 and 0581–0154. Merging the collections will enable the division to more efficiently manage the collection and prevent duplication of burden.

For Poultry Market News Reports 0581–0033

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: Producers, processors, brokers, distributors, retailers, and commercial dried egg products plants.

Estimated Number of Respondents: 411 respondents.

Estimated Total Annual Responses: 50,471 responses.

Estimated Number of Responses per Respondent: 122.80 responses.

Estimated Total Annual Burden on Respondents: 4,189 hours.

For Grain Market News 0581–0005

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .033 hours per response.

Respondents: Business or other for-profit entities, individuals or households, farms, and Federal Government.

Estimated Number of Respondents: 1,737 respondents.

Estimated Total Annual Responses: 153,168 responses.

Estimated Number of Responses per Respondent: 88.18 responses.

Estimated Total Annual Burden on Respondents: 5,100 hours.

For Livestock and Meat Market News 0581–0154

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .083 per response.

Respondents: Producers, processors, brokers, distributors, retailers, and wholesalers.

Estimated Number of Respondents: 520 respondents.

Estimated Total Annual Responses: 65,520 responses.

Estimated Number of Responses per Respondent: 126 responses.

Estimated Total Annual Burden on Respondents: 5,458 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 21, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12656 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–13–0033]

Perishable Agricultural Commodities Act; Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this document announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection for the Reporting and Recordkeeping Requirements Under Regulations Under the Perishable Agricultural Commodities Act, 1930, as amended.

DATES: Comments on this document must be received by July 29, 2013 to be assured of consideration.

ADDRESSES: You may submit written or electronic comments to: Natalie Worku, PACA Division, Recordkeeping and Reporting Comments, AMS, F&V Program, 1400 Independence Avenue SW., Room 1510–S, Stop 0242, Washington DC 20250–0242; or faxed to: 202–690–4413; or Internet: *http://www.regulations.gov.* All comments received will be posted without change, including any personal information provided, online at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during regular business hours.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: January 31, 2014.

Type of Request: Extension of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides a forum for resolving contract disputes, and a mechanism for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA provides for prompt payment to fruit and vegetable sellers and for revocation of licenses and sanctions against firms and principals found to have violated the law's standards for fair business practices. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. Retailers and grocery wholesalers must renew their licenses every three years. All other licensees must renew annually. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected pursuant to OMB Number 0581–0031 is used to administer licensing provisions under the PACA, to adjudicate contract disputes, and to enforce the PACA and the regulations. The purpose of this document is to solicit comments from the public concerning our information collection.

We estimate the paperwork and time burden of the above referenced information collection to be as follows:

Form FV–211, Application for License: average of .25 hours per application per response.

Form FV–231–1 (or 231–1A, or 231–2, or 231–2A), Application for Renewal or Reinstatement of License: Average of .05 hours per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of .05 hours per notice per response.

Regulations Section 46.4—Limited Liability Company Articles of Organization and Operating Agreement: Average of .083 hours with approximately 2,473 annual responses.

Regulations Section 46.18—Record of Produce Received: Average of 5 hours

with approximately 6,725 recordkeepers.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 683 recordkeepers.

Regulations Section 46.46(c)(2)—Waiver of Rights to Trust Protection: Average of .25 hours per notice with approximately 100 principals.

Regulations Sections 46.2(aa)(11) and 46.46(e)(1)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,343 recordkeepers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response annually.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of commercial quantities of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499c (a)).

Estimated Number of Respondents: 14,540.

Estimated Total Annual Responses: 29,095.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 87,455.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 21, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12653 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–12–0029]

Cotton Research and Promotion Program: Determination of Whether To Conduct a Referendum Regarding 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's determination, based on a review by the Agricultural Marketing Service (AMS), that it is not necessary to conduct a referendum among producers and importers on continuation of the 1990 amendments to the Cotton Research and Promotion Act (Act). The 1990 amendments require the Secretary of Agriculture, once every 5 years, to conduct a review to determine whether to hold a continuance referendum. The two major changes to the Cotton Research and Promotion Program made by the 1990 amendments were the elimination of assessment refunds to producers and a new assessment levied on imported cotton and the cotton content of imported products. Although USDA is of the view that a referendum is not needed, it will initiate a sign-up period as required by the Act, to allow cotton producers and importers the opportunity to request a continuance referendum.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Division, Cotton and Tobacco Programs, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: In July 1991, the Agricultural Marketing Service (AMS) implemented the 1990 amendments to the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons—to be determined by the Secretary—who import cotton or cotton products into the United States (U.S.) and are selected by the Secretary from nominations submitted by importer organizations certified by the Secretary of Agriculture; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount the Secretary can be reimbursed for conducting a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand an assessment refund.

Results of the initial July 1991 referendum showed that of the 46,220 valid ballots received with 27,879 or 60 percent of the persons voted in favor of the amendments to the Cotton Research and Promotion Order (7 CFR part 1205) (Order) and 18,341 or 40 percent opposed the amendments. AMS developed implementing regulations for the import assessment effective July 31, 1992 (57 FR 29181); the elimination of the producer refund effective July 31, 1992 (57 FR 29181); and provided for importer representation on the Cotton Board effective December 21, 1991 (56 FR 65979).

USDA conducted 5-year reviews of the Cotton Research and Promotion Program in 1996, 2001 and 2006. For each review, the Department prepared reports that described the impact of the Cotton Research and Promotion Program on the cotton industry and the views of those receiving its benefits. Following each review, USDA announced its decision not to conduct a referendum regarding the 1991 amendments to the Order (61 FR 52772, 67 FR 1714, and 72 FR 9918, respectively) and subsequently held sign-up periods, affording all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of each sign-up period did not meet the criteria as established by the Act for a continuance referendum and, therefore, referenda were not conducted.

In 2011–2012, the Department again prepared a 5-year report that described the impact of the Cotton Research and Promotion Program on the cotton industry. The review report is available upon written request to the Chief of the Cotton Research and Promotion Staff at the address provided above. Comments were solicited from all interested parties, including persons who pay the assessments as well as from organizations representing cotton producers and importers (76 FR 31573). Five comments, including comments from four certified producer organizations that nominate producers to the Cotton Board, claimed strong support for the continuance of the program, noting that the administration of the Act has been proper, carries out the intent and purpose in a timely and superior manner, and requires no changes or adjustment.

USDA reviewed the Cotton Research and Promotion Program major program activities and accomplishments, including third-party evaluations of advertising and marketing activities and other functional areas; the results of producer and importer awareness and satisfaction surveys; and data from the Foreign Agricultural Service. USDA also reviewed the results of the Cotton Board's 2011 independent program evaluation, which assessed the effectiveness of the Cotton Research and Promotion Program; the strength of cotton's competitive position; the ability to maintain and expand domestic and foreign markets; increases in the number of uses for cotton; and estimates of a return on investment for stakeholders and qualitative benefits and returns associated with the Cotton Research and Promotion Program. The review report concluded that the 1990 amendments to the Act were successfully implemented and are operating as intended. The report also noted that there is a general consensus within the cotton industry that the Cotton Research and Promotion Program and the 1990 amendments to the Act are operating as intended. Written comments, economic data, and results from independent evaluations support this conclusion.

Although USDA found no compelling reason to conduct a referendum regarding the 1990 Act amendments to the Cotton Research and Promotion Order, some program participants support a referendum. Therefore, USDA will initiate a sign-up period in accordance with the Act. During this sign-up period, eligible producers and importers may sign-up to request such a referendum at the county office of the Farm Service Agency (FSA), or by mailing such a request to FSA. The Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent referendum (July 1991), with not more than 20 percent of such request from producers in one state or importers of cotton.

Current procedures for the conduct of a sign-up period appear at 7 CFR sections 1205.10–1205.30. These procedures will be updated as appropriate prior to the beginning of the sign-up period.

Authority: 7 U.S.C. 2101–2118.

Dated: May 21, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–12655 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0011]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Virus-Serum-Toxin Act and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the Virus-Serum-Toxin Act and regulations.

DATES: We will consider all comments that we receive on or before July 29, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0011-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0011, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0011* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the Virus-Serum-Toxin Act and regulations, contact Dr. Donna Malloy, Section Leader, Policy, Evaluation and Licensing, CVB, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737; (301) 851–3426. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Virus-Serum-Toxin Act and Regulations.

OMB Number: 0579–0013.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Virus-Serum-Toxin Act (21 U.S.C. 151–159), the Animal and Plant Health Inspection Service (APHIS) is authorized to promulgate regulations designed to prevent the importation, preparation, sale, or shipment of harmful veterinary biological products. These regulations are contained in 9 CFR parts 102 to 124.

Veterinary biological products include viruses, serums, toxins, and analogous products of natural or synthetic origin, such as vaccines, antitoxins, or the immunizing components of microorganisms intended for the diagnosis, treatment, or prevention of diseases in domestic animals.

APHIS issues licenses to qualified establishments that produce veterinary biological products and issues permits to importers of such products. APHIS also enforces requirements concerning production, packaging, labeling, and shipping of these products and sets standards for the testing of these products.

To help ensure that veterinary biological products used in the United States are pure, safe, potent, and effective, APHIS requires certain information collection activities, including, among other things, establishment license applications, product license applications, product import permit applications, product and test report forms, field study summaries, and recordkeeping. These information activities have been approved by the Office of Management and Budget (OMB) under control number 0579–0013.

In addition, in accordance with the regulations in 9 CFR 105.3 and 115.2, APHIS may notify a veterinary biologics licensee or permittee to stop the preparation, importation, and/or distribution and sale of a serial or a subserial of a veterinary biological product if, at any time, it appears that such product may be worthless, contaminated, dangerous, or harmful in the treatment of animals. This notification triggers two information collection activities: (1) After being contacted by APHIS, veterinary biologics licensees or permittees must immediately, but no later than 2 days, send stop distribution and sale notifications to any wholesalers, jobbers, dealers, foreign consignees, or other persons known to have such veterinary biological product in their

possession; and (2) veterinary biologics licensees and permittees must account for the remaining quantity of each serial or subserial of any such veterinary biological product at each location in the distribution channel known to the licensee or permittee. These information collection activities have been approved by OMB under control number 0579–0318.

This notice includes a description of the information collection activities currently approved by OMB under numbers 0579–0013 and 0579–0318. After OMB approves and combines the burden for both collections under one collection (number 0579–0013), the Department will retire number 0579–0318.

We are asking OMB to approve our use of these information activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.963 hours per response.

Respondents: U.S. importers, exporters, and shippers of veterinary biological products; State veterinary authorities; and operators of establishments that produce or test veterinary biological products or that engage in product research and development and their wholesalers, dealers, jobbers, foreign consignees, or other persons known to have any such worthless, contaminated, dangerous, or harmful veterinary biological product in their possession.

Estimated annual number of respondents: 220.

Estimated annual number of responses per respondent: 181.413.

Estimated annual number of responses: 39,911.

Estimated total annual burden on respondents: 78,349 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 22nd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–12692 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0030]

Notice of Request for Extension of Approval of an Information Collection; Federally Recognized State Managed Phytosanitary Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with Federal recognition of a State's plant pest containment, eradication, or exclusion program as a Federally Recognized State Managed Phytosanitary Program.

DATES: We will consider all comments that we receive on or before July 29, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0030-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0030, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0030* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Federally Recognized State Managed Phytosanitary Program, contact Ms. Diane L. Schuble, National Coordinator for Official Control, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737; (301) 851–2334. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Federally Recognized State Managed Phytosanitary Program.

OMB Number: 0579–0365.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, or other articles if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

As part of this mission, APHIS' Plant Protection and Quarantine (PPQ) program responds to introductions of plant pests to eradicate, suppress, or contain them through various programs to prevent their interstate spread. APHIS' plant pest containment and eradication programs qualify as ''official control programs,'' as defined by the International Plant Protection Convention (IPPC), recognized by the World Trade Organization as the standard-setting body for international plant quarantine issues. ''Official control'' is defined as ''the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of containment or eradication of quarantine pests or for the management of regulated non-quarantine pests.'' As a contracting party to the IPPC, the United States has agreed to observe IPPC principles as they relate to international trade. However, APHIS will also recognize exclusion programs that are

intended to protect other States that would be endangered by the introduction of a quarantine pest established elsewhere in the United States.

APHIS is aware that individual States enforce phytosanitary regulations and procedures within their borders to address pests of concern, and that those pests are not always also the subject of an APHIS response program or activity. To strengthen APHIS' safeguarding system to protect agriculture and to facilitate agriculture trade through effective management of phytosanitary measures, APHIS initiated the Federally Recognized State Managed Phytosanitary (FRSMP) Program, which establishes an administrative process for granting Federal recognition to certain State-managed official control programs for plant pest eradication or containment and State-managed pest exclusion programs. (The FRSMP Program was previously referred to as the Official Control Program.) Federal recognition of a State's pest control activities will justify actions by Federal inspectors at ports of entry to help exclude pests that are under a phytosanitary program in a destination State. This process involves the use of information collection activities, including the submission by States of a protocol for quarantine pests of concern and a protocol for regulated non-quarantine pests.

These information collection activities were previously approved by the Office of Management and Budget (OMB) with an estimated total annual burden on respondents of 106,000 hours. However, we overestimated the number of respondents, and we have adjusted the estimated total annual burden on respondents to 1,399 hours.

We are asking OMB to approve these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 82 hours per response.

Respondents: State Plant Health Regulatory Officials.

Estimated annual number of respondents: 53.

Estimated annual number of responses per respondent: 0.33.

Estimated annual number of responses: 17.

Estimated total annual burden on respondents: 1,399 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 22nd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–12697 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0031]

Pioneer Hi-Bred International, Inc.; Availability of Plant Pest Risk Assessment, Environmental Assessment, Preliminary Finding of No Significant Impact, and Preliminary Determination of Nonregulated Status of Canola Genetically Engineered for Herbicide Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a preliminary determination regarding a request from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status of canola designated as DP–073496–4, which has been genetically engineered for resistance to the herbicide glyphosate. We are also making available for public review our plant pest risk assessment, environmental assessment, and preliminary finding of no significant impact for the preliminary determination of nonregulated status.

DATES: We will consider any information that we receive on or before June 28, 2013.

ADDRESSES: You may submit any information by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0031*.
- *Postal Mail/Commercial Delivery:* Send any information to Docket No. APHIS–2012–0031, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents for this petition and any other information we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0031* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Supporting documents for this petition are also available on the APHIS Web site at *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS Petition Number 11–063–01p.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Stankiewicz Gabel, Chief, Biotechnology Environmental Analysis Branch, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 851–3927, email: *rebecca.l.stankiewicz-gabel@aphis.usda.gov*. To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE)

organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. APHIS received a petition (APHIS Petition Number 11–063–01p) from Pioneer Hi-Bred International, Inc., of Johnston, IA, seeking a determination of nonregulated status of canola (*Brassica napus*) designated as event DP–073496–4, which has been genetically engineered for tolerance to the herbicide glyphosate. The petition stated that this canola is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

According to our process [1] for soliciting public comment when considering petitions for determinations of nonregulated status of GE organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. In a notice [2] published in the **Federal Register** on July 13, 2012, (77 FR 41364–41366, Docket No. APHIS–2012–0031), APHIS announced the availability of the Pioneer petition for public comment. APHIS solicited comments on the petition for 60 days ending on September 11, 2012, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition.

APHIS received 4,686 comments on the petition. Issues raised during the comment period include outcrossing and cross-pollination concerns and effects of herbicide use, such as the development of herbicide-resistant weeds and effects on non-target organisms. APHIS has evaluated the issues raised during the comment period and, where appropriate, has provided a discussion of these issues in our environmental assessment (EA).

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our decisionmaking process. According to our public review process (see footnote 1), the second opportunity for public involvement follows one of two approaches, as described below.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its EA, preliminary finding of no significant impact (FONSI), and its plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period. For this petition, we are using Approach 1.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises substantive new issues, APHIS will follow Approach 2. Under Approach 2, APHIS first solicits written comments from the public on a draft EA and PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA and, based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement).

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a PPRA to assess the plant pest risk of the article. APHIS also prepares the appropriate environmental documentation—either an EA or an environmental impact statement—in accordance with NEPA, to provide the Agency and the public with a review and analysis of any potential environmental impacts that may result if the petition request is approved.

APHIS has prepared a PPRA and has concluded that canola event DP–073496–4 is unlikely to pose a plant pest risk. In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

APHIS has prepared an EA in which we present two alternatives based on our analysis of data submitted by Pioneer, a review of other scientific data, field tests conducted under APHIS oversight, and comments received on the petition. APHIS is considering the following alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of canola event DP–073496–4 and it would continue to be a regulated article, or (2) make a determination of nonregulated status of canola event DP–073496–4.

The EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA and other pertinent scientific data, APHIS has reached a preliminary FONSI with regard to the preferred alternative identified in the EA.

Based on APHIS' analysis of field and laboratory data submitted by Pioneer, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the PPRA, comments provided by the public on the petition, and discussion of issues in the EA, APHIS has determined that canola event DP–073496–4 is unlikely to pose a plant pest risk. We have therefore reached a preliminary decision to make a determination of nonregulated status of canola event DP–073496–4, whereby canola event DP–073496–4 would no longer be subject to our regulations governing the introduction of certain GE organisms.

We are making available for a 30-day review period APHIS' preliminary regulatory determination of canola event DP–073496–4, along with our PPRA, EA, and preliminary FONSI for the preliminary determination of nonregulated status. The EA, preliminary FONSI, PPRA, and our preliminary determination for canola event DP–073496–4, as well as the Pioneer petition and the comments received on the petition, are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. Copies of these documents may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

[1] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0129*.

[2] To view the notice, the petition, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0031*.

After the 30-day review period closes, APHIS will review and evaluate any information received during the 30-day review period. If, after evaluating the information received, APHIS determines that we have not received substantive new information that would warrant APHIS altering our preliminary regulatory determination or FONSI, substantially changing the proposed action identified in the EA, or substantially changing the analysis of impacts in the EA, APHIS will notify the public through an announcement on our Web site of our final regulatory determination. If, however, APHIS determines that we have received substantive new information that would warrant APHIS altering our preliminary regulatory determination or FONSI, substantially changing the proposed action identified in the EA, or substantially changing the analysis of impacts in the EA, then APHIS will notify the public of our intent to conduct additional analysis and to prepare an amended EA, a new FONSI, and/or a revised PPRA, which would be made available for public review through the publication of a notice of availability in the **Federal Register**. APHIS will also notify the petitioner.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–12687 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0036]

Notice of Request for Extension of Approval of an Information Collection; Importation of Artificially Dwarfed Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of artificially dwarfed plants.

DATES: We will consider all comments that we receive on or before July 29, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0036-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0036* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of artificially dwarfed plants, contact Mr. Dave Farmer, National Operations Manager, PEQ Coordinator, PPQ, APHIS, Venture IV, Suite 200, 920 Main Campus Drive, Raleigh, NC 27606; (919) 855–7366. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Importation of Artificially Dwarfed Plants.

OMB Number: 0579–0176.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service.

The regulations contained in ''Subpart–Plants for Planting'' (7 CFR 319.37 through 319.37–14) prohibit or restrict the importation of living plants, plant parts, and seeds for propagation. Among other things, § 319.37–5(q) requires artificially dwarfed plants that are imported into the United States, except for plants that are less than 2 years old, to be accompanied by a phytosanitary certificate issued by the government of the country of origin. This phytosanitary certificate must contain declarations that the plants were:

- Grown for at least 2 years in a greenhouse or screenhouse in a nursery registered with the government of the country where the plants were grown;
- Grown in a greenhouse or screenhouse that has screening with openings of not more than 1.6 millimeters on all vents and openings, and all entryways equipped with automatic closing doors;
- Grown in pots containing only sterile growing media during the 2-year period when they were grown in a greenhouse or screenhouse in a registered nursery;
- Grown on benches at least 50 centimeters above the ground during the 2-year period when they were grown in a greenhouse or screenhouse in a registered nursery; and
- Inspected (along with the greenhouse or screenhouse and nursery) for any evidence of pests and found free of pests of quarantine significance to the United States at least once every 12 months by the plant protection service of the country where the plants are grown.

The phytosanitary certificate and declarations help APHIS verify that imported artificially dwarfed plants do not pose a risk for the introduction of longhorned beetles and other pests into the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Importers, nurseries, and plant health officials of exporting countries.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 150.

Estimated total annual burden on respondents: 38 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 22nd day of May 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–12681 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2013–0016]

Notice of Request for Extension of a Currently Approved Information Collection: Public Health Information System—Animal Disposition Reporting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request extension of an information collection for data on meat, poultry, exotic animal, and rabbit slaughter for the Public Health Information System—Animal Disposition Reporting because the information collection approval is scheduled to expire on June 30, 2013.

DATES: Comments on this notice must be received on or before July 29, 2013.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2013–0016. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E. Street, Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202) 720–0345.

SUPPLEMENTARY INFORMATION: *Title:* Public Health Information System—Animal Disposition Reporting.

Type of Request: Extension of an approved information collection.

OMB Control Number: 0583–0139.

Expiration Date: 6/30/2013.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture (7 CFR 2.18, 2.55) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat and poultry products are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS also inspects exotic animals and rabbits under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621, *et seq.*).

FSIS is planning to request an extension of an approved information collection that addresses paperwork requirements for the Public Health Information System—Animal Disposition Reporting, formerly known as the electronic Animal Disease Reporting System, because the OMB approval will expire on June 30, 2013.

In accordance with 9 CFR 320.6, 381.180, 352.15, and 354.91, establishments that slaughter meat, poultry, exotic animals, and rabbits are required to maintain certain records regarding their business operations and to report this information to the Agency as required.

In the Public Health Information System—Animal Disposition Reporting, establishments report (by shift) slaughter totals in number of head and weight by animal category. Poultry slaughter establishments complete FSIS Form 6510–7 after each shift and submit it to the Agency. Other slaughter establishments provide their business records to FSIS to report the necessary information.

FSIS uses this information to plan inspection activities, to develop sampling plans, to target establishments for testing, to develop the Agency budget, and to develop reports to Congress. FSIS also provides this data to other USDA agencies, including the National Agricultural Statistics Service (NASS), the Animal and Plant Health Inspection Service (APHIS), the Agricultural Marketing Service (AMS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA), for their publications and for other functions.

FSIS has made the following estimates on the basis of an information collection assessment:

Estimate of Burden: FSIS estimates that it will take poultry slaughter establishments an average of two minutes per response and other animal slaughter establishments five minutes per response to collect and submit this information to FSIS.

Respondents: Slaughter establishments.

Estimated Number of Respondents: 1,341.

Estimated Number of Annual Responses per Respondent: 500.

Estimated Total Annual Burden on Respondents: 48,350 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence SW., Room 6065, South Building, Washington, DC 20250; (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS'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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: May 20, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–12661 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0041]

Availability of Compliance Guide for Residue Prevention and Response to Comments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the final revision of the compliance guide for the prevention of violative residues in livestock slaughter establishments. In addition, this notice summarizes and responds to comments received on the guide and residue testing issues that FSIS raised previously in the **Federal Register**.

ADDRESSES: A downloadable version of the revised compliance guide is available to view and print at *http://www.fsis.usda.gov/PDF/Residue_Prevention_Comp_Guide.pdf*. No hard copies of the compliance guide have been published.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, at Telephone: (202) 205–0495, or by Fax: (202) 720–2025.

SUPPLEMENTARY INFORMATION:

I. Background

On April 25, 2012, FSIS announced the availability of a compliance guide for residue prevention (77 FR 24671) and requested comment on the guide. FSIS explained that the guide emphasizes that establishments, especially those that slaughter dairy cows and bob veal calves, should apply five basic measures to reduce or prevent the occurrence of violative residues. The guide recommends that establishments should: (1) Confirm producer history; (2) buy animals from producers who have a history of providing residue-free animals and have effective residue prevention programs; (3) ensure that animals are adequately identified to enable traceback; (4) supply information to FSIS at ante-mortem inspection showing that animals in the lot did not come from repeat violators; and (5) notify producers in writing if their animals are found to have violative residues. Similarly, the guidance recommends that establishments notify producers in writing if their animals are found to have residues that are detectable but that do not exceed the tolerance or action levels established by the Food and Drug Administration (FDA) and the Environmental Protection Agency.

FSIS also explained that the compliance guide discusses the Agency's Residue Repeat Violator List. In addition, FSIS explained recent changes to the list, including that the list now includes only producers who have provided more than one animal with a violative residue during the past 12 months, and asked for comment on recent revisions to the list.

FSIS also announced that it recently increased testing for residues of carcasses in establishments with violations associated with the same producer or at establishments that fail to apply the residue control measures described in the compliance guide. Finally, FSIS also announced it intended to increase testing for residues in animals from producers who are under an injunction obtained by the FDA because of drug use practices that have led to residue violations.

In response to the comments it received, FSIS has updated the guidance document by substituting ''residue free'' and ''drug free'' with the phrase ''free from violative residues.'' In addition, FSIS has included a discussion of means of livestock identification other than those discussed in the initial guidance that should be considered by livestock slaughter establishments when back tags are lost or prove ineffective in maintaining the identity of the animals.

The guide includes recommendations rather than regulatory requirements. FSIS encourages livestock slaughter establishments to follow this final guide.

As for increased testing of animals from producers under an injunction obtained by FDA, FSIS and FDA continue to discuss how this testing can best be done. FSIS did not receive any comments on this issue. FSIS advises

that it does intend to implement this increased testing.

FSIS also did not receive any comments on recent increases in testing of carcasses for residues.

II. Comments and Responses

FSIS received a total of 12 comment letters in response to the April 2012 notice from professional veterinary associations, national trade organizations, private citizens, and an animal welfare advocacy organization. Following is a summary of the comments and FSIS's responses.

Comment: Several comments stated that only a small percentage of livestock receiving a back tag at the livestock market or sale barn actually retain those tags all the way to slaughter. One comment estimated that 80 percent of back tags placed on swine fall off before the animals are presented for slaughter. Several comments conjectured that if processors refuse to purchase animals without identification as recommended by FSIS, owners of animals that unwittingly lose their back tags while in transit or holding pens will be denied market access. As an alternative to back tags, two comments requested that FSIS mandate the use of permanent ear identification tags in swine.

Response: FSIS acknowledges that incidental loss of back tags does occur while livestock are in transport and holding areas. However, FSIS believes, in some cases, back tags prove to be an acceptable form of identification. If back tags do not work in certain situations, FSIS recommends that establishments use other means of identification, like producer ear tags, feedlot identification tags, tattoos, and calf-hood tags (''bangs''). FSIS has modified the guide to address animal identification options for establishments to consider when incidental loss of back tags occurs.

FSIS has limited authority to mandate the use of specific identification devices, permanent or otherwise, on livestock presented for slaughter. Therefore, FSIS does not intend to propose changes to its regulations to require specific identification devices at this time.

Comment: Several comments opposed FSIS's recommendation that slaughter establishments notify animal producers if their animals are found to have non-violative levels of a drug residue because the information will likely confuse producers.

Response: On November 28, 2000, FSIS informed establishments that if their HACCP plans included residue controls that incorporate the best available preventive practices for slaughter establishments, if they implement those controls effectively, and if they supply FSIS with information about violators, then the Agency will not treat violative residue findings by the establishment that are followed by appropriate corrective actions as noncompliance (65 FR 70809). The **Federal Register** notice went on to recommend that slaughter establishments notify animal producers in writing of both violative and non-violative residue findings as one of several ''best preventive practices.'' As reaffirmed in the compliance guide, FSIS believes that such an approach will result in a decrease in violative residue findings because evidence of non-violative residues is an indication of lack of care in drug use by that producer.

Comment: Several comments requested that FSIS resume publishing the Residue Violator List in addition to the revised Residue Repeat Violator List. According to the comments, information contained within the discontinued Residue Violator List was used by certain trade organizations to target outreach on residue avoidance to reduce the probability that a repeat violation would occur.

Response: In 2011, to avoid confusion, FSIS stopped publishing the monthly Residue Violator (Alert) List that included the names of any producer, including first-time offenders, with a residue violation in the previous 12 months. FSIS replaced that list with the Residue Repeat Violator List. Published weekly, the Residue Repeat Violator List identifies producers who repeatedly (i.e., on more than one occasion) within a 12-month period have sold animals for slaughter whose carcasses were found by FSIS to contain a violative level of a chemical residue.

FSIS recognizes that posting the name of a livestock producer to a publicly-available list of residue violators may potentially result in significant economic harm to that producer. Moreover, the incentive of removal of the producer's name from the Residue Repeat Violator List, which motivates repeat violators to improve their operations to prevent violative residues, will be weakened if producers with only one violation are listed on the Web site. Finally, FSIS notes that many first-time residue violators do not go on to become repeat violators within the designated 12-month period. Therefore, FSIS does not intend to resume publishing names of producers with a single violation within a 12-month period.

Comment: Because producers or suppliers can sell livestock to multiple Federal establishments, one comment suggested that FSIS consolidate residue test results from the supplier or producer and set an acceptance level of non-violative samples that would trigger removal of a producer from the Residue Repeat Violator List rather than use a hard 12-month timeframe.

Response: FSIS would need to evaluate existing data to set a level of acceptable non-violative residue sample results that would trigger removal of a producer from the Residue Repeat Violator List. Given the time and resources that it would take to perform this evaluation, FSIS finds that the passage of time without a violation remains the appropriate criterion for removal from the list and is not making any changes to the Residue Repeat Violator list at this time.

Comment: Two comments requested that FSIS amend the compliance guide by substituting ''residue-free'' and ''drug residue free'' with the phrase ''free from violative residues''.

Response: FSIS agrees with the suggested changes and has modified the compliance guide accordingly.

Comment: Two comments expressed various concerns about drug residues in horses destined to be slaughtered for human consumption.

Response: In January 2010, the USDA Office of Inspector General determined in its review of the FSIS National Residue Program for Cattle that cull dairy cows and bob veal account for 90 percent of the residues found in animals presented for slaughter. Therefore, the guide focuses primarily on establishments that slaughter these livestock. However, this guide will be useful to any establishments that slaughter horses under Federal inspection in the future. By following the recommendations in the guidance, horse slaughter establishments would employ practices that help them avoid receiving horses with residues.

USDA Nondiscrimination Statement

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TTY). USDA is an equal opportunity provider and employer.

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FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: May 20, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–12666 Filed 5–28–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 130514469–3469–01]

Draft Initial Comprehensive Plan and Draft Programmatic Environmental Assessment

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf States Act (RESTORE Act), the Secretary of Commerce, as Chair of the Gulf Coast Ecosystem Restoration Council (Council), announces the availability of a Draft Initial Comprehensive Plan (Draft Plan) to restore and protect the Gulf Coast region. Council Members also have compiled preliminary lists of ecosystem restoration projects that are ''authorized but not yet commenced'' and the full Council is in the process of evaluating these lists; the Council announces the availability of these preliminary lists. Finally, the Council has drafted, and announces the availability of, a Draft Programmatic Environmental Assessment (Draft PEA) for the Draft Plan. These documents are available for public review and comment.

DATES: To ensure consideration, we must receive your written comments on the Draft Plan and Draft PEA by June 24, 2013.

ADDRESSES: You may submit comments on the Draft Plan, the preliminary lists of ''authorized but not yet commenced'' ecosystem restoration projects, and Draft PEA by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via *www.restorethegulf.gov*.
- *Mail/Commercial Delivery:* Please send a copy of your comments to Gulf Coast Ecosystem Restoration Council, c/o U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4077, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: The Council can be reached at *restorecouncil@doc.gov*.

SUPPLEMENTARY INFORMATION:

Background: In 2010, the *Deepwater Horizon* oil spill caused extensive damage to the Gulf Coast's natural resources, devastating the economies and communities that rely on it. In an effort to help the region rebuild in the wake of the spill, Congress passed and the President signed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (''RESTORE Act''). Public Law 112–141, §§ 1601–1608, 126 Stat. 588 (Jul. 6, 2012). The RESTORE Act created the Gulf Coast Ecosystem Restoration Trust Fund (Trust Fund) and dedicates eighty percent of any civil and administrative penalties paid under the Clean Water Act, after the date of enactment, by parties responsible for the *Deepwater Horizon* oil spill to the Trust Fund for ecosystem restoration, economic recovery, and tourism promotion in the Gulf Coast region. The ultimate amount of administrative and civil penalties potentially available to the Trust Fund is currently unknown because Clean Water Act claims against several responsible parties are outstanding. On January 3, 2013, however, the United States announced that Transocean Deepwater Inc. and related entities agreed to pay $1 billion in civil penalties for violating the Clean Water Act in relation to their conduct in the *Deepwater Horizon* oil spill. That settlement was approved by the court in February, and Transocean paid the first installment of its civil penalties to the United States at the end of March. These funds are subject to the RESTORE Act.

In addition to creating the Trust Fund, the RESTORE Act established the Gulf Coast Ecosystem Restoration Council (Council), which is chaired by the Secretary of Commerce and includes the Governors of Alabama, Florida, Louisiana, Mississippi, and Texas, and the Secretaries of the U.S. Departments of Agriculture, the Army, Homeland Security, and the Interior, and the Administrator of the U.S. Environmental Protection Agency. Among other things, the Act requires the Council to publish an Initial Comprehensive Plan to restore and protect the Gulf Coast region after notice and an opportunity for public comment.

This Draft Plan sets forth the Council's overarching goals for restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast region. Additionally, the Plan: (1) incorporates the recommendations and findings of the Gulf Coast Ecosystem Restoration Task Force (Task Force) as set forth in the *Gulf Coast Ecosystem Restoration Task Force Strategy* (*Strategy*); (2) describes how Council-Selected ecosystem restoration activities will be solicited, evaluated, and funded; (3) outlines the process for the development, review, and approval of State Expenditure Plans; and, (4) provides the Council's next steps. In addition, the Council as a whole is in the process of reviewing and evaluating preliminary lists submitted by individual Council Members in order to compile, as required by the RESTORE Act, ''a list of any project or program authorized prior to the date of enactment of [the Act] but not yet commenced, the completion of which would further the purposes and goals of [the Act].''

The Council has responsibility over the expenditure of sixty percent of the funds made available from the Trust Fund. The Council will administer thirty percent, plus fifty percent of the interest on Trust Fund monies, for ecosystem restoration and protection according to the Plan. The other thirty percent will be allocated to the Gulf States as described in the RESTORE Act

and spent according to individual State Expenditure Plans. The State Expenditure Plans must be consistent with the goals and objectives of the Comprehensive Plan and are subject to the Council's approval. Remaining RESTORE Act funds are not within Council responsibility.

The Council is seeking public and tribal comment on all aspects of the Draft Plan. In particular, the Council seeks public and tribal comment on the following:

(1) The Draft Plan includes restoration Priority Criteria established in the RESTORE Act and applicable to the Council's selection of projects and programs for at least the first three years after publication of the Initial Comprehensive Plan. The Council is considering further defining these criteria and developing additional criteria for consideration.

a. Should the Council further define the Priority Criteria? If so, how?

b. Should the Council develop additional criteria for consideration now or in the future? If so, what should they be?

(2) The ''Objectives'' section of the Draft Plan describes the broad types of activities the Council envisions funding in order to achieve its goals.

a. Should the Council consider other Objectives at this juncture? If not, at what point, if any, should the Council consider additional Objectives? If so, what should they be?

b. Similarly, should the Council eliminate any of the Objectives?

c. How should the Council prioritize its restoration Objectives?

(3) The Council is considering establishing or engaging advisory committees as may be necessary, such as a citizens' advisory committee and/or a science advisory committee, to provide input to the Council in carrying out its responsibilities under the RESTORE Act.

a. Should the Council establish any advisory committees?

b. If so, what type of advisory committees should the Council establish? How should the Council structure such advisory committees? What role should such advisory committees play?

In accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4335, and the Council on Environmental Quality's regulations implementing NEPA, 40 C.F.R. Parts 1500–1507, the Council has prepared a Draft PEA on the Draft Plan. The Council is also seeking public comment on all aspects of the Draft PEA in addition to all aspects of the Draft Plan and the preliminary list of ''authorized but not yet commenced'' ecosystem restoration projects compiled by Council Members.

Document Availability: Copies of the Draft Plan, the preliminary list of ''authorized but not yet commenced'' projects and programs, and Draft PEA are available at the following office during regular business hours: Department of Commerce, 1401 Constitution Avenue NW., Room 4077, Washington, DC 20230.

Electronic versions of both documents can be viewed and downloaded at *www.restorethegulf.gov*.

Legal Authority: The statutory program authority for the Draft Initial Comprehensive Plan is found in subtitle F of the Moving Ahead for Progress in the 21st Century Act (''MAP–21''), Pub. L. 112–141, 126 Stat. 405 (Jul. 6, 2012).

Dated: May 22, 2013.

Rebecca M. Blank,

Acting Secretary of Commerce, Chair, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2013–12608 Filed 5–28–13; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–52–2013]

Foreign-Trade Zone 168—Dallas/Fort Worth, Texas Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Metroplex International Trade Development Corporation, grantee of FTZ 168, requesting authority to reorganize and expand its existing sites in Gainesville (Site 8) and Coppell (Site 9), Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on May 23, 2013.

FTZ 168 was approved on November 1, 1990 (Board Order 491, 55 FR 46974, 11/8/90), and expanded on October 8, 1992 (Board Order 603, 57 FR 47619, 10/19/92), on April 23, 1997 (Board Order 873, 62 FR 24081, 5/2/97), twice on May 8, 1997 (Board Orders 885 and 886, 62 FR 28445, 5/23/97), and on May 28, 1998 (Board Order 982, 63 FR 31200, 6/8/98). The zone currently consists of nine sites (one of which is temporary) totaling 2,010 acres: *Site 1* (21 acres)—within the Carter Industrial Park located at Alta Mesa and Will Rogers Boulevards (5 acres) and at 1301 Joel East Road (16 acres) in southern Fort Worth; *Site 2* (263 acres)—within the Centreport Industrial Development located at Highways 183 and 360 in Fort Worth; *Site 3* (195 acres)—within the Fossil Creek Business Park located at Interstates 35W and 820 in Fort Worth; *Site 4* (91 acres)—Regency Business Park located at Post and Paddock Road in Grand Prairie; *Site 5* (630 acres)—within the 1,200-acre Mercantile Center located at Interstate 35 and Meacham Boulevard in Fort Worth; *Site 6* (168 acres)—Frankford Trade Center located adjacent to Interstate 35E and Frankford Road in Carrollton; *Site 7* (185 acres)—Corporate Square Industrial Park/Armco/National Industrial Center, 3333 North I.H. 35, Gainesville; *Site 8* (421 acres)—Gainesville Municipal Airport, 2300 Bonnavilla Drive, Gainesville; and, *Temporary Site 9* (36 acres, expires 12/31/2013)—located at 400 Dividend Drive, Coppell.

The applicant is requesting authority to reorganize and expand the zone as follows: modify *Site 8* by removing 101 acres due to changed circumstances (new total acreage—320 acres); and, modify and expand *Site 9* by requesting permanent status for the site's current 36 acres and including an additional 65.156 acres within the Point West Industrial Park (new total acreage—101.156 acres). No request for production authority is being requested at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Camille Evans 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 FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 29, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 12, 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 FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or at (202) 482–2350.

Dated: May 23, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–12781 Filed 5–28–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Applicants for Appointment to the United States-Brazil CEO Forum

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In March 2007, the Governments of the United States and Brazil established the U.S.-Brazil CEO Forum. This notice announces membership opportunities for up to twelve individuals for appointment as American representatives to the U.S. Section of the Forum. The term of the current representatives to the U.S. Section will expire August 12, 2013.

DATES: Applications should be received no later than June 28, 2013.

ADDRESSES: Please send requests for consideration to Ashley Rosen, Office of South America, U.S. Department of Commerce, either by email at *ashley.rosen@trade.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue NW., Room CC333, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ashley Rosen, Office of South America, U.S. Department of Commerce, telephone: (202) 482–6311.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce and the Deputy Assistant to the President and Deputy National Security Advisor for International Economic Affairs, together with the Planalto Casa Civil Minister (Presidential Chief of Staff) and the Brazilian Minister of Development, Industry and Foreign Trade, co-chair the U.S.-Brazil CEO Forum (Forum), pursuant to the Terms of Reference signed in March 2007 by the U.S. and Brazilian governments, as amended, which set forth the objectives and structure of the Forum. The Terms of Reference may be viewed at: *http://trade.gov/press/press_releases/2007/brazilceo_02.asp.* The Forum, consisting of both private and public sector members, brings together leaders of the respective business communities of the United States and Brazil to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between the two countries. The Forum consists of the U.S. and Brazilian co-chairs and a Committee comprised of private sector members. The Committee is composed of two Sections, each consisting of ten to twelve members from the private sector, representing the views and interests of the private sector business community in the United States and Brazil. Each government appoints the members to its respective Section. The Committee provides joint recommendations to the two governments that reflect private sector views, needs and concerns regarding the creation of an economic environment in which their respective private sectors can partner, thrive and enhance bilateral commercial ties to expand trade between the United States and Brazil.

Candidates are currently sought for membership on the U.S. Section of the Forum. Each candidate must be the Chief Executive Officer or President (or have a comparable level of responsibility) of a U.S.-owned or -controlled company that is incorporated in and has its main headquarters in the United States and that is currently doing business in both Brazil and the United States. Each candidate also must be a U.S. citizen or otherwise legally authorized to work in the United States and able to travel to Brazil and locations in the United States to attend official Forum meetings as well as independent U.S. Section and Committee meetings. In addition, the candidate may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended. Applicants may not be federally-registered lobbyists, and, if appointed, will not be allowed to continue to serve as members of the U.S. Section of the Committee if the member becomes a federally-registered lobbyist.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

—A demonstrated commitment by the individual's company to the Brazilian market either through exports or investment.

—A demonstrated strong interest in Brazil and its economic development.

—The ability to offer a broad perspective and business experience to the discussions.

—The ability to address cross-cutting issues that affect the entire business community.

—The ability to initiate and be responsible for activities in which the Forum will be active.

Members will be selected on the basis of who will best carry out the objectives of the Forum as stated in the Terms of Reference establishing the U.S.-Brazil CEO Forum. The U.S. Section of the Forum should also include members that represent a diversity of business sectors and geographic locations. To the extent possible, U.S. Section members also should represent a cross-section of small, medium, and large firms.

U.S. members will receive no compensation for their participation in Forum-related activities. Individual members will be responsible for all travel and related expenses associated with their participation in the Forum, including attendance at Committee and Section meetings. Only appointed members may participate in official Forum meetings; substitutes and alternates will not be designated. According to the current Terms of Reference, members are normally to serve two-year terms, but may be reappointed. However, we are currently pursuing a modification to the Terms of Reference which would provide for a three-year term with the possibility for reappointment.

To be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name(s) and title(s) of the individual(s) requesting consideration; name and address of company's headquarters; location of incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in Brazil; an affirmative statement that the applicant is neither registered nor required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended; an affirmative statement that the applicant is not a federally-registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a member of the U.S. Section of the Forum if the applicant becomes a federally registered lobbyist; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Applications will be considered as they are received. All candidates will be notified of whether they have been selected.

Dated: May 21, 2013.

Anne Driscoll,

Director for the Office of South America.

[FR Doc. 2013–12646 Filed 5–28–13; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Monday, June 24, 2013 from 8:30 a.m. to 5:00 p.m. Eastern Time.

DATES: The meeting will convene Monday, June 24, 2013, at 8:30 a.m. Eastern Time and will adjourn at 5:00 p.m. Eastern Time the same day.

ADDRESSES: The meeting will be held at the Hyatt Regency Denver Tech, 7800 E. Tufts Avenue, Denver, Colorado 80237. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Karen Lellock, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–4269, email: *Karen.Lellock@nist.gov*.

SUPPLEMENTARY INFORMATION: The MEP Advisory Board (Board) is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69) in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Board is composed of 10 members, appointed by the Director of NIST. MEP is a unique program consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board provides a forum for input and guidance from the MEP program stakeholders in the formulation and implementation of tools and services focused on supporting and growing the U.S. manufacturing industry, provides advice on MEP's programs, plans, and policies, assesses the soundness of MEP's plans and strategies, and assesses current performance against MEP's program plans.

Background information on the Board is available at *http://www.nist.gov/mep/advisory-board.cfm*.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Manufacturing Extension Partnership Advisory Board will hold an open meeting on Monday, June 24, 2013 from 8:30 a.m. to 5:00 p.m. Eastern Time. This meeting will focus on (1) an update on MEP's strategic planning efforts, (2) system collaborations, (3) upcoming program evaluations and (4) partnership opportunities. The agenda may change to accommodate other Board business. The final agenda will be posted on the MEP Advisory Board Web site at *http://www.nist.gov/mep/advisory-board.cfm*. This meeting is being held in conjunction with the MEP regional meeting that will be held June 25–26 also at the Hyatt Regency Denver Tech Center in Denver, Colorado.

Anyone wishing to attend this meeting must submit their name, email address and phone number to Karen Lellock by 5:00 p.m. Eastern Time, Monday, June 17, 2013. Ms. Lellock's email address is *karen.lellock@nist.gov* and her phone number is 301–975–4269.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the beginning of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board Web site as *http://www.nist.gov/mep/advisory-board.cfm*. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, or via fax at (301) 963–6556, or electronically by email to *karen.lellock@nist.gov*.

Dated: May 22, 2013.

Phillip Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2013–12701 Filed 5–28–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Notice of Inent (NOI) To Prepare an Environmental Impact Statement (EIS) for the Oro Verde Solar Project at Edwards Air Force Base and County of Kern, CA

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of Intent.

SUMMARY: The Air Force is issuing this notice to advise the public of its intent to prepare a joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) with the County of Kern, California to evaluate potential environmental impacts associated with the development of the Oro Verde Solar Project (OVSP) on Edwards AFB. The OVSP is a solar photovoltaic (PV) facility that involves the lease of non-excess Air Force lands to a private energy developer, SunEdison LLC, who will pursue the development of up to 450 Megawatts of renewable energy on Edwards Air Force Base (AFB). The Proposed Action includes construction, operation, and maintenance of the OVSP facility. As part of the Proposed Action, the developer would construct a 230- kilovolt (kV) generation interconnection (Gen-tie) line connecting the OVSP to Southern California Edison's Windhub substation or to the Los Angeles Department of Power and Water (LADWP) Barren Ridge-Rinaldi transmission line. The Gen-tie line would be constructed to support the delivery of the energy generated by the project. For the County of Kern, the Proposed Action is to approve a franchise agreement for routing of the Gen-tie line, and to amend land use plans to provide rights-of-way for the project in select locations along the proposed transmission route.

SUPPLEMENTARY INFORMATION: The OVSP would be sited on 1,500 to 4,000 acres of available, non-excess Air Force land located on Edwards AFB. Alternatives which meet the purpose and need for Proposed Action have been identified and include the No Action Alternative and two additional alternatives. Alternative A includes full-scale project development of a 450 Megawatt solar PV project on up to 4,000 acres of Edwards AFB property located in the northwestern corner of the base. The project would include construction of a Gen-tie line of approximately 10–14 miles in total length. Alternative B represents a reduced-scale alternative for the construction and operation of a 150–200 Megawatt OVSP facility. Under Alternative B, the reduced-scale project would be sited on up to 2,000 acres of

Edwards AFB non-excess property within the same project footprint as Alternative A. Alternative B would allow the developer to have greater siting flexibility to avoid environmentally sensitive areas.

Scoping: In order to effectively define the full range of issues to be evaluated in the EIS/EIR, the Air Force and County of Kern are soliciting scoping comments from interested state and federal agencies and interested members of the public. The public scoping period will extend for 30 days following the publication of the Notice of Intent in the **Federal Register**. The public is invited to participate in scoping meetings that will be held on 12 and 13 June, 2013, in the local communities of Mojave, CA; and Rosamond, CA. Federal, State, and local agencies, along with other stakeholders who may be interested or affected by the project are invited to participate in the scoping process. Notification of the meeting locations, dates, and times will be published and announced in local news media no later than 15 days prior to public scoping meetings.

The scoping process will help identify the full range of reasonable alternatives, potential impacts, and key issues to be emphasized in the environmental analysis. The USAF has identified potential impacts to the following resources: Air Quality, Biological Resources, Cultural and Historical Resources, Water Resources, Land Use, Paleontological Resources, Soils, and Visual Resources. Scoping will assist the Air Force and County of Kern in identifying and addressing other issues of concern.

Oral and written comments presented at the public scoping meetings, as well as written comments received by the Air Force or County of Kern will be considered in the preparation of the Draft EIS/EIR.

FOR FURTHER INFORMATION CONTACT: Gary Hatch, Environmental Public Affairs, Bldg. 1405 Room 400, Edwards Air Force Base, CA 93524; email: *412tw.pae@edwards.af.mil,* Phone: 661–277–8707, Fax: (661) 277–2732. Handicap assistance or translation service at public meetings can be made available by providing advance notice to Mr. Hatch at the contact information listed above.

Henry Williams Jr,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2013–12751 Filed 5–28–13; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Intelligence University Board of Visitors; Notice of Closed Meeting

AGENCY: National Intelligence University, Defense Intelligence Agency, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the National Intelligence University Board of Visitors has been scheduled as follows.

DATES: Tuesday, June 18, 2013, from 8:00 a.m. to 5:00 p.m. and Wednesday, June 19, 2013, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: National Intelligence University, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Intelligence University, Washington, DC 20340–5100 (202) 231–3344.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Intelligence University.

Dated: May 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–12689 Filed 5–28–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Seeks Industry Input for National Security Space Launch Assessment

AGENCY: Office of the Deputy Under Secretary of the Air Force for Space, Department of the Air Force, DOD.

ACTION: Request for information.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force, Office of the Deputy Under Secretary of the Air Force for Space, seeks industry views and perspectives to inform an on-going strategic National Security Space Launch Assessment. To support this effort, the Air Force requests interested parties provide responses to the following questions:

1. Describe your company's near-term and long-term plans to offer launch services to the U.S. Government.
2. What are the critical issues that concern current and prospective launch service providers who intend to provide the capability to launch national security space payloads?
3. What DoD policy recommendations would your company have to improve national launch capabilities or aid industry in lowering the cost of space access?
4. What aspects of future DoD launch service or systems acquisitions would contribute to industrial base stabilization in your respective sectors?

Any member of the public wishing to provide input to the United States Air Force should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Prefer that written statements be submitted electronically to the Designated Federal Officer at the addresses detailed below by 21 June 2013. The Designated Federal Officer will review all timely submissions and continue dialogue with parties submitting responses as needed. Any information submitted will be for U.S. Government use only and not shared with external parties.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Designated Federal Officer, Lt. Col. Robert Long, 703–693–4978, Office of the Deputy Under Secretary of the Air Force for Space, 1670 Air Force Pentagon, Washington, DC 20330–1670, *ea4ss.launch@pentagon.af.mil.*

Henry Williams Jr.,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2013–12771 Filed 5–28–13; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA); Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and its regualtions, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.
2. *Date:* Wednesday, June 19, 2013.
3. *Time:* 2 p.m.–3:30 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.
4. *Location:* Room 340, Cannon House Office Building, New Jersey and Independence Avenues SE., Washington, DC.
5. *Purpose of the Meeting:* This is the 2013 Summer Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.
6. *Agenda:* The Academy leadership will provide the Board updates on the following:

Graduation 2013, Class of 2017, Military Program (Summer Training), Summer Term Academic Program (STAP) and Academic Individual Advanced Development (AIAD) and Civilian/Military Reductions, Budget and Military Construction updates on USMA from the USMA Superintendent and USMA Chief of Staff.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.
8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–12632 Filed 5–28–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Collection Requests; Comment Request; Program for International Student Assessment (PISA 2015) Recruitment and Field Test

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On 4/16/2013, a 60-day notice was published in the **Federal Register** (volume 78 FR, page 22530) for the Program for International Student Assessments (PISA 2015) Recruitment and Field Test, 1850–0755. Since that time, the PISA has been amended. It reflects a change in the field test design and burden. In addition to science, reading, mathematics, and collaborative problem solving, the field test will include an assessment of students' financial literacy. From the sample of students that take the science, mathematics, reading, and collaborative problem solving assessments, 585 students (15 per school) will be subsampled to return for a second assessment session to take financial literacy. Students taking financial literacy will take an additional 5 minutes of background questions. This change in the design increases the total field test student burden estimate by 42 hours. Consistent with the science, reading, and mathematics domains, the field test includes a mode effect study to examine the impact of transitioning from a paper-based to a computer-based financial literacy assessment. Schools and student response rates and other information from the field test will be evaluated to determine whether the financial literacy assessment should be administered in the main study. The revised documents have been posted to regulations.gov under Docket Number ED–2013–ICCD–0053. The 60-day period ends June 17, 2013.

The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: May 22, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–12644 Filed 5–28–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0031]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fiscal Operations Report for 2012–2013 and Application To Participate for 2014–2015 (FISAP) and Reallocation Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 28, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0031 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also

helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fiscal Operations Report for 2012–2013 and Application to Participate for 2014–2015 (FISAP) and Reallocation Form.

OMB Control Number: 1845–0030.

Type of Review: Revision of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 1,549.

Total Estimated Number of Annual Burden Hours: 37,176.

Abstract: The data submitted electronically in the Fiscal Operations Report and Application to Participate (FISAP) through FISAP on the Web is used by the Department of Education to determine the institution's funding need for the award year and monitor program effectiveness and accountability of fund expenditures.

The Reallocation form is part of FISAP on the Web. The Higher Education Amendments (HEA) requires that if an institution anticipates not using all of its allocated funds for the Perkins, Federal Work Study (FWS), and Federal Supplemental Education Opportunity Grant (FSEOG) programs by the end of an award year, it must specify the anticipated remaining unused amount to the Secretary. In addition to renewing the expiration date, references to dates and award years dates have been updated on the forms and in the instructions for both documents. The FISAP form has been revised: (1) To use technology to gather existing data electronically from other sources requiring less data entry concerning Additional Institutions in Part I; (2) to allow applicable aggregate level data entry concerning graduate and professional students for schools with non-traditional academic calendars; and (3) to expand the income grid in the Part VI summary to collect a more concise breakdown of student data at the aggregate level.

Dated: May 22, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–12643 Filed 5–28–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0072]

Agency Information Collection Activities; Comment Request; Native American Career and Technical Education Program (NACTEP) Performance Reports

AGENCY: Office of Vocational and Adult Education (OVAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 29, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0072 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115 Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Native American Career and Technical Education Program (NACTEP) Performance Reports.

OMB Control Number: 1830–0573.

Type of Review: an extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 30.

Total Estimated Number of Annual Burden Hours: 1,200.

Abstract: The Native American Career and Technical Education Program (NACTEP) is requesting approval to collect semi-annual, annual/continuation reports, and final performance reports from currently funded NACTEP grantees. This information is necessary to (1) manage and monitor the current NACTEP grantees, and (2) award continuation grants for years four and five of the grantees' performance periods. The continuation performance reports will include budgets, performance/statistical reports, GPRA reports, and evaluation reports. The data, collected from the performance reports, will be used to determine if the grantees successfully met their project goals and objectives, so that NACTEP staff can award continuation grants. Final performance reports are required to determine whether or not the grant can be closed out in compliance with the grant's requirements.

Dated: May 22, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–12645 Filed 5–28–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3326–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 05–17–2013 SA 2165 Ameren-Settlers GIA Comp to be effective 4/9/2011.
Filed Date: 5/17/13.
Accession Number: 20130517–5141.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER11–3330–003.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits 05–17–2013 SA 2325 MPFCA Ameren-Settlers Comp to be effective 4/12/2011.
Filed Date: 5/17/13.
Accession Number: 20130517–5143.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER11–3576–009.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc. submits Updated Market Power Analysis—Second Revision to be effective 12/28/2012.
Filed Date: 5/17/13.
Accession Number: 20130517–5109.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER12–1772–001.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits Compliance Filing in ER12–1772—Attachment O to be effective 7/26/2010.
Filed Date: 5/17/13.
Accession Number: 20130517–5155.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER13–1519–000.
Applicants: Arizona Public Service Company
Description: Arizona Public Service Company submits Edison Navajo Transmission Agreement as APS Rate Schedule No. 267 to be effective 7/1/2013.
Filed Date: 5/17/13.
Accession Number: 20130517–5145.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER13–1520–000.
Applicants: Arizona Public Service Company
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Amendment of Shiprock Four Corners Project Interconnection Agreement, SA 209 to be effective 7/1/2013.
Filed Date: 5/17/13.
Accession Number: 20130517–5149.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER13–1521–000.
Applicants: Arizona Public Service Company
Description: Arizona Public Service Company submits Amendments to reflect APS acquisition of portions of Four Corners Units 4–5 to be effective 7/1/2013.
Filed Date: 5/17/13.
Accession Number: 20130517–5152.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER13–1522–000.
Applicants: Massachusetts Electric Company
Description: Massachusetts Electric Company submits: Interconnection Agreement Between MECO and French River Land Co. re Tannery Pond to be effective 7/17/2013.
Filed Date: 5/17/13.
Accession Number: 20130517–5153.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER13–1523–000.
Applicants: Blythe Energy, LLC.
Description: Blythe Energy, LLC submits Blythe Energy Inc. MBR Tariff to be effective 5/18/2013.
Filed Date: 5/17/13.
Accession Number: 20130517–5154.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER13–1524–000.
Applicants: Massachusetts Electric Compan.y
Description: Massachusetts Electric Company submits Interconnection Agreement Between MECO and MM Lowell Energy LLC to be effective 7/17/2013.
Filed Date: 5/17/13.
Accession Number: 20130517–5159.
Comments Due: 5 p.m. ET 6/7/13.

Docket Numbers: ER13–1525–000.
Applicants: PPL Electric Utilities Corporation.
Description: Notice of Cancellation of PPL Electric Utilities Corporation.
Filed Date: 5/17/13.
Accession Number: 20130517–5174.
Comments Due: 5 p.m. ET 6/7/13.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM13–2–000.
Applicants: PPL Electric Utilities Corporation.
Description: Application to Terminate Purchase Obligation of PPL Electric Utilities Corporation.
Filed Date: 5/17/13.
Accession Number: 20130517–5183.
Comments Due: 5 p.m. ET 6/14/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 20, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–12648 Filed 5–28–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0001; FRL–9387–6]

SFIREG Full Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Full Committee will hold a 2-day meeting, beginning on June 10, 2013 and ending June 11, 2013. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, June 10, 2013, from 8:30 a.m. to 5 p.m. and 8:30 a.m. to noon on Tuesday, June 11, 2013.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days

prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA, One Potomac Yard (South Bldg.), 1st Floor South Conference Room, 2777 Crystal Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; fax number: (703) 305–5884; email address: *kendall.ron@epa.gov.* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number (302) 422–8152; fax: (302) 422–2435; email address: *aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting States and any discussion between EPA and SFIREG on FIFRA field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those who sell, distribute or use pesticides, as well as any non-government organization.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket ID number EPA–HQ–OPP–2013–0001 is available at *http://www.regulations.gov,* or at the Office of Pesticide Programs Regulatory Public Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Tentative Agenda Topics

The following are tentative agenda topics for the upcoming meeting.

1. Pesticide re-registration update.
2. Office of Pesticide Programs (OPP) update/progress on issue papers/emerging issue papers.
3. Status of pollinator protection issues policy development.
4. Environmental Quality Issues Working Committee (EQI WC) Report.
5. Cooperative agreement guidance/grant template.
6. Pesticide Operations and Management Working Committee (POM WC) Report.
7. National Pesticide Information Center/State Lead Agency.
8. Insecticide performance measures development.
9. Discussion on use of risk mitigation statements on labels.
10. Distributor label enforcement coordination/evidence collection.
11. Program performance measures development and implementation.
12. Tribal Pesticide Program Council (TPPC) Report.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection.

Dated: May 15, 2013.

Daniel A. Helfgott,

Acting Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2013–12647 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0025; FRL–9385–7]

Notice of Receipt of Pesticide Products; Registration Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This notice provides the public with an opportunity to comment on the applications.

DATES: Comments must be received on or before June 28, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA Registration Number or EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Antimicrobial Division (7510P) or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).

• Animal production (NAICS code 112).
• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30–day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process *http://www.epa.gov/pesticides/regulating/registration-public-involvement.html.* EPA received the following applications to register new uses for pesticide products containing currently registered active ingredients:

1. *EPA Registration Number:* 100–1017. *Docket ID Number:* EPA–HQ–OPP–2012–0589. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Fomesafen. *Product Type:* Herbicide. *Proposed Use:* Lima Beans. Contact: Michael Walsh, (703) 308–2972, email address: *walsh.michael@epa.gov.*

2. *EPA Registration Number:* 100–1131. *Docket ID Number:* EPA–HQ–OPP–2013–0231. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Mesotrione. *Product Type:* Herbicide. *Proposed Use:* Mesotrione-Tolerant Soybeans. *Contact:* Michael Walsh, (703) 308–2972, email address: *walsh.michael@epa.gov.*

3. *EPA Registration Numbers:* 352–728, 352–729, and 352–844. *Docket ID Number:* EPA–HQ–OPP–2013–0238. *Applicant:* DuPont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714. *Active ingredient:* Chlorantranili-prole. *Product Type:* Insecticide. *Proposed Use:* Peanuts. Contact: Jennifer Urbanski, (703) 347–0156, email address: *urbanski.jennifer@epa.gov.*

4. *EPA Registration Number:* 39039–17. *Docket ID Number:* EPA–HQ–OPP–2013–0264. *Applicant:* Michael Fletcher, V.P., Y-Tex Corp., P.O. Box 1450, 1825 Big Horn Ave., Cody WY 82414–1450. *Active ingredient:* Abamectin. *Product Type:* Insecticide. *Proposed Uses:* Cattle Ear Tags on Lactating Dairy Cows. Contact: Jessica Rogala, (703) 347–0263, email address: *rogala.jessica@epa.gov.*

5. *EPA File Symbol:* 53883–GGL. *Docket ID Number:* EPA–HQ–OPP–2013–0256. *Applicant:* Control Solutions, Inc., 5903 Genoa-Red Bluff Road, Pasadena, TX 77507–1041. *Active ingredient:* Novaluron. *Product Type:* Insecticide; Insect Growth Regulator. *Proposed Uses:* Control of fleas, roaches, flies, mosquitoes, gnats, litter beetles, and ants on furniture, animal quarters, carpets, kennels, and poultry houses. Contact: Jennifer Gaines, (703) 305–5967, email address: *gaines.jennifer@epa.gov.*

6. *EPA File Symbol:* 89101–R. *Docket ID Number:* EPA–HQ–OPP–2013–0363. *Applicant:* Reintjes Marine Surfaces Technologies, LLC, 3800 Summit Street, Kansas City, MO 64111. *Active ingredients:* Zinc and Silver. *Product Type:* Antifoulant. *Proposed Uses:* Thermoplastic antifouling powder coating to prevent hard and soft fouling on all boat/ship hulls/bottoms of pleasure and commercial vessels and stationary structures in freshwater and saltwater. Contact: Karen Leavy, (703) 308–6237, email address: *leavy.karen@epa.gov*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 21, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–12754 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0026; FRL–9386–7]

Pesticide Products; Registration Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before June 28, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the EPA File Symbol of interest as shown in section II., by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Biopesticides and Pollution Prevention Division (BPPD) (7511P) or the Registration Division (RD) (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received several applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30–day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process (*http://www.epa.gov/pesticides/regulating/registration-public-involvement.html*). EPA received the following applications to register pesticide products containing an active ingredient not included in any currently registered products:

1. *EPA File Symbol:* 264–RRUR. *Docket ID Number:* EPA–HQ–OPP–2013–0226. *Applicant:* Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. *Active ingredient:* Flupyradifurone. *Product Type:* Insecticide. *Proposed Uses:* Aspirated grains, fractions; root vegetables, except sugar beets, crop subgroup 1B; tuberous and corm vegetable, crop sub-group 1C; onion, bulb subgroup, crop subgroup 3–07A; onion, green subgroup, crop subgroup 3–07B; leafy vegetables, except Brassica vegetables, crop group 4; taro, leaves; head and stem Brassica, crop subgroup 5A; leafy Brassica, greens, crop sub-group 5B; turnip, greens; edible-podded legume vegetables, crop subgroup 6A; succulent shelled pea and bean, crop subgroup 6B; dried shelled pea and bean, except soybean, crop subgroups 6C; foliage of legume vegetables, including soybeans, crop group 7, forage green vines; foliage of legume vegetables, including soybean, crop group 7, hay; soybean, seed; fruiting vegetables, except cucurbits, crop group 8–10, fruit; tomato, paste; cucurbit vegetables, crop group 9, fruit; citrus fruits, crop group 10–10, fruit; citrus, pulp, dried; pome fruits, crop group 11–10, fruit; bushberry, subgroup, crop subgroup 13–07B; small fruit vine climbing subgroup, except fuzzy kiwifruit, crop subgroup 13–07F; grapes, raisin; low growing berry subgroup, crop subgroup 13–07G; tree nuts, crop group 14, nutmeat; pistachio; tree nut, crop group 14, hulls; grain, cereal, crop group 15, except rice grain; sweet corn, kernels plus cobs with husks removed (K+CWHR); wheat, bran; rice, grain (rotational crop) 4; grain cereal (forage, fodder and straw), group 16, forage; grain cereal (forage, fodder and straw), group 16, hay; grain cereal (forage, fodder and straw), group 16, straw; grain cereal (forage, fodder and straw), group 16, stover; cotton, undelinted seed crop subgroup 20C; cotton, gin by-products; nongrass animal feeds, forage, crop group 18; nongrass animal feeds, hay, crop group 18; coffee, bean, green; coffee, bean, roasted, instant; hops; peanut, hay; peanut, nutmeat; prickly pear cactus, fruit; pitaya, fruit; prickly pear cactus, pads; cattle/goat/hog/horse/sheep, fat; cattle/goat/hog/horse/sheep, meat; cattle/goat/hog/horse/sheep, meat byproducts; milk; poultry, eggs; poultry, meat; and poultry, meat byproducts. Contact: Jessica Rogala, (RD), (703) 347–0263, email address: *rogala.jessica@epa.gov.*

2. *EPA File Symbol:* 85354–E. *Docket ID Number:* EPA–HQ–OPP–2013–0257. *Applicant:* Technology Sciences Group, Inc., on behalf of Alpha Scents, Inc., 1150 18th Street, NW., Suite 1000, Washington, DC 20036. *Active ingredient:* (Z,Z)-7,11-Hexadecadienal. *Product Type:* Pheromone/Mating

Disruptor. *Proposed Uses:* Control of Citrus Leafminer (*Phyllocnistis citrella*). Contact: Gina Burnett, (BPPD), (703) 605–0513, email address: *burnett.gina@epa.gov.*

3. *EPA File Symbol:* 89670–R. *Docket ID Number:* EPA–HQ–OPP–2013–0261. *Applicant:* Lodi Group, 7140 Heritage Village Plaza, Gainesville, VA 20155. *Active ingredient:* Alphachloralose. *Product Type:* Rodenticide. *Proposed Use:* For indoor use only on house mice and field mice. Contact: Gene Benbow, (RD), (703) 347–0235, email address: *benbow.gene@epa.gov.*

4. *EPA File Symbol:* 89670–E. *Docket ID Number:* EPA–HQ–OPP–2013–0261. *Applicant:* Lodi Group, 7140 Heritage Village Plaza, Gainesville, VA 20155. *Active ingredient:* Alphachloralose. *Product Type:* Rodenticide. *Proposed Use:* For formulation use only. Contact: Gene Benbow, (RD), (703) 347–0235, email address: *benbow.gene@epa.gov.*

5. *EPA File Symbols:* 38719–I and 38719–O. *Docket ID Number:* EPA–HQ–OPP–2013–0101. *Applicant:* Linde Electronics and Specialty Gases, One Greenwich Street, Suite 100, Stewartsville, NJ 08886. *Active ingredient:* Ethyl Formate. *Product Type:* Insecticide. *Proposed Use:* Fumigant on agricultural commodities and indoor bed bug control. Contact: Cheryl Greene, (BPPD), (703) 308–0352, email address: *greene.cheryl@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 22, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–12703 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0844; FRL–9386–4]

Notice of Receipt of a Request to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. The cancellation for the allethrins manufacturing use products will be effective September 30, 2015, and the cancellation for the allethrins end-use products will be effective December 31, 2016, as described in Unit II. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before June 28, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0844 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Attn: Molly Clayton.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Molly Clayton, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 603–0522; email address: *clayton.molly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What action is the Agency taking?

This notice announces receipt by the Agency of a request from multiple registrants to cancel certain manufacturing use and end use pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by

registration number in Tables 1 and 2 of this unit.

The allethrin series of pyrethroid insecticides includes bioallethrin (PC code 004003), esbiol (004004), esbiothrin (004007, formerly 004003/004004), and pynamin forte (004005). On March 31, 2010, the public phase of registration review for the allethrins began with the opening of the initial docket (EPA–HQ–OPP–2010–0022). The comment period for the allethrins registration review docket was open for 60 days, from March 31, 2010, to June 1, 2010. The Final Work Plan (FWP) for the allethrins was completed on August 11, 2010. The Agency's projected registration review timeline described in the FWP established that the preliminary risk assessments would be completed by December 2018, and the final registration decision would be completed in 2020.

The technical registrants (Sumitomo Chemical Company Limited and Valent BioSciences Corporation) subsequently requested cancellation of their allethrins technical products effective September 30, 2015, and cancellation of their end use products effective December 31, 2016. Further, they requested that use of their technical products to formulate end-use products not be permitted after December 31, 2015.

This request was published for a 30-day comment period in the **Federal Register** issue of December 19, 2012 (77 FR 75157) (FRL–9369–4). In the December 19, 2012 notice, EPA indicated that it would issue an order implementing the cancellations unless the Agency received substantive comments within the 30-day comment period that would merit its further review of the requests, or unless the registrants withdrew their request. The Agency received one set of comments on the notice, and the comments did not merit EPA's further review of the request. Further, the registrants did not withdraw their request. A Final Cancellation Order was published in the **Federal Register** issue of April 24, 2013 (78 FR 24195) (FRL–9383–5).

Because the allethrins technical products have been cancelled, several registrants for allethrins end use products, and a registrant for several manufacturing use products, have also requested cancellation for their products with dates consistent with those specified for the technical products.

TABLE 1—MANUFACTURING USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name
1021–1060	D-Trans Allethrin 90% Concentrate.
1021–1128	D-Trans Intermediate 1868.
1021–1550	Evercide Intermediate 2416.
1021–1575	Evercide Intermediate 2941.

TABLE 2—END USE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name
1021–1607	Evercide Residual Pressurized Spray 2581.
1021–1594	Evercide Residual Pressurized Spray 2523.
5178–5	Kilmos PF Mosquito Repellent Coils.
5178–10	Kilmos PF Mosquito Repellent Sticks.
8848–72	Black Jack DS205 Insect Killer.
9688–230	Chemsico Aerosol Insecticide LD.
9688–233	Chemsico Wasp & Hornet Killer DL.
9688–255	Chemsico Wasp # Hornet Killer DS.
43917–1	Spira Air-O-Mat.
43917–7	Spira Area Mosquito Repellent.
43917–8	Spira Punks Mosquito Coils II.
45385–9	Chem-Tox Insect Spray.
46515–48	House & Garden Bug Killer 4.
63376–1	Family Mosquito Coils.
63376–2	Family Mosquito Repellent Coils.
63376–5	Family Mosquito Repellent Sticks.
82539–2	Ultimate Bug Candle.
83467–1	Buzz Buster Mosquito Repellant Coils.
10807–436	Konk Insect Killer.
13283–20	Rainbow Point Three Wasp & Ant Spray.
13283–22	Rainbow Flying and Crawling Bug Killer.
13283–24	Rainbow Flying & Crawling Bug Killer IV.
13283–29	Multi-Bug II.
13283–36	Rainbow Liquid Wasp & Ant Spray.
22950–14	Cobra PF Mosquito Repellent Coils.

Table 3 of this unit includes the company number and name of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	EPA company name
1021	McLaughlin Gormley King Co.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA company No.	EPA company name
5178	Blood Protection Company (China), Ltd.
8848	Safeguard Chemical Corporation.
9688	Chemsico.
10807	Amrep, Inc.
43917	Zobele Holdings, P.A.
45385	CTX-Cenol, Inc.
46515	Celex, Division of United Industries Corp.
63376	Family Products SDN BHD.
82539	Kerslig Candle Light.
83467	Multinational Resources, Inc.
13283	Rainbow Technology Corporation.
22950	Coils International, Inc.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) provides for the possibility of a 180-day comment period where the voluntary cancellation involves a pesticide registered for at least one minor agricultural use. Because these allethrins products are not registered for any minor agricultural uses, this 180-day comment provision does not apply, and EPA is providing a 30-day comment period on the proposed voluntary cancellation of allethrins registrations.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because these allethrins products are re-registered pesticides, there are no known risks of concern, and the cancellation date for the technical products will occur several years prior to the time of the planned registration review decision for the allethrins, the Agency expects to grant these requests unless the Agency receives substantive comments that warrant further review of the requests or the registrants withdraw their request. In 2013, EPA intends to issue an order in the **Federal Register** canceling all of the manufacturing use registrations as of September 30, 2015, and end use product registrations as of December 31, 2016. It is the Agency's current intention to include in that order the following terms and conditions applicable to existing stocks:

- No sale or distribution of allethrins manufacturing use products by any person, other than for purposes of disposal or export, will be permitted after September 30, 2015.
- No use of the manufacturing use products to formulate end-use products will be permitted after December 31, 2015.
- As of January 1, 2017, persons other than registrants will be allowed to sell, distribute, or use existing stocks of cancelled end use products until such stocks are exhausted. Use of existing stocks will be permitted only to the extent that the use is consistent with the terms of the previously-approved labeling accompanying the product used.

List of Subjects

Environmental protection, Pesticides and pests, Allethrins.

Dated: May 14, 2013.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2013–12706 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0036; FRL–9387–5]

CDM Smith and Dynamac Corp; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to CDM Smith and its subcontractor, Dynamac Corp, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). CDM Smith and its subcontractor, Dynamac Corp, have been awarded a contract to perform work for OPP, and access to this information will enable CDM Smith and its subcontractor, Dynamac Corp, to fulfill the obligations of the contract.

DATES: CDM Smith and its subcontractor, Dynamac Corp, will be given access to this information on or before June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 703 305–8338, *steadman.mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific

entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2013–0036. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Contractor Requirements

Under Contract No. EP–W–11–020, CDM Smith and its subcontractor, Dynamac Corp, will perform support OPP in four general areas: Reviewing and evaluating studies provided by the registrants or found in open literature searches; producing assessments; reviewing submitted risk assessments; and developing or improving risk assessment methods. In addition, support may be required to provide training for EPA staff on issues related to the science and methods of risk assessment. Workshop organization and facilitation may also be required.

OPP has determined that access by CDM Smith and its subcontractor, Dynamac Corp, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with CDM Smith and its subcontractor, Dynamac Corp, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, CDM Smith and its subcontractor, Dynamac Corp, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to CDM Smith and its subcontractor, Dynamac Corp, until the requirements in this document have been fully satisfied. Records of information provided to CDM Smith and its subcontractor, Dynamac Corp, will be maintained by EPA Project Officers for this contract. All information supplied to CDM Smith and its subcontractor, Dynamac Corp, by EPA for use in connection with this contract will be returned to EPA when CDM Smith and its subcontractor, Dynamac Corp, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Pesticides and pests, Security measures.

Dated: May 14, 2013.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2013–12780 Filed 5–28–13; 8:45 am]

BILLING CODE 6560–50–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 July 29, 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 Control Number: 3060–0788.

Title: DTV Showings/Interference Agreements.

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: 300 respondents; 300 responses.

Estimated Hours per Response: 5 hours.

Frequency of Response: On occasion reporting requirement, Third Party Disclosure requirement.

Total Annual Burden: 1,500 hours.

Total Annual Costs: $3,900,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.623 requires applicants to submit a technical showing to establish that their proposed facilities will not result in additional interference to TV broadcast operations. The Commission permits broadcasters

to agree to proposed TV facilities that do not conform to the allotted parameters, even though they might be affected by potential new interference. The Commission will consider granting applications on the basis of interference agreements if it finds that such grants will serve the public interest. These agreements must be signed by all parties to the agreement. In addition, the Commission needs the following information to enable such public interest determinations: A list of parties predicted to receive additional interference from the proposed facility; a showing as to why a grant based on the agreements would serve the public interest; and technical studies depicting the additional interference. The technical showings and interference agreements will be used by FCC staff to determine if the public interest would be served by the grant of the application and to ensure that the proposed facilities will not result in additional interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–12695 Filed 5–28–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Barrett Capital Investments, LP, John Barrett, General Partner and Susan Barrett, General Partner,* both of Athens, Georgia; to acquire additional voting shares of NBG Bancorp, Inc., and thereby indirectly acquire additional voting shares of National Bank of Georgia, both in Athens, Georgia.

Board of Governors of the Federal Reserve System, May 23, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–12663 Filed 5–28–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0639]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

EEOICPA Special Exposure Cohort Petitions (OMB No. 0920–0639 exp. 9/20/2013)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. §§ 7384–7385 [1994, supp. 2001] was enacted. The Act established a compensation program to provide a lump sum payment of $150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation for certain survivors of these covered employees. This program has been mandated to be in effect until Congress ends the funding.

Among other duties, the Department of Health and Human Services (HHS) was directed to establish and implement procedures for considering petitions by classes of nuclear weapons workers to be added to the ''Special Exposure Cohort'' (the ''Cohort''). In brief, EEOICPA authorizes HHS to designate such classes of employees for addition to the Cohort when NIOSH lacks sufficient information to estimate with sufficient accuracy the radiation doses of the employees, and if HHS also finds that the health of members of the class may have been endangered by the radiation dose the class potentially incurred. HHS must also obtain the advice of the Advisory Board on Radiation and Worker Health (the ''Board'') in establishing such findings. On May 28, 2004, HHS issued a rule that established procedures for adding such classes to the Cohort (42 CFR Part 83). The rule was amended on July 10, 2007.

The HHS rule authorizes a variety of respondents to submit petitions. Petitioners are required to provide the information specified in the rule to qualify their petitions for a complete evaluation by HHS and the Board. HHS has developed two forms to assist the petitioners in providing this required information efficiently and completely. Form A is a one-page form to be used by EEOICPA claimants for whom NIOSH has attempted to conduct dose reconstructions and has determined that available information is not sufficient to complete the dose reconstruction. Form B, accompanied by separate instructions, is intended for all other petitioners. Forms A and B can be submitted electronically as well as in hard copy. Respondent/petitioners should be aware that HHS is not *requiring* respondents to use the forms. Respondents can choose to submit petitions as letters or in other formats, but petitions must meet the informational requirements stated in the rule. NIOSH expects, however, that all petitioners for whom Form A would be appropriate will actually use the form, since NIOSH will provide it to them upon determining that their dose reconstruction cannot be completed and encourage them to submit the petition. NIOSH expects the large majority of petitioners for whom Form B would be appropriate will also use the form, since it provides a simple, organized format for addressing the informational requirements of a petition.

NIOSH will use the information obtained through the petition for the following purposes: (a) Identify the petitioner(s), obtain their contact information, and establish that the petitioner(s) is qualified and intends to petition HHS; (b) establish an initial

definition of the class of employees being proposed to be considered for addition to the Cohort; (c) determine whether there is justification to require HHS to evaluate whether or not to designate the proposed class as an addition to the Cohort (such an evaluation involves potentially extensive data collection, analysis, and related deliberations by NIOSH, the Board, and HHS); and, (d) target an evaluation by HHS to examine relevant potential limitations of radiation monitoring and/or dosimetry-relevant records and to examine the potential for related radiation exposures that might have endangered the health of members of the class.

Finally, under the rule, petitioners may contest the proposed decision of the Secretary to add or deny adding classes of employees to the cohort by submitting evidence that the proposed decision relies on a record of either factual or procedural errors in the implementation of these procedures. NIOSH estimates that the time to prepare and submit such a challenge is 45 minutes. Because of the uniqueness of this submission, NIOSH is not providing a form. The submission will typically be in the form of a letter to the Secretary.

There are no costs to respondents unless a respondent/petitioner chooses to purchase the services of an expert in dose reconstruction, an option provided for under the rule. The total estimated burden hours are 51.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Form Name	No. of respondents	No. of responses per respondent	Avg. burden per response (in hrs.)
Petitioners	Form A 42 CFR 83.9	5	1	3/60
	Form B 42 CFR 83.9	8	1	5
Petitioners using a submission format other than Form B (as permitted by rule).	42 CFR 83.9	1	1	6
Petitioners Appealing final HHS decision (no specific form is required).	42 CFR 83.18	4	1	45/60
Claimant authorizing a party to submit petition on his/her behalf.	Authorization Form 42 CFR 83.7.	5	1	3/60

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–12612 Filed 5–28–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Announcement of Requirements and Registration for ''Be Heads Up About Concussion Safety'' Poster Design Contest

Authority: 15 U.S.C. 3719.

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

Award Approving Official: Thomas R. Frieden, MD, MPH, Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) launches the ''Be Heads Up About Concussion Safety'' poster design contest for children and adolescents ages 5 to 18. HHS/CDC's National Center for Injury Prevention and Control (NCIPC) asks children and adolescents to be creative and send in posters they create by taking concussion safety key messages created by CDC (listed below), or creating their own message(s) on concussion safety, and using them to design a poster. Children and adolescents can draw, paint, or use a computer to design a poster. The poster should be designed to help make aware and educate other children and adolescents about how to spot a concussion or other serious brain injury, what to do if someone may have a concussion or other serious brain injury, and how to help keep safe from these injuries at school, home, or play.

Children and adolescents can create their own concussion safety messages or use one or more of the CDC key messages listed below in their poster:

- Be Heads Up about concussion. Learn more at *www.cdc.gov/Concussion.*
- Be Heads Up about concussion at school, home, and play. Learn more at *www.cdc.gov/Concussion.*
- We can all play a role in concussion safety. Learn more at *www.cdc.gov/Concussion.*
- Be Heads Up! All concussions are serious. Learn more at *www.cdc.gov/Concussion.*
- Get a Heads Up! Learn what to do if you think you have a concussion at *www.cdc.gov/Concussion.*
- Getting back in the game with a concussion is a bad call. It could take you out of the game of life, for good. Learn more at *www.cdc.gov/Concussion.*
- All concussions are serious. It's better to miss one game than the whole season. Learn more at *www.cdc.gov/Concussion.*
- Be Heads Up! If you think you have a concussion: don't hide, report it. Take time to recover. Learn more at *www.cdc.gov/Concussion.*

This contest is necessary to make children and adolescents aware that there are things they can do to help prevent concussions and other serious brain injuries. We expect the contest will inspire children and adolescents to educate other people and raise awareness of concussion safety in elementary, middle, and high schools in their communities. By showcasing the winning posters in each category of submission ((1) Ages 5–8; (2) Ages 9–12; (3) Ages 13–15; (4) Ages 16–18), we will help children and adolescents reach others with important messaging about concussions and other serious brain injuries.

How To Enter:

- Sign up for a Challenge.gov account and become a follower of the ''Be Heads Up About Concussion Safety'' Poster Design Contest at *www.beheadsup.challenge.gov.*
- Review the rules and guidelines of this contest listed below or at *www.beheadsup.challenge.gov.*
- Contestants must send in original artwork by email or mail. To send in the poster by email, please send the poster in the form of a photograph, PDF or scanned copy to:

DUIPinquiries@cdc.gov. Please use subject line: Heads Up Poster Design Contest. Contestants can also send in posters by mail on a 22″ by 28″ poster board to: Heads Up Poster Design Contest, 4770 Buford Hwy. NE., Mail Stop F–62, Atlanta, GA 30341.

- Contestants must include the following information with their poster entry:
  - Name(s) of the contestant(s)
  - Age category (Ages 5–8; Ages 9–12; Ages 13–15; Ages 16–18.)
- Posters entered into the contest will not be returned to contestants.
- You can use graphic design and other creative methods (including, but not limited to paint, pencil, colored pencils, or crayon) to design your poster.
- All posters must be in English.

DATES: Contestants can send in posters on June 12, 2013 to January 31, 2014. Judging will take place between February 1–28, 2014, and winners will be notified and prizes awarded by March 19, 2014.

Contest Prizes: We will choose one winner in each category: ((1) Ages 5–8; (2) Ages 9–12; (3) Ages 13–15; (4) Ages 16–18). The winner in each category will get one prize of $250.00. We will pay $250.00 to winners by electronic funds transfer. Winners may need to pay Federal income taxes on any prize money. HHS will follow Internal Revenue Service withholding and reporting requirements.

How Winners Will Be Selected: An informed panel of HHS/CDC/NCIPC program staff and external injury and violence professionals who meet the requirements of the *America COMPETES Act* will judge the poster entries. We will name the judges after the contest begins. The judging panel will use these criteria to choose the winners:

(1) Creativity/Innovation: We will judge poster designs on creative and innovative presentation of how to prevent concussions at school, home, or play and how to identify and what to do if a concussion happens.

(2) Use of Concussion Safety Message(s): We will judge the poster on the accuracy of the concussion safety message(s) included, as well as how well the poster design uses the message(s) to educate others about concussion safety.

(3) Depiction of a Positive Message: We will judge posters on how well the designs show how to prevent concussions at school, home, or play and how to identify and what to do if a concussion happens. Your poster must not show acts of violence, profane language, inappropriate content, or personal or professional attacks.

(4) We will only accept original graphic design and other creative methods (including, but not limited to paint, pencil, colored pencils, or crayon). You must send in your poster in one of the following ways:

a. by email, in the form of a photograph, PDF or scanned copy to: *DUIPInquiries@cdc.gov.* Please use subject line Heads Up Poster Design Contest.

b. by mail on a 22″ by 28″ poster board to: Heads Up Poster Design Contest, 4770 Buford Hwy. NE., MS F–62, Atlanta, GA 30341.

Contest Rules and Guidelines

Subject of Contest Competition: Your entry for the ''Be Heads Up About Concussion Safety'' poster design contest should show your ideas about how to make people aware of concussions and ways to prevent concussions while at school, home or play.

Eligibility Rules for Participating in the Competition: The contest is open to any contestant, who is an individual or permanent resident of the United States between 5 and 18 years of age. Contestants between 5 and 12 years of age are eligible with the permission of a parent/guardian. (Please note help from a parent/guardian is limited to the online registration process and submission of entries. All submissions must include original artwork created solely by children and adolescents.) Contestants may work as teams and enter more than one poster in the contest. We will place teams in the age category based on the oldest team member's age (for example, a team of 11, 12 and 13-year-olds will compete in the Ages 13–15 category).

To have a chance to win a prize in this contest you must—

(1) Register for the contest at *www.beheadsup.challenge.gov* and follow HHS/CDC's National Center for Injury Prevention and Control rules;

(2) Meet all of the requirements in this section;

(3) Enter the contest as an individual or as a team in which you or all members of the team are citizen(s) or permanent resident(s) of the United States; and

(4) You cannot enter the contest if you are an employee (or contractor) of the HHS/CDC/NCIPC, a contest judge, or in any way involved with the design, production, execution, or distribution of the contest or their immediate family (spouse, parents or step-parents, siblings and step-siblings, and children and step-children).

You won't be disqualified from the contest if you use Federal facilities or talk with Federal employees during the contest if the facilities and employees are available equally to all individuals and entities participating in the contest.

By participating in this contest, contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this contest, contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to contest activities.

Registration Process for Participants: You may register for the ''Be Heads Up About Concussion Safety'' contest at: *www.beheadsup.challenge.gov.* Before you enter a poster in the contest you must follow the rules at Challenge.gov before the deadline of July 28, 2013.

Additional Information: More information on concussion can be found at *www.cdc.gov/Concussion.*

Regarding Copyright/Intellectual Property: When you send in your poster entry you promise you are the person who made the poster and you own the content presented in the poster. You also promise that you didn't use any copyrighted material or affect the rights of any third party that you know of.

Submission Rights: Once you send in your poster, you give HHS/CDC permission to post, link to, share, and publically display your poster. You can't take this permission back or ask us for money to use the poster. You can give other people permission to use your poster too. You keep all other intellectual property rights of your poster.

Compliance with Rules and Contacting Contest Winners: If you are a finalist or the contest winner, you must meet all terms and conditions of these Official Rules. You can be named a winner only if you meet all the requirements. We will contact finalists using the contact information provided (by email, telephone, or mail after the date of the judging). You may need to pay Federal income taxes on any prize money. The Department of Health and Human Services will follow the Internal Revenue Service withholding and reporting requirements.

Privacy: If you provide personal information to use when you register for the contest at the Challenge.gov Web

site, we will use that information to contact you about your poster entry, announcement of entrants, finalists, and winners of the contest. We do not use the information for commercial marketing. If you are a contest winner, you can tell other people you won this contest.

General Conditions: HHS/CDC can cancel, suspend, or change the contest, or any part of it, for any reason.

Authority: 15 U.S.C. 3719.

Dated: May 21, 2013.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2013–12682 Filed 5–28–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9951–N]

HHS-Operated Risk Adjustment Data Validation Stakeholder Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting on the Affordable Care Act HHS-operated risk adjustment data validation process. The purpose of this public meeting is to provide opportunity to discuss the HHS risk adjustment data validation process that will be conducted when HHS operates the risk adjustment program on behalf of a state under the Affordable Care Act. The meeting will provide information to stakeholders including, but not limited to, issuers, states, and other interested parties about key HHS policy considerations pertaining to the HHS-operated risk adjustment data validation process and will also provide an opportunity for participants to ask clarifying questions. The stakeholder meeting is being offered as both an in-person meeting and web conference for those unable to attend in person. The comments and information that we obtain through this meeting may aid future policy-making for the HHS-operated risk adjustment data validation process.

DATES: *Meeting Date:* The HHS-Operated Risk Adjustment Data Validation Stakeholder Meeting will take place on: Tuesday, June 25, 2013, from 9:30 a.m. to 2 p.m., eastern daylight time (e.d.t.).

ADDRESSES: *Meeting Location:* The public meeting will be held in the Multi-Purpose Room of the central building of the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: REGTAP Registrar at 1–800–257–9520 between the hours of 9:00 a.m. and 5:00 p.m., e.d.t. Please note that this office is closed on weekends and federal holidays. Please send inquiries about the logistics of the meeting to *registrar@REGTAP.info*. Inquiries and comments pertaining to content covered during the meeting should be submitted in REGTAP using ''My Dashboard'' to select ''Submit an Inquiry,'' then select ''Risk Adjustment Data Validation Stakeholder Meeting'' to enter the question or comment. Users may submit their comments and upload attachments as needed. Users will receive an acknowledgement that the comment was received. Press inquiries are handled through our press office at (202) 690–6343.

SUPPLEMENTARY INFORMATION:

Registration: Registration will be on a first-come, first-serve basis, limited to one participant per organization for the on-site option and three participants per organization for the web conference. Individuals may only register for either the on-site option or the web conference, not both. If an individual is wait-listed for one option, the registration must be cancelled before attempting to register for the other option. Registration deadlines are as follows:

- *On-site Participation:* Register by June 7, 2013, 5 p.m., e.d.t.
- *Web Conference Participation:* Register by June 19, 2013, 5 p.m., e.d.t.
- *Special Accommodations:* The deadline to request a special accommodation is June 19, 2013, 5 p.m., e.d.t.
- *Deadline for Attendees that are Foreign Nationals Registration:* Attendees that are foreign nationals (as described in section III. of this notice) are required to identify themselves as such, and provide the necessary information for security clearance (as described in section III. of this notice) to *registrar@REGTAP.info* at least 12 business days in advance of the date of the public meeting date. Therefore, the deadline for attendees that are foreign nationals is June 10, 2013, 5 p.m., e.d.t.

Registration Instructions: To register for either in-person or web conference participation, visit the Registration for Technical Assistance Portal at *www.REGTAP.info*. Individuals must register as a user, if not already registered then go to ''My Dashboard'' and select ''Training Events'' to register for on-site or web conference. Registrants may only register for either the on-site session at CMS's headquarters or the web conference. If you are a potential auditor for the Initial Validation Audit process, please select ''Auditor/Initial Validation Auditor'' for the organization type when registering.

I. Background

This notice announces a meeting regarding the HHS-operated risk adjustment data validation process. Section 1343 of the Affordable Care Act establishes three programs (transitional reinsurance, temporary risk corridors, and permanent risk adjustment) intended to help stabilize premiums in the insurance market and minimize the potential effects of adverse selection that may occur in the initial operational years of the marketplaces and market reform which will begin with the 2014 benefit year. This meeting focuses on the data validation process for the permanent risk adjustment program when HHS operates a risk adjustment program on behalf of a state (referred to as the HHS-operated risk adjustment program). Health insurance issuers must comply with these risk adjustment data validation requirements in the first year of the program, the 2014 benefit year.

On March 11, 2013, we published a final regulation, the HHS Notice of Benefit and Payment Parameters for 2014 (also referred to as the 2014 payment notice) (78 FR 15410), that established the regulatory framework for the risk adjustment data validation audit process for the HHS-operated risk adjustment program. Although the overall framework for the six-stage risk adjustment data validation process was described in the 2014 payment notice, the detailed processes for several of these stages have not been specified. We committed to stakeholder engagement in developing the detailed processes. The purpose of this meeting is to provide information to issuers, states, and other interested parties about the HHS-operated risk adjustment data validation process and offer an opportunity for these stakeholders to comment on key elements of the risk adjustment data validation process.

II. Meeting Agenda

The risk adjustment data validation meeting will provide information to stakeholders including, but not limited to, issuers, states, and other interested parties about the Affordable Care Act HHS-operated risk adjustment data validation process and gather feedback on key elements of the HHS-operated

risk adjustment data validation process. The stakeholder meeting will focus on topics including, but not limited to, data validation audit standards, sampling, initial and second validation audits, appeals, and error rates. The meeting is open to the public, but attendance is limited to the space available. There are capabilities for remote access. Persons wishing to attend this meeting must register by the date listed in the ''Registration'' section above, and by visiting *www.REGTAP.info*.

III. Security, Building, and Parking Guidelines

The meeting will be held within the CMS Complex, which is not open to the general public. Visitors to the complex are required to show a valid U.S. Government issued photo identification, preferably a driver's license, at the time of entry. Participants will also be subject to a vehicular search before access to the complex is granted. Participants not in possession of a valid identification or who are in possession of prohibited items will be denied access to the complex. Prohibited items on Federal property include, but are not limited to, alcoholic beverages, illegal narcotics, explosives, firearms or other dangerous weapons (including pocket knives), and dogs or other animals (except service animals). Once cleared for entry to the complex, participants will be directed to parking by a security officer.

To ensure expedited entry into the building, it is recommended that participants have their ID and a copy of their written meeting registration confirmation readily available and that they do not bring laptops or large/bulky items into the building. Participants are reminded that photography on the CMS complex is prohibited. CMS has also been declared a tobacco free campus and violators are subject to legal action. In planning arrival time, we recommend allowing additional time to clear security. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes before the meeting convenes. Guest access to the CMS complex is limited to the meeting area, the main lobby, and the cafeteria. If a visitor is found outside of those areas without proper escort, they may be escorted by a security officer out of the complex.

Please be mindful that, at the meeting, and subject to the constraints of the meeting agenda and allotted meeting time, there will be an opportunity for individuals to speak, and we request that individuals wait for the appropriate time to present their questions or comments. Disruptive behavior will not be tolerated, and may result in removal from the meeting and/or escort from the complex. Visitors may not attach USB cables, flash/thumb drives, or any other equipment to any CMS information technology (IT) system or hardware for any purpose at anytime. Additionally, CMS staff is prohibited from taking such actions on behalf of a visitor, or utilizing any removable media provided by a visitor.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Special accommodations, arrangements, and approvals to bring pieces of equipment or medical devices are required by June 19, 2013, 5:00 p.m., e.d.t. These arrangements need to be made with the *registrar@REGTAP.info*. It is possible that certain requests made in advance of the public meeting may be denied because of unique safety, security or handling issues related to the equipment.

CMS policy requires that every foreign national (as defined by the Department of Homeland Security is ''an individual who is a citizen of any country other than the United States'') is assigned a host (in accordance with the Department Foreign Visitor Management Policy, Appendix C, Guidelines for Hosts and Escorts). The host/hosting official is required to inform the Division of Critical Infrastructure Protection (DCIP) at least 12 business days in advance of any visit by a foreign national. Foreign nationals will be required to produce a valid passport at the time of entry.

Attendees that are foreign nationals need to identify themselves as such, and provide the following information for security clearance to the *registrar@REGTAP.info* by the date specified in the ''REGISTRATION'' section of this notice:

- Visitor's full name (as it appears on passport).
- Gender.
- Country of origin and citizenship.
- Biographical data and related information.
- Date of birth.
- Place of birth.
- Passport number.
- Passport issue date.
- Passport expiration date.
- Dates of visits.
- Company Name.
- Position/Title.

Dated: May 23, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–12856 Filed 5–28–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of an Altered CMS System of Records Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Altered System of Records Notice (SORN).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 USC 552a), CMS proposes the following alterations to existing system of records (SOR) number 09–70–0560 ''Health Insurance Exchanges (HIX) Program,'' published at 78 **Federal Register** (FR) 8538 (February 6, 2013):

1. Add ''Relevant Individual(s)'' as a new category of individuals;
2. Add personally identifiable information (PII) pertaining to ''Relevant Individual(s)'' as a new category of records;
3. Add new purposes to describe the reason for the above additions; and
4. Revise existing routine uses to authorize the agency to disclose PII of ''Relevant Individual(s)'' to parties outside the agency.

DATES: *Effective Dates:* Effective 30 days after publication of this notice in the **Federal Register** unless comments received on or before that date result in revisions to this notice.

ADDRESSES: The public should send comments to: CMS Privacy Officer, Division of Privacy Policy, Privacy Policy and Compliance Group, Office of E-Health Standards & Services, Offices of Enterprise Management, CMS, Room S2–24–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Karen Mandelbaum, JD, MHA, Office of Health Insurance Exchanges, Consumer Information and Insurance Systems Group, Center for Consumer Information and Insurance Oversight, 7210 Ambassador Road, Baltimore, MD 21244, Office Phone: (410) 786–1762,

Facsimile: (301) 492–4353, Email: *karen.mandelbaum@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: CMS proposes to alter the SOR to add ''Relevant Individual(s)'' as a category of individuals whose PII is necessary for determining the eligibility of applicants for insurance affordability programs or a certification of exemption under provisions of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) and CMS' implementation of the Affordable Care Act.

For the purpose of this SORN, ''Relevant Individual(s)'' means any individual listed on an application for an insurance affordability program or certification of exemption whose PII may bear upon the eligibility of an individual for an insurance affordability program (as defined in 42 CFR 435.4 and 45 CFR 155.20),[1] or certification of exemption. These individuals include non-applicant household members/family members, certain non-applicant tax payers or tax filers, and spouses and parents of applicants. Due to the potential impact of the Relevant Individuals' PII on an individual's eligibility determination this category of individuals is added to the SOR.

Additionally, Routine Use #3 is proposed to be modified to permit CMS to disclose information about Relevant Individual(s), in addition to applicants, in order to obtain information from other Federal and State agencies and third party data sources that provide information to CMS, pursuant to agreements with CMS, for purposes of determining eligibility of applicants to enroll in qualified health plans (QHP) through an Exchange, in insurance affordability programs, or for a certification of exemption from the individual responsibility requirement. Routine Use #8 is proposed to be modified to enable CMS to provide information about Relevant Individual(s), in addition to applicants, to application filers who are filing on behalf of those applicants for whom an eligibility determination will require information about the Relevant Individual(s).

The proposed changes require the following alterations to sections of the notice.

1. Categories of Individuals Covered by the System: Remove the ''and'' before ''(7)'' and add the following at the end of this section:

''and (8) Individuals, including non-applicant household members/family members, non-applicant tax payers or tax filers, and spouses and parents of applicants, who are listed on the application and whose PII may bear upon a determination of the eligibility of an individual for an insurance affordability program and for certifications of exemption from the individual responsibility requirement. Such individuals will hereafter be referred to as ''Relevant Individual(s)''.''

2. Categories of Records in the System: Add the following to the end of the first paragraph of this section:

''The system will collect and maintain information pertaining to Relevant Individual(s) that includes the following: First name, last name, middle initial, permanent residential address, date of birth, SSN (if the Relevant Individual has one or is required to provide it as specified in 45 CFR 155.305(f)(6)), taxpayer status, gender, residency, relationship to applicant, employer information, and household income, including tax information from the IRS, income information from the Social Security Administration, and financial information from other third party sources.''

3. Purpose(s) of the System: Replace the first sentence of the first paragraph of this section with the following sentence:

''The purpose of this system is to collect, create, use and disclose PII about individuals who apply for eligibility determinations for enrollment in a QHP through the Exchange, for insurance affordability programs, and for certifications of exemption from the individual responsibility requirement and on Relevant Individual(s) whose PII may bear upon a determination of the eligibility of an individual for an insurance affordability program and for certifications of exemption from the individual responsibility requirement.''

4. Routine Use #3: Delete entry and replace with:

''To disclose information about applicants and Relevant Individual(s) in order to obtain information from other Federal agencies and State agencies and third party data sources that provide information to CMS, pursuant to agreements with CMS, for purposes of determining the eligibility of applicants to enroll in QHPs through an Exchange, in insurance affordability programs, or for a certification of exemption from the individual responsibility requirement.''

5. Routine Use #8: Delete entry and replace with:

''To provide information about applicants and Relevant Individual(s) to applicants/enrollees, authorized representatives of applicants/enrollees, and application filers, who are filing on behalf of those applicants, when relevant and necessary to determine eligibility for enrollment in a QHP through an Exchange, insurance affordability programs, or a certification of exemption from the individual responsibility requirement.''

The information collected by this system and the purposes for which it is used and disclosed by CMS are described in the modifications to the SORN as stated above.

Michelle Snyder,

Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–12691 Filed 5–28–13; 8:45 am]

BILLING CODE 4120–03–P

[1] *See also* 78 FR 8539, 8540.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New Routine Use for Selected CMS Systems of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS) Department of Health and Human Services (HHS).

ACTION: Altered System Notice, Adding a New Routine Use for Selected CMS Systems of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), CMS is adding a new routine use to twenty-three CMS systems of records to assist in preventing and detecting fraud, waste and abuse. The new routine use will authorize CMS to disclose provider and beneficiary-identifiable records to representatives of health plans for the purpose of preventing and detecting fraud, waste and abuse, pursuant to section 1128C(a)(2) of the Social Security Act (''the Act''). At section 1128C(c) of the Act, a health plan is defined as a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes: (1) A policy of health insurance; (2) a contract of a service benefit organization; and (3) a membership agreement with a health maintenance organization or other prepaid health plan.

Disclosures made pursuant to the routine use will be coordinated through CMS' Data Sharing and Partnership Group, Center for Program Integrity, CMS. CMS has identified twenty-three systems that contain the data potentially

necessary to disclose to health plans for the prevention and detection of fraud, waste and abuse. These systems are listed at the end of this notice.

DATES: *Effective Dates:* The new routine use described in this notice will become effective without further notice 30 days after publication of this notice in the **Federal Register** (FR), unless comments received on or before that date result in revisions to this notice.

ADDRESSES: The public should send comments to: CMS Privacy Officer, Division of Privacy Policy, Privacy Policy and Compliance Group, Office of E-Health Standards & Services, Office of Enterprise Management, CMS, Room S2–24–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Shantanu Agrawal, MD, MPhil, FAAEM, Medical Director, Director, Data Sharing and Partnership Group, CMS Center for Program Integrity, 7500 Security Boulevard, Mail Stop AR–18–50, Baltimore, MD 21244, Office phone: 410.786.1795, Facsimile: 410.786.0604, Email: *shantanu.agrawal@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 1128C(a)(2) of the Act authorizes the Secretary and the Attorney General to consult with, and arrange for the sharing of data with, representatives of health plans. At section 1128C(c) of the Act, a health plan is defined as a plan or program that provides health benefits, whether directly, through insurance, or otherwise, and includes: (1) A policy of health insurance; (2) a contract of a service benefit organization; and (3) a membership agreement with a health maintenance organization or other prepaid health plan. In order for CMS to disclose data with representatives of health plans pursuant to section 1128C(a)(2) of the Act, CMS is establishing a new routine use for twenty-three systems identified as containing the data that may be used to detect and prevent fraud, waste, and abuse. The Secretary's authority under section 1128C(a)(2) of the Act has been delegated to the Administrator of CMS. Advance notice of the proposed new routine use for the twenty-three systems of record was provided to OMB and Congress as required by the Privacy Act at 5 U.S.C. 552a(r).

For the reasons described above, the following routine use is added to the twenty-three systems of records listed below:

''To disclose to health plans, defined for this purpose as plans or programs that provide health benefits, whether directly, through insurance, or otherwise, and includes—(1) a policy of health insurance; (2) a contract of a service benefit organization; and (3) a membership agreement with a health maintenance organization or other prepaid health plan when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs. Disclosures may include provider and beneficiary-identifiable data.''

1. Health Plan Management System (HPMS), System No. 09–70–0500, published at 73 **Federal Register** (FR) 2257 (January 14, 2008).
2. Medicare Multi-Carrier Claims System (MCS), System No. 09–70–0501, published at 71 FR 64968 (November 6, 2006).
3. Enrollment Database (EDB), System No. 09–70–0502, published at 73 FR 10249 (February 26, 2008).
4. Fiscal Intermediary Shared System (FISS), System No. 09–70–0503, published at 71 FR 64961 (November 6, 2006).
5. Inpatient Rehabilitation Facilities—Patient Assessment Instrument (IRF–PAI), System No. 09–70–0521, published at 71 FR 67143 (November 20, 2006).
6. HHA Outcome and Assessment Information Set (OASIS), System No. 09–70–0522, published at 72 FR 63906 (November 13, 2007).
7. Unique Physician/Practitioner Identification Number System (UPIN), System No. 09–70–0525, published at 71 FR 66535 (November 15, 2006).
8. Common Working File (CWF), System No, 09–70–0526, published at 71 FR 64955 (November 6, 2006).
9. Fraud Investigation Database (FID), System No. 09–70–0527, published at 71 FR 77759 (December 27, 2006).
10. Long Term Care MDS (LTC MDS), System No. 09–70–0528, published at 72 FR 12801 (March 19, 2007).
11. Medicare Supplier Identification File (MSIF), System No. 09–70–0530, published at 71 FR 70404 (December 4, 2006).
12. Provider Enrollment, Chain and Ownership System (PECOS), System No. 09–70–0532, published at 71 FR 60536 (October 13, 2006).
13. Medicare Exclusion Database (MED), System No. 09–70–0534, published at 71 FR 70967 (December 7, 2006).
14. Medicare Beneficiary Database (MBD), System No. 09–70–0536, published at 71 FR 70396 (December 4, 2006).
15. Medicaid Statistical Information System (MSIS), System No. 09–70–0541, published at 71 FR 65527 (November 8, 2006).
16. Medicare Retiree Drug Subsidy Program (RDSP), System No. 09–70–0550, published at 70 FR 41035 (July 15, 2005).
17. Medicare Drug Data Processing System (DDPS), System No. 09–70–0553, published at 73 FR 30943 (May 29, 2008).
18. National Plan and Provider Enumeration System (NPPES), System No. 09–70–0555, published at 75 FR 30411 (June 1, 2010).
19. National Claims History (NCH), System No. 09–70–0558, published at 71 FR 67137 (November 20, 2006).
20. Integrated Data Repository (IDR) System No. 09–70–0571, published at 71 FR 74915 (December 13, 2006).
21. Chronic Condition Data Repository (CCDR), System No. 09–70–0573, published at 71 FR 74915 (December 13, 2006).
22. Medicaid Integrity Program System (MIPS), System No. 09–70–0599, published at 73 FR 11639 (March 4, 2008).
23. Medicare Advantage Prescription Drug System (MARx), System No. 09–70–0588, published at 70 FR 60530 (October 18, 2005).

Michelle Snyder,

Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–12690 Filed 5–28–13; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Federally Assisted State Transmitted Levy (FAST Levy).

OMB No.: New Collection.

Description: State IV–D child support enforcement agencies are required to secure assets in cases where there is a support arrearage to satisfy any current support obligation and the arrearage by attaching and seizing assets of the obligor held in financial institutions. To assist states in fulfilling this statutory requirement the federal Office of Child Support Enforcement (OCSE) is proposing a new information collection using the Federally Assisted State Transmitted Levy (FAST Levy), a new

application within the Federal Parent Locator Service's Portal. FAST Levy is a centralized, secure and automated method of collecting and disseminating electronic levy notices between child support enforcement agencies and multistate financial institutions to secure the assets in an obligor's account.

The anticipated impact of employing FAST Levy is the significant reduction in existing delays to execute a levy notice, thereby diminishing opportunity for an obligor to close accounts; increase collections of past-due payments to state agencies and families; cut the states' and multistate financial institutions administrative and implementation costs of manually executing levy notices; and strengthen document security.

The proposed information collection using the FAST Levy application is authorized by: (1) 42 U.S.C. 652(a)(7), which requires OCSE to provide technical assistance to state child support agencies to help them establish effective systems for collecting child and spousal support; (2) 42 U.S.C. 666 (a)(2) and (c)(1)(G)(ii), which requires state child support agencies to secure assets of an obligor to satisfy past due support orders; and (3) 45 CFR 303.7(a)(5), which requires state child support agencies to transmit requests for information and provide requested information electronically to the greatest extent possible.

Respondents: Multistate Financial Institutions and State Child Support Enforcement Agencies

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Multistate financial institutions	5	1	317.5	1,587.5
State Child Support Enforcement Agencies	7	1	317.5	2,222.5

Estimated Total Annual Burden Hours: 3,810.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Report Clearance Officer.

[FR Doc. 2013–12664 Filed 5–28–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Psychoactive Drug Screening Program.

Date: June 20, 2013.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 22, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12636 Filed 5–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, July 15, 2013, 8:00 a.m. to July 15, 2013, 5:00 p.m., DoubleTree by Hilton, 4810 Page Creek Lane, Durham, NC, 27703 which was published in the **Federal Register** on May 20, 2013, 78 FR 97.

The meeting notice is amended to change the location of the meeting from the DoubleTree by Hilton to NIEHS, 111

T.W. Alexander Drive, Research Triangle Park, NC 27709. The meeting is closed to the public.

Dated: May 22, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12635 Filed 5–28–13; 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 Cancer Therapeutics.

Date: June 24, 2013.

Time: 8:00 a.m. to 5:30 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: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: June 26–27, 2013.

Time: 8:00 a.m. to 4:30 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: Cheryl M Corsaro, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: High Throughput Screening Assays for Probe Discovery.

Date: June 26, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Dermatology, Rheumatology and Inflammation.

Date: June 26, 2013.

Time: 10:00 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.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 27–28, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group Child Psychopathology and Developmental Disabilities Study Section.

Date: June 27–28, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group Cancer Genetics Study Section.

Date: June 27–28, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024.

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: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: June 27–28, 2013.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group Molecular Oncogenesis Study Section.

Date: June 27–28, 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: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group Immunity and Host Defense Study Section.

Date: June 27–28, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria,, VA 22314.

Contact Person: Patrick K Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group Social Sciences and Population Studies B Study Section.

Date: June 27, 2013.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Valerie Durrant, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group Urologic and Genitourinary Physiology and Pathology.

Date: June 28, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza Hotel and Resorts, Washington National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@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: May 22, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12633 Filed 5–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis And Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 20–21, 2013.

Time: 6:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 21, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–12634 Filed 5–28–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0026]

Agency Information Collection Activities: Immigrant Petition by Alien Entrepreneur, Form Number I–526; Revision of a Currently Approved Collection

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on November 30, 2012, at 77 FR 71432, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice. USCIS has incorporated the ability to file Form I–539 electronically within USCIS' Electronic Immigration System (USCIS ELIS) in this information collection activity and has provided the ELIS on line screen shots for viewing and comment in e-Docket ID number USCIS–USCIS–2007–0021.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 28, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–USCIS–2007–0021. When submitting comments by email, please make sure to add OMB Control Number 1615–0026 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection Request:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* USCIS Form I–526; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–526 is used by the USCIS to determine if an alien can enter the U.S. to engage in commercial enterprise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 807 responses at 1 hour and 20 minutes (1.33 hours) per response for paper filers, and 7,263 responses at 1 hour and 15 minutes (1.25 hours) per response for electronic filers.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,151 annual burden hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140; Telephone 202–272–8377.

Dated: May 23, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–12678 Filed 5–28–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5696–N–03]

Allocations, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant Disaster Recovery Funds in Response to Disasters Occurring in 2011 or 2012

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises the public of a $514,012,000 allocation for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster in 2011 or 2012. This is the second allocation of Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2). The first allocation provided $5,400,000,000 to the areas most impacted by Hurricane Sandy. In HUD's **Federal Register** notice published on March 5, 2013, at 78 FR 14329, HUD described that allocation and its applicable waivers and alternative requirements, relevant statutory provisions, the grant award process, criteria for Action Plan approval, and eligible disaster recovery activities. Subsequently, HUD published a notice on April 19, 2013, at 78 FR 23578, which provided additional waivers and alternative requirements to Hurricane Sandy grantees, and clarified or modified guidance provided in the March 5, 2013, notice. For grantees receiving an allocation under this Notice, published in today's **Federal Register** many of the requirements described in the prior notices will apply. Additionally, this Notice modifies an alternative requirement for grantees in receipt of an allocation under section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011); allocations published in the **Federal Register** on April 16, 2012, at 77 FR 22583.

DATES: Effective Date: June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. Allocation
II. Use of Funds
III. Timely Expenditure of Funds, and Prevention of Fraud, Abuse, and Duplication of Benefits
IV. Overview of Grant Process
V. Applicable Rules, Statutes, Waivers, and Alternative Requirements
VI. Duration of Funding
VII. Catalog of Federal Domestic Assistance
VIII. Finding of No Significant Impact
Appendix A: Allocation Methodology

I. Allocation

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2, approved January 29, 2013) (Appropriations Act) made available $16,000,000,000 in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG–DR grants under the Appropriations Act to $15.18 billion. Through the March 5, 2013, Notice, HUD allocated $5.4 billion for the areas most impacted by Hurricane Sandy (*see* 78 FR 14329). Of the remaining $9.78 billion, this Notice allocates $514,012,000 for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster in 2011 or 2012. As the Appropriations Act requires funds to be awarded directly to a State, or unit of general local government (hereinafter, local government), at the discretion of the Secretary, the term ''grantee'' refers to any jurisdiction receiving a direct award from HUD under this Notice.

To comply with statutory direction that funds be used for disaster recovery-related expenses in the most impacted and distressed areas, HUD computes allocations based on the best available data that cover all of the eligible affected areas. Based on a review of the impacts from Presidentially-declared disasters that occurred in 2011 or 2012 (excluding Hurricane Sandy), and estimates of remaining unmet need, this Notice, published in today's **Federal Register**, provides the following awards:

TABLE 1—ALLOCATIONS FOR DISASTERS OCCURRING IN 2011 OR 2012

State	Grantee	Allocation
Alabama	State of Alabama	$49,157,000
Alabama	City of Tuscaloosa	43,932,000
Alabama	City of Birmingham	17,497,000
Alabama	Jefferson County	9,142,000
Louisiana	State of Louisiana	66,398,000
Louisiana	Jefferson Parish	16,453,000
Louisiana	City of New Orleans	15,031,000
Louisiana	St. Tammany Parish	8,896,000
Massachusetts	Commonwealth of Massachusetts	7,210,000
Massachusetts	City of Springfield	21,896,000
Missouri	State of Missouri	11,844,000
Missouri	City of Joplin	113,276,000
North Dakota	State of North Dakota	6,576,000
North Dakota	City of Minot	35,056,000
Pennsylvania	Commonwealth of Pennsylvania	29,986,000
Pennsylvania	Luzerne County	9,763,000
Pennsylvania	Dauphin County	7,632,000
Tennessee	State of Tennessee	13,810,000
Tennessee	Shelby County	7,464,000
Texas	State of Texas	5,061,000
Vermont	State of Vermont	17,932,000
Total		514,012,000

To ensure funds provided under this Notice address unmet needs within the ''most impacted and distressed'' counties or parishes, each local government receiving a direct award under this Notice must expend its entire CDBG–DR award within its jurisdiction (e.g., Shelby County must expend all funds within Shelby County; the City of Joplin must expend all funds in the portions of Jasper and Newton counties located within the city's jurisdiction). State grantees may expend funds in any county or parish that received a Presidential disaster declaration in 2011 or 2012, but must expend a minimum amount in counties or parishes considered most impacted and distressed, as shown in Table 2:

TABLE 2—COUNTIES AND PARISHES ELIGIBLE FOR CDBG–DR ASSISTANCE

State grantee	FEMA disaster No.	Most impacted and distressed counties and parishes	Minimum amount to expend in most impacted and distressed counties and parishes
Alabama	1971, 4052, 4082.	Tuscaloosa, Jefferson, Dekalb, Cullman, Franklin, Marion	$25,211,400
Louisiana	4015, 4041, 4080.	St. John the Baptist, Plaquemines, Jefferson, Orleans, St. Tammany	45,042,400
Massachusetts	1959, 1994, 4028, 4051, 4097.	Hampden	1,388,800
Missouri	1961, 1980, 4012.	Jasper, Newton	0
North Dakota	1981, 1986	Ward	0
Pennsylvania	4003, 4025, 4030.	Luzerne, Bradford, Dauphin, Columbia, Newton	20,509,800
Tennessee	1965, 1974, 1978, 1979, 4005, 4060.	Shelby	9,555,200
Texas	1999, 4029	Bastrop	4,048,800
Vermont	1995, 4001, 1022, 4043, 4066.	Windsor, Washington, Windham	14,345,600

A detailed explanation of HUD's allocation methodology is provided at Appendix A. Grantees with additional questions regarding the counties and parishes identified as the most impacted and distressed should contact the HUD Community Development and Planning (CPD) Representative assigned to their grant.

II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster recovery-related purposes. The Appropriations Act also requires that prior to the obligation of funds, a

grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. Thus, in an Action Plan for Disaster Recovery, each grantee must describe uses and activities that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act), or allowed by a waiver or alternative requirement published in an applicable **Federal Register** notice; and (2) respond to a disaster-related impact. To help meet these requirements, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities. Detailed information on the needs assessment, eligible CDBG–DR activities, and the development of an Action Plan is included in the March 5, 2013, notice. The subsequent noticepublished on April 19, 2013, clarifies and/or modifies information provided in the March 5, 2013, notice. For grantees receiving an allocation under this Notice, many of the requirements described in those prior notices will apply (*see* section V of this Notice: ''Applicable Rules, Statutes, Waivers, and Alternative Requirements''). Links to the prior notices, the text of the Appropriations Act, and additional guidance prepared by HUD for CDBG–DR grants, are available on HUD's Web site under the Office of Community Planning and Development, Disaster Recovery Assistance (hereinafter referred to as the CPD Disaster Recovery Web site): *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs/drsi.*

Each grantee receiving an allocation under this Notice must submit an initial Action Plan no later than 90 days after the effective date of this Notice. However, grantees are encouraged to submit their Action Plans as soon as possible. HUD will only approve Action Plans that meet the specific criteria identified in the March 5, 2013, notice, as modified by the April 19, 2013, notice (*see* section V of this Notice: ''Applicable Rules, Statutes, Waivers, and Alternative Requirements'')

Finally, as provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE) (as provided at 42 U.S.C. 5305); however, the amount of CDBG–DR used as matching funds for USACE-funded projects may not exceed $250,000. In addition, per the Appropriations Act, CDBG–DR funds may not be used for expenses reimbursable by, or for which funds are made available by, either FEMA or USACE.

III. Timely Expenditure of Funds and Prevention of Waste, Fraud, Abuse, and Duplication of Benefits

To ensure the timely expenditure of funds, section 904(c) under Title IX of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG–DR grant agreement). Action Plans must demonstrate how funds will be fully expended within two years of obligation. For any funds that the grantee believes will not be expended by the deadline and that it wishes to retain, it must submit a letter to HUD not less than 30 days in advance of the deadline justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. HUD will forward the request to the Office of Management and Budget (OMB) and publish any approved waivers in the **Federal Register** once granted. Waivers to extend the expenditure deadline may be granted by OMB in accordance with guidance to be issued by OMB, but grantees are cautioned that such waivers may not be approved. Funds remaining in the grantee's line of credit at the time of the 24-month expenditure deadline will be returned to the U.S. Treasury, or if before September 30, 2017, will be recaptured by HUD. The Appropriations Act requires that HUD obligate all funds not later than September 30, 2017. Grantees must continue to meet the requirements for Federal cash management at 24 CFR 85.20(a)(7).

In addition to the above, the Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. HUD guidance to assist in preventing a duplication of benefits is provided in a notice published in the **Federal Register** on November 16, 2011, at 76 FR 71060. To provide a basis for the Secretary to make the certification, each grantee must submit documentation to HUD demonstrating its compliance with the above requirements. Grantees must submit the required documentation listed in paragraph A.1.i. under section VI of the March 5, 2013, Notice. Additional information is available in section III of March 5, 2013, Notice and on HUD's CPD Disaster Recovery Web site (see ''Guide for Review of Financial Management'' and ''Certification Checklist'').

Additionally, grantees must submit to HUD a projection of expenditures and outcomes to ensure funds are expended in a timely manner, and to track proposed versus actual performance (guidance on the preparation of the projections is available on HUD's CPD Disaster Recovery Web site). Grantees are also required to ensure all contracts (with subrecipients, recipients, and contractors) clearly stipulate the period of performance or the date of completion. In addition, grantees must enter expected completion dates for each activity in HUD's Disaster Recovery Grant Reporting (DRGR) system. When target dates are not met, grantees are required to explain why in the activity narrative. Therefore, all grantees must comply with all reporting, procedural, and monitoring requirements described in section VI. A. Grant Administration, in the March 5, 2013, Notice. HUD will institute risk analysis and on-site monitoring of grantee management as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

IV. Overview of Grant Process

To begin expenditure of CDBG–DR funds, the following expedited steps are necessary:

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of this Notice and the March 5, 2013, Notice;
- Grantee consults with stakeholders, including required consultation with affected, local governments and public housing authorities;
- Within 30 days of the effective date of this Notice (or when the grantee submits its Action Plan, whichever is sooner), grantee submits evidence that it has in place proficient financial controls and procurement processes and has established adequate procedures to

prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds;

- Grantee publishes its Action Plan for Disaster Recovery on the grantee's official Web site for no less than 7 calendar days to solicit public comment;
- Grantee responds to public comment and submits its Action Plan (which includes Standard Form 424 (SF–424) and certifications) to HUD no later than 90 days after the effective date of this Notice;
- HUD expedites review of Action Plan (allotted 45 days from date of receipt; however, completion of review is anticipated much sooner) and approves the Plan according to criteria identified in the March 5, 2013, Notice;
- HUD sends an Action Plan approval letter, grant conditions, and signed grant agreement to the grantee. If the Action Plan is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Action Plan within 45 days of the notification letter;
- Grantee ensures that the HUD-approved Action Plan is posted on its official Web site;
- Grantee signs and returns the fully executed grant agreement;
- HUD establishes the proper amount in a line of credit for the grantee;
- Grantee requests and receives DRGR system access (if the grantee does not already have it);
- If it has not already done so, grantee enters the activities from its published Action Plan into DRGR and submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR);
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 and, as applicable, under the clarifying note in paragraph 20.a at 78 FR 14343, receives from HUD or the State an approved Request for Release of Funds and certification;
- Grantee begins to draw down funds within 60 days of receiving access to its line of credit;
- Grantee amends its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan approval; and
- Grantee updates its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update.

V. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This section describes the rules, statutes, waivers, and alternative requirements that apply to grantees receiving an allocation under this Notice. It also clarifies requirements and other information provided in the April 16, 2012, Notice —applicable to all CDBG–DR grantees in receipt of an allocation under section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011). Grantees may request additional waivers and alternative requirements from HUD as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. *Incorporation of waivers, alternative requirements, and statutory changes previously described.* The waivers and alternative requirements provided in the March 5, 2013, Notice, as clarified or modified by the April 19, 2013, Notice apply to each grantee receiving an allocation of funds under this Notice, except as modified herein. These waivers and alternative requirements provide additional flexibility in program design and implementation to support full recovery following the disasters of 2011 and 2012, while also ensuring that statutory requirements unique to the Appropriations Act are met. The following clarifications or modifications apply to grantees in receipt of an allocation under this Notice:

a. All submission deadlines regarding the Secretary's certification or the Action Plan, referenced in this Notice or previous notices, are triggered by the effective date of this Notice.

b. Paragraph 1(a)(1) of the March 5, 2013, Notice, at 78 FR 14333 is hereby amended by striking the contacts listed for other Federal agencies. Grantees seeking updated information about assistance provided by other Federal agencies or remaining unmet needs should contact their CPD Representative.

c. Paragraph 1(a)(6) of the March 5, 2013, Notice, at 78 FR 14334 is hereby amended by deleting that paragraph and replacing it in its entirety with the following: A description of how the grantee will identify and address (if needed) the rehabilitation (as defined at 24 CFR 570.202), reconstruction, and replacement of the following types of housing affected by the disaster: Public housing (including administrative offices), HUD-assisted housing (defined at subparagraph (1) of the March 5, 2013, Notice, at 78 FR 14332), McKinney-Vento funded shelters and housing for the homeless—including emergency shelters and transitional and permanent housing for the homeless, and private market units receiving project-based assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program. As part of this requirement, each grantee must work with any impacted Public Housing Authority (PHA), located within its jurisdiction, to identify the unmet needs of damaged public housing. If unmet needs exist once funding under this Notice becomes available to the grantee, the grantee must work directly with the impacted PHA(s) to identify necessary costs, and ensure adequate funding is dedicated to the recovery of the damaged public housing. Grantees are reminded that public housing is eligible for FEMA Public Assistance; thus, they must ensure that there is no duplication of benefits when using CDBG–DR funds to assist public housing.

d. Paragraph 1(l) of the March 5, 2013, Notice, at 78 FR 14337 is hereby amended by adding the following to the existing language: Grantees that have previously projected expenditures and outcomes, in a format consistent with prior guidance issued by HUD, may use and update those projections with HUD approval. HUD will work with the grantee to determine the most efficient way of submitting these projections while still ensuring transparency. Revised projections must still be incorporated into the published Action Plan within 90 days of the Action Plan approval.

e. Any waiver or alternative requirement (described in the March 5, 2013, or April 19, 2013, Notices) that is restricted to one or more grantees cited by the waiver or alternative

requirement, is only applicable to the cited grantee(s).

2. *Acquisition of real property and flood buyouts.* To ensure consistency between allocations of CDBG–DR funds, and to give grantees greater flexibility to respond to disaster recovery needs, paragraph 27 of the April 16, 2012, Notice, at 77 FR 22594 is hereby amended by deleting that paragraph and replacing it in its entirety with the following:

''27. *Acquisition of real property and flood buyouts.* Grantees under this notice are able to carry out property acquisition for a variety of purposes. However, the term ''buyouts'' as referenced in this Notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

a. *Buyout requirements:*

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(2) No new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space (*e.g.,* a park, campground, or outdoor recreation area); (b) a rest room; (c) a flood control structure that the local floodplain manager approves in writing before the commencement of the construction of the structure;

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity in perpetuity;

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG–DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses;

(5) All buyout activities must be classified using the ''buyout'' activity type in the DRGR system; and

(6) Any State grantee implementing a buyout program or activity must consult with affected UGLGs.

b. *Redevelopment of acquired properties.*

(1) Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. See subparagraph a(2), above.

(2) Grantees may redevelop an acquired property if: (a) the property is not acquired through a buyout program, and (b) the purchase price is based on the property's post-flood fair market value (the pre-flood value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

(3) In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans.''

c. The language in this paragraph that replaces language in the April 16, 2012, Notice at 77 FR 22594 applies to buyout acquisitions contracted after the effective date of this Notice.

VI. Duration of Funding

The Appropriations Act requires that HUD obligate all funds provided under Chapter 9, Community Development Fund, not later than September 30, 2017. Concurrently, section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds. Therefore, each grantee must expend all funds within two years of the date HUD signs the grant agreement with the grantee. Note that if a grantee amends its Action Plan to program additional funds that HUD has allocated to it, the grant agreement must also be revised. The requirement for each grantee to expend funds within two years is triggered by each amendment to the grant agreement. That is, each grant amendment has its own expenditure deadline. Pursuant to section 904(c) of the Appropriations Act, grantees or HUD may request waivers of the two-year expenditure deadline from the Office of Management and Budget. For any funds that the grantee believes will not be expended by the deadline and that it desires to retain, it must submit a letter to HUD not less than 30 days in advance of the deadline justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. Funds remaining in the grantee's line of credit at the time of this expenditure deadline will be returned to the U.S. Treasury.

VII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice is as follows: 14.269.

VIII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: May 22, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

Appendix A—Allocation Methodology

Pub.lic Law 113–2 states:

For an additional amount for ''Community Development Fund'', $16,000,000,000, to remain available until September 30, 2017, for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.):

Provided, That funds shall be awarded directly to the State or unit of general local government as a grantee at the discretion of the Secretary of Housing and Urban Development:

Provided further, That the Secretary shall allocate to grantees not less than 33 percent of the funds provided under this heading within 60 days after the enactment of this division based on the best available data:

Provided further, That prior to the obligation of funds, a grantee shall submit a plan to the Secretary for approval detailing

the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas:

The legislation specifies that the CDBG–DR funds are to be used ''for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster'' and further specifies that the funds are not to be used for activities reimbursable by or for which funds are made available by FEMA or the Corps of Engineers.

The language also calls for HUD to use ''best available'' data to make its allocation. For this allocation, similar to prior allocations, HUD made a determination of unmet needs by estimating unmet needs related to the main intended uses of the funds:

- ''restoration of . . . housing''. HUD made an estimate with best available data on the amount of housing damage not likely to be covered by insurance, SBA disaster loans, or FEMA housing assistance. To target the ''most impacted and distressed areas'', the calculation limits the need calculation only to homes with high levels of individual damage (see below) in counties and parishes with severe housing and business needs of $10 million or greater.
- ''economic revitalization''. HUD made an estimate with best available data on the amount of damage to businesses declined for an SBA loan, usually because of inadequate credit or income to support the needed loan amount.
- ''restoration of infrastructure''. HUD calculated infrastructure need as the match required to address the FEMA estimates for repair of permanent infrastructure in the FEMA Public Assistance program (categories C to G).
- ''in the most impacted and distressed areas''. To target the funds to the most impacted and distressed areas, HUD limited its calculation to ''severe needs in areas of concentrated damage'':
  - Severe Needs: Only homes and businesses categorized as severe or major-high damage were included in the calculation (see below).
  - Concentration: Only counties and parishes with greater than $10 million in severe housing and business needs were included for the calculation. The $10 million threshold was established looking at a ''natural break'' in the distribution of impacted counties or parishes when ordered form most to least severe needs. Note, if a county or parish had been designated as ''most impacted'' in the 2012 allocation, it is included even if the adjusted methodology calculated a lower amount with the new data.
  - Overall size of the need: Again using the concept of a natural break, HUD established an aggregate of $25 million or more of severe unmet housing, business, and infrastructure needs in counties and parishes with over $10 million in severe housing and business needs to be eligible to receive a grant.

Methodology for Calculating Unmet Needs

Available Data

The ''best available'' data HUD staff identified as being available to calculate unmet needs at this time for the targeted disasters come from the following data sources:

- FEMA Individual Assistance program data on housing unit damage;
- SBA for management of its disaster assistance loan program for housing repair and replacement;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss; and
- FEMA Public Assistance program data on public infrastructure damage;

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by Small Business Administration data from its Disaster Loan Program. HUD calculated ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

- Each of the FEMA inspected owner units were categorized by HUD into one of five categories:
  - Minor-Low: Less than $3,000 of FEMA inspected *real property* damage
  - Minor-High: $3,000 to $7,999 of FEMA inspected *real property* damage
  - Major-Low: $8,000 to $14,999 of FEMA inspected *real property* damage
  - Major-High: $15,000 to $28,800 of FEMA inspected *real property* damage and/or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $28,800 of FEMA inspected *real property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To ensure funds are used in ''most impacted'' areas as required by statute, homes were included in the calculation if they were categorized as having sustained ''major-high'' or ''severe'' damage. That is, they have a real property FEMA inspected damage of $15,000 or flooding over 4 foot. Furthermore, for purposes of this calculation, a homeowner is assumed to have unmet needs if they have received a FEMA grant to make home repairs. For homeowners with a FEMA grant and insurance for the covered event, HUD assumed an unmet need ''gap'' of 20 percent of the difference between total damage and the FEMA grant.

- FEMA does not inspect rental units for real property damage so personal property damage was used as a proxy for unit damage. Each of the FEMA inspected renter units were categorized by HUD into one of five categories:
  - Minor-Low: Less than $1,000 of FEMA inspected *personal property* damage
  - Minor-High: $1,000 to $1,999 of FEMA inspected *personal property* damage
  - Major-Low: $2,000 to $3,499 of FEMA inspected *personal property* damage
  - Major-High: $3,500 to $7,499 of FEMA inspected *personal property* damage or 4 to 6 feet of flooding on the first floor.
  - Severe: Greater than $7,500 of FEMA inspected *personal property* damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For rental properties, to ensure funds are allocated to ''most impacted'' areas as required by statute, homes were included in the calculation if they were categorized as having sustained ''major-high'' or ''severe'' damage. That is, they received a FEMA personal property damage assessment of $3,400 or greater or flooding over 4 feet. Furthermore, landlords were presumed to have adequate insurance coverage unless the unit was occupied by a renter with income of $30,000 or less. Units occupied by a tenant with income less than $30,000 were used to calculate likely unmet needs for affordable rental housing. For those units occupied by tenants with incomes under $30,000, HUD estimated unmet needs as 75 percent of the estimated repair cost.

- The average cost to fully repair a home for a specific disaster within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA inspects for full repair costs, HUD presumed that SBA assessments reflect the full cost to repair the home. SBA estimates generally exceed the FEMA estimates of the cost to make the home habitable. If fewer than 100 SBA inspections were made for homes within a FEMA damage category, HUD applied a cap to the estimated damage amount in the category for that disaster at the 75th percentile of all damaged units for that category for all disasters and applied a floor at the 25th percentile.

Calculating Unmet Infrastructure Needs

- To best proxy unmet infrastructure needs, HUD used data from FEMA's Public Assistance program on the state match requirement (usually 25 percent of the estimated public assistance needs). This allocation methodology used only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and state match requirement. Those activities are categories: C-Roads and Bridges; D-Water Control Facilities; E-Public Buildings; F-Public Utilities; and G-Recreational-Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used. Because Public Assistance damage estimates are available only statewide (and not at the county or parish level), estimates of unmet infrastructure needs were sub-allocated to counties, parishes, and local jurisdictions based on each jurisdiction's proportion of unmet housing and business needs.

Calculating Economic Revitalization Needs

- Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This was adjusted upward by the proportion of applications that were received for a disaster for which SBA did not calculate content and real property loss because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as (1 + 10/160) * calculated unmet real content loss.
- Because applications denied for poor credit or income are a likely indication of applicants requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each state were adjusted upwards by the proportion of total applications that were denied at the pre-process stage because of poor credit or inability to show repayment ability. Similar to housing, estimated damage was used to determine what unmet needs would be used to identify most impacted areas. Only properties with total real estate and content loss in excess of $65,000 are categorized as having sustained severe damage and counted for purposes of identifying the most impacted areas.
  - Category 1: real estate + content loss = below 12,000
  - Category 2: real estate + content loss = 12,000–30,000
  - Category 3: real estate + content loss = 30,000–65,000
  - Category 4: real estate + content loss = 65,000–150,000
  - Category 5: real estate + content loss = above 150,000
- To obtain unmet business needs, the amount for approved SBA loans is subtracted out of the total estimated damage. Since SBA business needs are best measured at the county or parish level, HUD estimates the distribution of needs to local entitlement jurisdictions based on the distribution of all unmet housing needs.

Methodology for Determining the Amount a Grantee Must Expend in Most Impacted and Distressed Counties or Parishes

In total, 80 percent of the funds allocated in to state must be expended in the most impacted counties or parishes. In states where there are direct grantees, HUD requires the direct grantee to spend 100 percent of their funds in the most impacted county or parish, thus reducing the share of funds the state needs to expend in the most impacted county or parish. For example, because of the large grant to Joplin, there is no minimum requirement for the State of Missouri. In contrast, Vermont which has no direct grantees, must spend 80 percent of its funds in the most impacted counties of Windsor, Washington, and Windham. See the below table for further explanation:

			80% of Total state allocation	Percent spent in most impacted county(ies) or parish(es)
MO	Direct Grantees	113,276,000		100
	State Grant	11,844,000		0
Total		125,120,000	100,096,000	
AL	Direct Grantees	70,571,000		100
	State Grant	49,157,000		51
Total		119,728,000	95,782,400	
ND	Direct Grantees	35,056,000		100
	State Grant	6,576,000		0
Total		41,632,000	33,305,600	
LA	Direct Grantees	40,380,000		100
	State Grant	66,398,000		68
Total		106,778,000	85,422,400	
PA	Direct Grantees	17,395,000		100
	State Grant	29,986,000		68
Total		47,381,000	37,904,800	
TX	Direct Grantees			100
	State Grant	5,061,000		80
Total		5,061,000	4,048,800	
TN	Direct Grantees	7,464,000		100
	State Grant	13,810,000		69
Total		21,274,000	17,019,200	
MA	Direct Grantees	21,896,000		100
	State Grant	7,210,000		19
Total		29,106,000	23,284,800	
VT	Direct Grantees			100
	State Grant	17,932,000		80
Total		17,932,000	14,345,600	

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BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[A10–2006–1010–000–00–0–0, 2015200]

Notice of Availability of the Final Environmental Impact Statement/ Environmental Impact Report for Klamath Facilities Removal

AGENCY: Office of Environmental Policy and Compliance, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior and the California Department of Fish and Wildlife have prepared a final environmental impact statement and environmental impact report (EIS/EIR) evaluating the potential effects of removing four privately owned dams on the Klamath River in southern Oregon and northern California should the Secretary of the Interior determine that removal will advance restoration of salmonid fisheries in the Klamath Basin and is in the public interest. The Department of the Interior has released the final EIS/EIR pursuant to the requirements of the National Environmental Policy Act and the Klamath Hydroelectric Settlement Agreement. The California Department of Fish and Wildlife is not releasing the document at this time, therefore there is no action under California Environmental Quality Act at this time. Additionally, no decision on the potential removal of these facilities is being made with the release of this document.

DATES: Under the terms of the Klamath Hydroelectric Settlement Agreement, congressional authorization is necessary prior to a decision on the proposed action. Because Congress has not enacted the legislation necessary to authorize a Secretarial Determination, the Department of the Interior will not make a final decision on the proposed action at this time.

ADDRESSES: The final EIS/EIR may be viewed and electronically downloaded at *http://klamathrestoration.gov.* To request a compact disc of the final EIS/EIR, please contact Ms. Elizabeth Vasquez, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825; email *KlamathSD@usbr.gov;* or telephone 916–978–5040. See the Supplementary Information section for locations where copies of the final EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Vasquez, Bureau of Reclamation, 916–978–5040, *evasquez@usbr.gov.* For public involvement information, please contact Mr. Matt Baun, U.S. Fish and Wildlife Service, 530–841–3119, *Matt_Baun@fws.gov.*

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) and the California Department of Fish and Wildlife (CDFW) have prepared an EIS/EIR for Klamath Facilities Removal. The EIS/EIR evaluates potential effects of the proposed removal of four PacifiCorp dams on the Klamath River in southern Oregon and northern California. The proposed removal would be in accordance with the Klamath Hydroelectric Settlement Agreement (KHSA). The KHSA established a process for studies and environmental review, leading to a Secretarial Determination on whether removal of the dams will accomplish the following:

(1) Advance restoration of salmonid (salmon, steelhead, and trout) fisheries of the Klamath River Basin; and

(2) Be in the public interest, including, but not limited to, consideration of potential impacts on affected local communities and Tribes.

The Klamath Basin Restoration Agreement (KBRA) provides for restoration of native fisheries and sustainable water supplies throughout the Klamath River Basin. Together, these two agreements attempt to resolve long-standing conflicts in the Klamath River Basin.

The KHSA, pursuant to its terms, requires certain criteria to be met prior to a determination as to whether these privately owned dams should be removed. One such criterion is for the enactment of legislation by the Congress authorizing the Secretary of the Interior (Secretary) to make this decision. Because legislation has not been enacted, the Department is not making any decision regarding the potential removal of these privately owned facilities. Nonetheless, the Department also believes that release of this final EIS/EIR will help inform public discourse at the federal, state and local levels.

While CDFW has participated in the development of this joint EIS/EIR, the release of this document at this time is solely pursuant to NEPA. Questions regarding the application of CEQA to this EIS/EIS should be directed to CDFW.

Statement of Purpose and Need and Proposed Action

The proposed action is to remove the four lower PacifiCorp dams on the Klamath River in accordance with the KHSA. The need for the proposed action is to advance restoration of the salmonid fisheries in the Klamath Basin consistent with the KHSA and the connected KBRA. The purpose is to achieve a free-flowing river condition and full volitional fish passage as well as other goals expressed in the KHSA and KBRA. Under the terms of the KHSA, the Secretary will determine whether the proposed action is appropriate and should proceed. In making this determination, the Secretary will consider whether removal of the four private facilities will advance the restoration of the salmonid fisheries of the Klamath Basin, and is in the public interest, which includes, but is not limited to, consideration of potential impacts on affected local communities and Tribes.

The EIS/EIR and its related processes were developed to accomplish the following:

- Inform the Secretary's decision on whether to approve the proposed removal of the four PacifiCorp dams, consistent with the KHSA and the connected KBRA;
- Provide meaningful opportunities for involvement by Tribes, agencies, and the public;
- Analyze and disclose the effects of the proposed action and alternatives on the human and physical environment, including, but not limited to, effects on biological resources, historic and archaeological resources, geomorphology, flood hydrology, water quality, air quality, public safety, hazardous materials and waste, visual resources, socioeconomics, real estate, tribal trust, recreation, and environmental justice;
- Meet the requirements of Section 106 of the National Historic Preservation Act, in lieu of the procedures set forth in 36 CFR §§ 800.3 through 800.6, pursuant to 36 CFR 800.8; and
- Comply with NEPA and the California Environmental Quality Act (CEQA).

The public review period of the draft EIS/EIR opened with a Notice of Availability of the draft EIS/EIR, published in the **Federal Register** on Thursday, September 22, 2011 (76 FR 58833). A second notice was published on Thursday, December 1, 2011 to provide the public an additional 30 days to submit written comments (77 FR 74804). The public review period ended on December 30, 2011. During the public review period, six public meetings were held in California and Oregon to solicit comments. Over 4,000 verbal and written comments were

received. The final EIS/EIR considers comments received and responds, as appropriate, with text revisions, clarifications, and corrections. The final EIS/EIR is divided into three volumes: Volumes I and II comprise the revised EIS/EIR and appendices, with actual text changes resulting from responses to comments; Volume III provides responses to all comments received, as well as an appendix with copies of each comment letter or communication.

Copies of the final EIS/EIR are available for public inspection at several libraries and government offices. A full list of locations where the final EIS/EIR is available for public inspection can be found at *http://klamathrestoration.gov.* Following is a partial list of the locations:

- Main Siskiyou County Library, 719 Fourth Street, Yreka, CA 96097
- Main Klamath County Library, 126 South Third Street, Klamath Falls, OR 97601
- Arcata Library, 500 7th Street, Arcata, CA 95521
- Main Humboldt County Library, 1313 3rd Street, Eureka, CA 95501
- Hoopa Library, Loop Rd. & Orchard Street, Hoopa, CA 95546
- Willow Creek Library Branch, Junction of Highways 299 & 96, Willow Creek, CA 95573
- Main Del Norte County Library, 190 Price Mall, Crescent City, CA 95531
- Medford Library Branch, 205 South Central Avenue, Medford, OR 97501
- Ashland Library Branch, 410 Siskiyou Boulevard, Ashland, OR 97520
- Chetco Community Public Library, 405 Alder Street, Brookings, OR 97415
- Bureau of Reclamation, 2800 Cottage Way, MP–152, Sacramento, CA 95825
- California Department of Fish and Wildlife, 619 Second Street, Eureka, CA 95501
- Natural Resources Library, Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001
- Bureau of Reclamation, Klamath Basin Area Office, 6600 Washburn Way, Klamath Falls, OR 97603.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in any communication, you should be aware that your entire communication—including your personal identifying information—may be made publicly available at any time. While you can ask us in your communication to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 10, 2013.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2013–12675 Filed 5–28–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. ONRR–2012–0003; DS63600000 DR2PS0000.PX8000 134D0102R2]

U.S. Extractive Industries Transparency Initiative Multi-Stakeholder Group (USEITI MSG) Advisory Committee

AGENCY: Policy, Management and Budget, Interior.

ACTION: Meeting notice.

SUMMARY: This notice announces the next two meetings of the United States Extractive Industries Transparency Initiative (USEITI) Multi-Stakeholder Group Advisory Committee.

DATES: The meetings will be held as follows: Wednesday, June 12, 2013, and Thursday, June 13, 2013, from 9:30 a.m. to 5 p.m.; and Tuesday, July 23, 2013, and Wednesday, July 24, 2013, from 9:30 a.m. to 5 p.m.

ADDRESSES: Meetings will be held at the Main Interior Building, 1849 C Street NW., Washington, DC 20240. Room numbers will be provided at the entrance each day of the meetings, and also posted on the final agendas at *www.doi.gov/eiti/faca.*

FOR FURTHER INFORMATION CONTACT: USEITI Staff, Office of the Assistant Secretary—Policy, Management and Budget; 1849 C Street NW., Room 5117, Washington, DC 20240. You may also contact the USEITI Staff via email at *useiti@ios.doi.gov,* by phone at 202–208–0272, or by fax at 202–513–0734.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior established the USEITI Advisory Committee (Committee) on July 26, 2012 to serve as the initial USEITI multi-stakeholder group. More information about the Committee, including its charter, can be found at *www.doi.gov/eiti/faca.*

Meeting Agenda: Agenda items for the June 12–13, 2013, meeting will include legal context for revenue disclosures, consideration of sub-national payments, and discussions on scope and materiality. The agenda for the July 23–24, 2013, meeting will include criteria and components for the U.S. draft candidacy application for EITI. The final agendas and materials for the meetings will be posted on the Committee Web site at *www.doi.gov/eiti/faca.* All Committee meetings are open to the public.

Members of the public may attend in person, or view documents and presentations under discussion via WebEx at *http://bit.ly.ZQ9aQP* and listen to the proceedings at telephone number 1–866–707–0640 (Passcode: 1500538). Whenever possible, we encourage those participating by telephone to gather in conference rooms in order to share teleconference lines. Please plan to dial into the meeting and/or log-in to WebEx at least 10–15 minutes prior to the scheduled start time in order to avoid possible technical difficulties. Individuals with special needs will be accommodated whenever possible. If you require special assistance (such as an interpreter for the hearing impaired), please notify USEITI staff in advance of the meeting at 202–208–0272 or via email at *useiti@ios.doi.gov.* Anyone wishing to provide comments during the public comment period must submit written statements to *useiti@doi.gov* by June 7, 2013, for the June 12–13, 2013, meeting and by July 19, 2013, for the July 23–24, 2013 meeting. In addition, individuals or groups wishing to make comments in person or via the teleconference line may do so for up to two minutes each during the designated time on the agenda, as time permits.

The minutes from these proceedings will be posted at *http://www.doi.gov/eiti/faca* and will also be available for public inspection and copying at our office in the Main Interior Building in Washington, DC, by contacting USEITI staff at *useiti@ios.doi.gov* or by telephone at 202–208–0272. For more information about USEITI, visit *http://www.doi.gov/eiti.*

Dated: May 22, 2013.

Amy Holley,

Chief of Staff—Policy, Management and Budget.

[FR Doc. 2013–12698 Filed 5–28–13; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2013–N050: FF07R06000 FXRS12650700000 123]

Kenai National Wildlife Refuge, Soldotna, AK; Environmental Impact Statement for the Shadura Natural Gas Development Project

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we), announce that the Environmental Impact Statement (EIS) for the Shadura Natural Gas Development Project is available for public review. The EIS was prepared pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); the National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act); and the National Environmental Policy Act of 1969 (NEPA). It describes five alternatives for accessing the subsurface natural gas estate owned by Cook Inlet Region, Inc. (CIRI), and provides analysis of the effects of those alternatives. The Service does not have a preferred alternative.

DATES: Following a 30-day waiting period beginning with the publication of this notice, the Record of Decision will be signed.

ADDRESSES: Additional information concerning the project can be found at *http://alaska.fws.gov/nwr/planning/nepa.htm.*

Additional information concerning the Refuge may be found at *http://www.fws.gov/refuges/profiles/index.cfm?id=74525.*

Send comments or requests for information by any one of the following methods:

- *EMail: fw7_kenai_planning @fws.gov;*
- *Fax:* Attn: Peter Wikoff, (907) 786–3976;
- *U.S. Mail:* Peter Wikoff, Natural Resource Planner, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Peter Wikoff, Natural Resource Planner, U.S. Fish and Wildlife Service, at (907) 786–3357, or at the address above.

SUPPLEMENTARY INFORMATION: We have received an application from NordAq Energy, Inc., and have prepared an environmental impact statement (EIS) for, a proposed right-of-way within the Refuge. The right-of-way would be in compliance with the Alaska National Interests Lands Conservation Act (ANILCA) Section 1110(b) regarding access to inholdings, for the construction and operation of facilities associated with the exploration and production of natural gas from the subsurface estate within the Refuge. The United States owns the surface estate, which is managed by the U.S. Fish and Wildlife Service as part of the Kenai National Wildlife Refuge, while Cook Inlet Region, Inc. (CIRI), owns the subsurface estate of coal, oil, and gas in the project area. The project would be in the northwestern portion of the Kenai Peninsula, approximately 4 miles southeast of the end of the road in Captain Cook State Recreation Area. The application is being made by NordAq Energy, Inc., the holder of the lease from CIRI for the area.

The EIS describes and evaluates five alternatives and the anticipated impacts of each. We are publishing this notice in compliance with the NEPA regulations (40 CFR 1501.7) to advise other agencies and the public that the EIS is available for public review and comment.

Alternatives Considered

Alternative 1—No Action

The No Action alternative is required by the National Environmental Policy Act to present the current situation for comparison with the other alternatives.

Action Alternatives (Alternatives 2–5)

Under any of the action alternatives (alternatives 2–5), the Shadura Natural Gas Development Project would be constructed, operated, maintained, decommissioned, and reclaimed. During the first stage of the project, a gravel road, gravel storage yards, and a minimal drilling/processing pad would be constructed. Then one natural gas well would be drilled and tested. If the results of this testing were unfavorable, all equipment and gravel would be removed and the affected areas would be restored to approximate preconstruction conditions. If the results of testing were favorable, the second stage would be constructed.

The second stage of construction would involve expanding the drilling/processing pad to its final size and configuration; drilling five additional natural gas wells, an industrial water well, and a Class II disposal well; and constructing production facilities.

Once constructed, the project would operate for about 30 years. At the end of the project's useful life, it would be decommissioned and the impacted areas reclaimed.

Alternative 2—Applicant's Proposed Action:

The access road would extend from the North Kenai Spur Highway along the west and south sides of Salmo Lake to a drilling/processing pad. That portion of the access road outside the Refuge has already been permitted by the State of Alaska as part of another project.

The access road would be 4.3 miles long, about 2.7 miles of which would be on the Kenai NWR. The remaining 1.6 miles are on State and other lands. Of that portion on the Kenai NWR, about 1.7 miles of the road would be constructed in upland areas and about one mile would be in wetlands. The metering pad, gathering lines, and communication cable would be located parallel to the access road.

Alternative 3—Natural Gas Development with Northern Access:

Under this alternative, the access road would be constructed around the north and east sides of Salmo Lake. The access road would be 4.6 miles long, of which 2.2 miles would be constructed on State and other lands, and 2.4 miles would be on the Kenai NWR. About 3.7 miles would be in upland areas and about 0.9 mile would be in wetlands. The North Kenai Spur Highway would provide primary access to the project area. The metering pad, gathering lines, and communication cable would be located parallel to the access road.

Alternative 4—Natural Gas Development with Eastern Access:

Under this alternative, the access road would be constructed from the east. The access road would be 3.3 miles long—all on the Kenai NWR. About 2.7 miles would be constructed in upland areas and about 0.5 mile would be in wetlands.

The metering pad, gathering lines, and communication cable would not follow the access road but be constructed in the same locations as for Alternative 2. They would be installed cross-country between the drilling/processing pad and the previously permitted road on State lands. The segment between the Kenai NWR boundary and metering pad would follow this previously permitted road. The North Kenai Spur Highway would provide primary access to the metering pad.

Alternative 5—Natural Gas Development with Southern Access:

Under this alternative, an access road would be constructed from the southeast. The access road would be 5.5 miles long—all on the Kenai NWR. About 5.3 miles would be constructed in upland areas and about 0.2 mile would be in wetlands.

The metering pad, gathering lines, and communication cable would be constructed in the same locations as for Alternatives 2 and 4. They would be installed cross-country between the drilling/processing pad and the previously permitted road on State lands. The segment between the Kenai NWR boundary and metering pad would follow this previously permitted road.

The North Kenai Spur Highway would provide primary access to the metering pad.

Public Input

Special mailings, newspaper advertisements, and other media announcements informed the public of opportunities to meet with project staff at public meetings and how to provide written comments. Public meetings were held in Kenai on January 16, 2013, and in Anchorage on January 17, 2013. The EIS and information pertaining to the right-of-way application for the project are and have been available for viewing and downloading at *http://alaska.fws.gov/nwr/planning/nepa.htm.*

Refuge Information

The Refuge covers approximately 2 million acres on the Kenai Peninsula in south-central Alaska. It is readily accessible by road from the city of Anchorage, which is home to 41.5 percent of Alaska's population. The Refuge consists of the western slopes of the Kenai Mountains and forested lowlands bordering Cook Inlet. The Kenai Mountains, with their glaciers, rise to more than 6,500 feet. Treeless alpine and subalpine habitats are home to mountain goats, Dall sheep, caribou, wolverine, marmots, and ptarmigan. Boreal forests extend from sea level to 1,800 feet and are composed of spruce and birch forests, which on the Refuge are intermingled with hundreds of lakes. Boreal forests are home to moose, wolves, black and brown bears, lynx, snowshoe hares, and numerous species of Neotropical birds, such as olive-sided flycatchers, myrtle warblers, and ruby crowned kinglets. At sea level, the Refuge encompasses the last remaining pristine major saltwater estuary on the Kenai Peninsula, the Chickaloon River Flats. The Flats provide a major migratory staging area and nesting habitat for shorebirds and waterfowl throughout the spring, summer, and fall. The Flats are also used as a haul-out area by harbor seals. Thousands of salmon migrate up the Chickaloon River system each year to spawn.

While the United States owns the land surface within the Refuge, portions of the subsurface estate, consisting of the oil, gas, and coal are owned by Cook Inlet Region, Inc. (CIRI). CIRI is an Alaska Native regional corporation established under the Alaska Native Claims Settlement Act of 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*). CIRI received the subsurface oil, gas, and coal estate to nearly 200,000 acres within the Refuge as part of ANCSA and the subsequent Cook Inlet Land Exchange (Pub. L. 94–205 and Pub. L. 94–456 of 1976). The State of Alaska also owns lands adjacent to the Refuge (Captain Cook State Recreation Area). ANILCA Section 1110(b) requires that the Service provide adequate and feasible access to the CIRI-owned subsurface estate. CIRI has previously leased other portions of its subsurface estate within the Refuge. Oil and gas are currently being produced under Federal leases from other production units within the Refuge.

The Alaska National Interests Land Conservation Act of 1980 (Section 303[4]) established the Refuge from the Kenai Moose Range and other lands, and set forth the following major purposes for which the Refuge was to be managed:

(i) To conserve fish and wildlife populations and habitats in their natural diversity, including, but not limited to, moose, bear, mountain goats, Dall sheep, wolves, and other furbearers; salmonoids and other fish; waterfowl and other migratory and non-migratory birds;

(ii) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(iii) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the Refuge;

(iv) To provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and

(v) To provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold it from public view, we cannot guarantee we will be able to do so.

Dated: May 17, 2013.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2013–12680 Filed 5–28–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[123A2100DD/AAK30030000/A0T501010.000000]

Renewal of Agency Information Collection for Indian Self-Determination and Education Assistance Contracts

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information titled, ''Indian Self-Determination and Education Assistance Contracts, 25 CFR part 900,'' OMB Control Number 1076–0136. This information collection expires May 31, 2013.

DATES: Interested persons are invited to submit comments on or before June 28, 2013.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov*.

Please send a copy of your comments to Terrence Parks, Chief, Division of Self-Determination, BIA Office of Indian Services, 1849 C Street NW., Mail Stop 4513, Washington, DC 20240; send via facsimile to (202) 208–5113; or send via email to *Terrence.Parks@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Terrence Parks, (202) 513–7625.

You may 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:

I. Abstract

The BIA is seeking renewal of the approval for information collections conducted under their joint regulations, 25 CFR part 900, implementing the Indian Self-Determination and Education Assistance Act (ISDEAA) as amended (25 U.S.C. 450 et seq.). The Act requires the joint rule to govern how contracts are awarded to Indian tribes, thereby avoiding the unnecessary burden or confusion associated with two sets of rules and information collection requirements. See 25 U.S.C.

450k(a)(2)(A)(ii). The joint regulations at 25 CFR part 900 was developed through negotiated rulemaking with tribes in 1996 and governs, among other things, what must be included in a tribe's initial ISDEAA contract proposal to the BIA. A response is required to obtain and retain a benefit.

The information requirements for this joint rule represent significant differences from other agencies in several respects. Under the Act, the Secretaries of Health and Human Services and the Interior are directed to enter into self-determination contracts with tribes upon request, unless specific declination criteria apply, and, generally, tribes may renew these contracts annually, whereas other agencies provide grants on a discretionary or competitive basis. Both the BIA and IHS award contracts for multiple programs whereas other agencies usually award single grants to tribes. This information collection addresses only the information that BIA collects under the joint rule.

The BIA uses the information collected to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Federal agencies to administer and evaluate contract programs. Tribal governments or tribal organizations provide the information by submitting contract proposals, and related information, to the appropriate Federal agency, as required under the ISDEAA. No third party notification or public disclosure burden is associated with this collection. IHS estimates are not included in this submission as they will provide their estimates to OMB at a later date. The revisions included in this renewal include two information collection items that were not previously included.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable 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.

III. Data

OMB Control Number: 1076–0136.

Title: Indian Self-Determination and Education Assistance Contracts, 25 CFR part 900.

Brief Description of Collection: An Indian tribe or tribal organization is required to submit this information each time that it proposes to contract with BIA under the ISDEAA. Each response may vary in its length. In addition, each subpart of 25 CFR part 900 concerns different parts of the contracting process. For example, Subpart C relates to provisions of the contents for the initial contract proposal. The respondents do not incur the burden associated with Subpart C when contracts are renewed. Subpart F describes minimum standards for management systems used by Indian tribes or tribal organizations under these contracts. Subpart G addresses the negotiability of all reporting and data requirements in the contracts. Responses are required to obtain or retain a benefit. IHS estimates are not included in this notice, but will be submitted to OMB at a later date by IHS.

Type of Review: Revision of currently approved collection.

Respondents: Federally recognized Indian tribes and tribal organizations.

Number of Respondents: 533.

Estimated Number of Responses: 7,063.

Estimated Time per Response: Varies from 4 to 122 hours, with an average of 38 hours per response.

Frequency of Response: Each time programs, functions, services, or activities are contracted from the BIA under the ISDEAA.

Estimated Total Annual Hour Burden: 127,127.

Dated: May 23, 2013.

Christine Cho,

Acting Assistant Director for Information Resources.

[FR Doc. 2013–12730 Filed 5–28–13; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[134A2100DD.AAK4004601.A0N5A2020]

Renewal of Agency Information Collection for Navajo Partitioned Lands Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Navajo Partitioned Lands Grazing Permits authorized by OMB Control Number 1076–0162. This information collection expires May 31, 2013.

DATES: Interested persons are invited to submit comments on or before June 28, 2013.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov*. Please send a copy of your comments to David Edington, Office of Trust Services, 1849 C Street NW., Mail Stop 4637, Washington, DC 20240; facsimile: (202) 219–0006; email: *David.Edington@bia.gov*.

FOR FURTHER INFORMATION CONTACT: David Edington, (202) 513–0886. You may 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:

I. Abstract

BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 161, implementing the Navajo-Hopi Indian Relocation Amendments Act of 1980, 94 Stat. 929, and the Federal court decisions of *Healing* v. *Jones,* 174 F. Supp. 211 (D. Ariz. 1959) (Healing I), *Healing* v. *Jones,* 210 F. Supp. 126 (D.

Ariz. 1962), aff'd 363 U.S. 758 (1963) (Healing II), *Hopi Tribe* v. *Watt,* 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe* v. *Watt,* 719 F.2d 314 (9th Cir. 1983).

This information collection allows BIA to receive the information necessary to determine whether an applicant to obtain, modify, or assign a grazing permit on Navajo Partitioned Lands is eligible and complies with all applicable grazing permit requirements. This renewal includes changes to the Navajo Partitioned Lands: Grazing Permit (Form 5–5015), to make the guidance and instructions clear and easy to understand.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable 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.

III. Data

OMB Control Number: 1076–0162.

Title: Navajo Partitioned Lands Grazing Permits, 25 CFR 161.

Brief Description of Collection: Submission of information is required for Navajo Nation representatives, members, and authorized tribal organizations to obtain, modify, or assign a grazing permit on Navajo partitioned lands. Some of this information is collected on the following forms: Form 5–5015—Navajo Partitioned Lands: Grazing Permit, Form 5–5022—Navajo Partitioned Lands: Modification of Grazing Permit, and Form 5–5023—Navajo Partitioned Lands: Assignment of Grazing Permit. Changes were made to Form 5–5015—Navajo Partitioned Lands: Grazing Permit, to make the guidance and instructions clear and easy to understand. Response is required to obtain a benefit.

Type of Review: Revision of currently approved collection.

Respondents: Tribes, tribal organizations, and individual Indians.

Number of Respondents: 700.

Estimated Number of Responses: 3,120.

Estimated Time per Response: Varies, from 15 minutes to 1 hour.

Estimated Total Annual Hour Burden: 2,122 hours.

Dated: May 21, 2013.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2013–12710 Filed 5–28–13; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–12639; PPPWCHISM0.PPMOMFM1Z.Y00000]

Scorpion Pier Replacement Project, Channel Islands National Park, Santa Barbara County, California

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), and pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08), the National Park Service (NPS) is initiating the conservation planning and environmental impact analysis process for the proposed replacement and potential relocation of the existing Scorpion Pier at Santa Cruz Island's eastern waterfront. The NPS is the lead federal agency for environmental review under NEPA. The lead state agency for environmental review under the California Environmental Quality Act is currently being determined. As described in 36 CFR 800.8(c), the NPS is also using the NEPA process to fulfill certain provisions of § 106 of the National Historic Preservation Act related to consultation and public involvement.

DATES: All written comments must be postmarked or transmitted no later than July 29, 2013.

ADDRESSES: Submit comments by mail to Superintendent, Channel Islands National Park, Attn: Scorpion Pier Project, 1901 Spinnaker Drive, Ventura, CA 93001 or electronically to *http://parkplanning.nps.gov/parkHome.cfm?parkID=292*).

FOR FURTHER INFORMATION CONTACT: Karl Bachman, Facility Manager, Channel Island National Park, at (805) 658–5710.

Background: Santa Cruz Island and the surrounding one nautical mile of marine waters are located in Channel Islands National Park. The NPS owns and manages the eastern 24% of the island, including the Scorpion Valley area. Santa Cruz Island is surrounded by the Channel Islands National Marine Sanctuary which extends six nautical miles from the island. The Scorpion Pier is also within the Scorpion State Marine Reserve designated by the State of California. Over 55,000 people come ashore at the Scorpion pier annually for recreational activities including hiking, picnicking, camping, kayaking, and swimming. Many people also visit the island's historic Scorpion Ranch.

The existing Scorpion Pier is a flatbed railcar that was installed as a temporary facility in 2000. The pier is rapidly deteriorating due to wave action and saltwater. It has been closed numerous times due to weather hazards and to perform required repair and maintenance activities. The pier sometimes cannot be used by park or concession boats, such as during low tides, because of inadequate water depth. The existing pier access road undergoes reconstruction several times per year due to wave erosion.

Purpose and Need and Preliminary Alternatives: The NPS seeks to construct a permanent replacement pier that provides a safe, accessible, efficient, and sustainable access point for visitors and Park staff to Santa Cruz Island. Additionally, the NPS intends that this replacement pier, along with proposed improvements to the access road, will decrease future impacts to the island's sensitive archaeological resources. Permanent replacement of the pier is required due to the following current conditions:

- Shallow water depths at the pier, especially during low tide;
- Difficult vessel navigation and mooring during moderate to extreme wind and wave conditions;
- Challenging and limited access for visitors embarking from ferries onto the pier and from the pier onto the ferries;

• Narrow width of the existing pier inhibits efficient visitor and cargo circulation;
• Frequent maintenance required to the pier access road, which threatens to expose or damage sensitive resources;
• The existing temporary pier is reaching the end of its anticipated lifespan.

The objectives of the proposed pier replacement project include:
• Improving navigational access;
• Improving access and circulation for passengers, cargo, and park operations;
• Protecting marine and terrestrial environments;
• Preserving archaeological resources;
• Preserving and enhancing the historic character of the area.

To meet the purpose, need, and objectives, two preliminary alternatives identified thus far include replacing the pier in its existing location, and replacing the pier at a location approximately 150 feet to the south. If the pier is replaced in its present location, this would include some shoreline armoring to protect the pier access road. If a new pier is constructed to the south, the pier would span the beach and shoreline, and it would require only a short access road with a small amount of scour protection. In either location, the new pier will need to be longer and higher than the existing pier to facilitate safer vessel mooring in deeper water.

Comments and Public Scoping: The purpose of the scoping phase is to elicit comments from interested individuals, organizations, and agencies about issues and concerns about the proposed project in order to inform the development of the Draft EIS. Public scoping meetings are tentatively scheduled for late Spring or Summer 2013 in Ventura and Santa Barbara counties. Concurrent with the publishing of this Notice of Intent in the **Federal Register**, the confirmed dates, times, and locations of the scoping meetings will be publicized through local and regional news media and via the project Web site *http://www.nps.gov/chis/parkmgmt/scorpion-pier-replacement.htm*. The project Web site will be periodically updated, and provides relevant information, including the project description, current information about the EIS process, meeting notices, reports and documents, and useful links associated with the project.

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.

Decision Process: At this time, it is anticipated that the Draft EIS will be available for public review during Winter 2013. Availability of the Draft EIS for review will be formally announced in the **Federal Register**, through local and regional news media, and via the project Web site. Public meetings will be held after the Draft EIS is distributed to provide further opportunities to comment on the document. The Final EIS is anticipated to be completed in 2014. Because this is a delegated EIS, the official responsible for the final decision regarding the proposed pier replacement is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementation of the approved project will be the Channel Islands National Park.

Dated: March 15, 2013.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2013–12745 Filed 5–28–13; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0220]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Extension of Currently Approved Collection: Bureau of Justice Assistance Application Form: Public Safety Officers' Educational Assistance

ACTION: 30-Day Notice.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 46, on pages 1504, on March 8, 2013, allowing for a 60 day comment period.

Comments are encouraged and will be accepted for ''thirty days'' until July 29, 2013. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chris Casto at 202–353–7193, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC, 20531 or by email at *Chris.Casto@usdoj.gov*. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of currently approved collection.

(2) The title of the form/collection: Public Safety Officers' Educational Assistance.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Spouses and/or children of public safety officers who were killed or permanently and totally disabled in the line of duty.

Abstract: BJA's Public Safety Officers' Benefits (PSOB) Office will use the PSOEA application information to confirm the eligibility of applicants to receive PSOEA benefits. Eligibility is dependent on several factors, including the applicant having received or being eligible to receive a portion of the PSOB death benefit, or having a family member who received the PSOB disability benefit. Also considered are

the applicant's age and the schools being attended. In addition, information to help BJA identify an individual is collected, such as Social Security number and contact numbers and email addresses. The changes to the application form have been made in an effort to streamline the application process and eliminate requests for information that is either irrelevant or already being collected by other means.

Others: None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* It is estimated that no more than 150 new respondents will apply a year. Each application takes approximately 20 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection is:* 33 hours. Total Annual Reporting Burden: 150 × 20 minutes per application = 3000 minutes/by 60 minutes per hour = 60 hours.

If additional information is required, please contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

May 22, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–12631 Filed 5–28–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 21, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Kansas in the lawsuit entitled *United States* v. *Coffeyville Resources Refining & Marketing L.L.C.,* Civil Action No. 11–CV–1291–JTM–JPO.

The United States of America, on behalf of the United States Environmental Protection Agency (EPA) filed a Complaint in this action asserting the claims against Defendant Coffeyville Resources Refining & Marketing, LLC (''CRRM'') for penalties and injunctive relief under Section 112(r)(7) of the Clean Air Act (''CAA''), 42 U.S.C. 7412(r)(7). Specifically, the Complaint asserts that CRRM violated various Risk Management Program (RMP) regulations promulgated under Section 112(r) of the CAA at its petroleum refinery located in Coffeyville, Kansas. The RMP regulations require stationary sources using threshold amounts of regulated substances to undertake specified steps to prevent accidental releases and minimize the consequences of releases that do occur.

Under the proposed Consent Decree, CRRM will pay a penalty of $300,000 and correct all of the RMP violations alleged in the Complaint. In addition, it will retain independent third party experts to conduct three different and extensive audits of RMP components.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Coffeyville Resources Refining & Marketing L.L.C.,* D.J. Ref. No. 90–5–2–1–07459/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $9.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–12639 Filed 5–28–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Issuance of Insurance Policy

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Notice of Issuance of Insurance Policy,'' Form CM–921, to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 28, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201303–1240–001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Notice of Issuance of Insurance Policy, Form CM–921, provides insurance carriers with the means to supply the Division of Coal Mine Workers' Compensation within the OWCP with information showing that a responsible coal mine operator is insured against liability for payment of compensation under the Federal Black Lung Benefits Act. This ICR has been classified as a revision, because an electronic filing option is now available. For additional

substantive information about this information collection, see the related notice published in the **Federal Register** on March 12, 2013 (78 FR 15743).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0048. The current approval is scheduled to expire on May 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. Authorization for new information collection requirements would only take effect upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0048. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Notice of Issuance of Insurance Policy.

OMB Control Number: 1240–0048.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 51.

Total Estimated Number of Responses: 3500.

Total Estimated Annual Burden Hours: 8.

Total Estimated Annual Other Costs Burden: $434.

Dated: May 23, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–12667 Filed 5–28–13; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection; Extension With Minor Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about supporting the Workforce Investment Act's National Emergency Grant Program: Application and Reporting Procedures (OMB Control No. 1205–0439, expires July 31, 2013).

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 29, 2013.

ADDRESSES: Submit written comments to Jeanette Provost, Office of National Response, Room C–5311, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3500] (this is not a toll-free number). Email: *NEGEsystem@dol.gov.* Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3589. Email: *NEGEsystem@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is necessary for the U.S. Department of Labor's (DOL's) award of National Emergency Grants (NEGs) which are discretionary grants intended to temporarily expand the service capacity at the state and local area levels by providing funding assistance in response to significant dislocation events for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of the Workforce Investment Act (WIA) (Pub. L. 105–220); sections 113, 114 and 203 of the Trade Adjustment Assistance (TAA) Reform Act of 2002 (Pub. L. 107–210), as amended; and 20 CFR 671.140. Applications are accepted on an ongoing basis as the need for funds arises at the state and local levels. The provisions of WIA and the Regulations define four NEG project types:

- *Regular,* which encompasses plant closures, mass layoffs, and multiple layoffs in a single community.
- *Disaster,* which includes all eligible Federal Emergency Management Agency (FEMA)-declared natural and manmade disaster events.
- *TAA–WIA Dual Enrollment,* which provides supplemental funding to ensure that a full range of services is available to individuals eligible under the TAA program provisions of the TAA Reform Act of 2002, as amended.
- *TAA Health Insurance Coverage Assistance,* which provides specialized health coverage, support services, and income assistance to targeted individuals defined in the TAA program provisions of the TAA Reform Act of 2002, as amended.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the 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.

III. Current Actions

Type of Review: Extension with Minor Revisions.

Title: Workforce Investment Act National Emergency Grant.

OMB Number: 1205–0439.

Affected Public: State and Local Grantees, Tribal Government.

Form(s): ETA 9103, Cumulative Planning Form; ETA 9104, Quarterly Report; ETA 9105, Employer Data Form; ETA 9106, Project Synopsis; and ETA 9107, Project Operator Data Form.

Total Annual Respondents: 150.

Annual Frequency: Once per project; for ETA 9104, quarterly per project.

Total Annual Responses: 1,485.

Estimated Total Annual Burden Hours: 1,006.

Total Annual Burden Cost for Respondents: 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: May 21, 2013.

Signed: In Washington, DC, this 21st day of May 2013.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–12700 Filed 5–28–13; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Station, Units 3 and 4; Southern Nuclear Operating Company; Change to Information in Tier 1, Table 3.3–1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and Combined License Amendment: Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and License Amendment No. 6 to Combined Licenses (COL), NPF–91 and NPF–92. The COLs were issued to Southern Nuclear Operating Company, Inc., and Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia (the licensee); for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia. The amendment changes requested improve the clarity and accuracy of the Tier 1 information located in Table 3.3–1, ''Definition of Wall Thicknesses for Nuclear Island Buildings, Turbine Buildings, and Annex Building,'' which describes wall and floor thicknesses in the plant. The granting of the exemption allows the changes asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption were submitted by letter dated September 21, 2012 (ADAMS Accession No. ML12269A433). The licensee supplemented this request on October 29, 2012 (ADAMS Accession No. ML12307A195), and January 25, 2013 (ADAMS Accession No. ML13028A266).

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony Minarik, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6185; email: *Anthony.Minarik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and License Amendment No. 6 to COLs, NPF–91 and NPF–92, issued to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. The licensee sought to change the Tier 1 information located in Table 3.3–1 of its Updated Final Safety Analysis Report (UFSAR). These changes sought to improve the clarity and accuracy of the table so that it could be more easily inspected during Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) closure.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of Appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13074A178.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for Vogtle Units 3 and 4 (COLs NPF–91 and NPF–92). These documents can be found in ADAMS under Accession Nos. ML13112A231 and ML13112A242. The exemption is reproduced (with the exception of

abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–91 and NPF–92 are available in ADAMS under Accession Nos. ML13074A151 and ML13074A160. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to Vogtle Unit 3 and Unit 4. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated September 21, 2012, and as supplemented by letters dated October 29, 2012, and January 25, 2013, the licensee requested from the Commission an exemption from the provisions of 10 CFR Part 52, Appendix D, Section III.B, as part of license amendment request 12–008, ''Definition of Wall Thicknesses for Nuclear Island Buildings, Turbine Buildings, and Annex Building'' (LAR 12–008).

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13074A178, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR Part 52, Appendix D, Section III.B, to allow deviations from the Tier 1 certification information in Table 3.3–1 of the certified Design Control Document, as described in the licensee's request dated September 21, 2012, and as supplemented on October 29, 2012, and January 25, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 6, which is being issued concurrently with this exemption.

3. As explained in Section 5.0, ''Environmental Consideration,'' of the NRC staff's Safety Evaluation (ADAMS Accession No. ML13074A178), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of May 8, 2013.

III. License Amendment Request

By letter dated September 21, 2012, the licensee requested that the NRC amend the COLs for VEGP, Units 3 and 4, COLs NPF–91 and NPF–92. The licensee supplemented this application on October 29, 2012, and January 25, 2013. The proposed amendment would depart from the UFSAR Tier 1 material, and would revise the associated material that has been included in Appendix C of each of the VEGP, Units 3 and 4, COLs. Specifically the requested amendment will revise the Tier 1 information located in Table 3.3–1, to correctly translate information found in Tier 1 and Tier 2 drawings. No physical changes or design changes were requested as part of this amendment, only the presentation of design information in Table 3.3–1 changed.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on November 13, 2012 (77 FR 67685). The supplements had no effect on the no significant hazards consideration determination and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on September 21, 2012, and supplemented by letters dated October 29, 2012, and January 25, 2013. The exemption and amendment were issued on May 8, 2013 as part of a combined package to the licensee. (ADAMS Accession No. ML13074A139).

Dated at Rockville, Maryland, this 21st day of May 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–12699 Filed 5–28–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on June 5–7, 2013, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, June 5, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Station Blackout Mitigation Strategies Rulemaking (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft regulatory basis for the Station Blackout Mitigation Strategies rulemaking.

10:15 a.m.–12:15 p.m.: Revisions to Six Regulatory Guides on the use of Digital Computer Software in the Safety Systems of Nuclear Power Plants (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding revisions to Regulatory Guides 1.168, 1.169, 1.170, 1.171, 1.172, and 1.173 regarding the use of digital computer software in the safety systems of nuclear power plants.

1:15 p.m.–2:15 p.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—Discussion with members of the ACRS panels

performing the quality assessment of the following NRC research projects: (1) NUREG/CR–7026: Application of Model Abstraction Techniques to Simulate Transport in Soils and (2) NUREG–2121: Fuel Fragmentation, Relocation, and Dispersal During the Loss-of-Coolant Accident.

2:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Thursday, June 6, 2013, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–12:30 p.m.: Preparation for Meeting with the Commission on July 11, 2013 (Open)—Discussion of the topics for the upcoming meeting with the Commission on July 11, 2013.

1:30 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Friday, June 7, 2013, Conference Room T–2b1, 11545 Rockville Pike, Rockville, Md

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (76 FR 64146–64147). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: May 23, 2013.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2013–12744 Filed 5–28–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of May 27, June 3, 10, 17, 24, July 1, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of May 27, 2013

Tuesday, May 28, 2013

10:00 a.m. Briefing on Security Issues (Closed—Ex. 1).

1:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

Wednesday, May 29, 2013

9:00 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting) (Contact: Rani Franovich, 301–415–1868).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of June 3, 2013—Tentative

There are no meetings scheduled for the week of June 3, 2013.

Week of June 10, 2013—Tentative

There are no meetings scheduled for the week of June 10, 2013.

Week of June 17, 2013—Tentative

There are no meetings scheduled for the week of June 17, 2013.

Week of June 24, 2013—Tentative

There are no meetings scheduled for the week of June 24, 2013.

Week of July 1, 2013—Tentative

There are no meetings scheduled for the week of July 1, 2013.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: May 23, 2013.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2013–12836 Filed 5–24–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30527; 812–14041]

ProShares Advisors LLC, et al.; Notice of Application

May 21, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: ProShares Advisors LLC (''ProShares''), ProShares Trust (the ''Trust''), and SEI Investments Distribution Co. (''SEI'').

Summary of Application: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units ((a) through (d), the ''ETF Relief''); and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on August 2, 2012, and amended on December 19, 2012, and May 17, 2013.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 17, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. ProShares and the Trust: 7501 Wisconsin Avenue, Suite 1000E, Bethesda, MD 20814, and SEI, One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870 or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust intends to offer an actively managed investment series, ProShares CDS Long North American HY Credit ETF (the ''Initial Fund''). The investment objective of the Initial Fund will be to provide exposure to credit risk by investing primarily in index-based credit default swaps whose reference entities are North American high yield debt issuers; the Initial Fund is designed to increase in value when the North American below investment grade credit market improves.

2. ProShares, a Maryland limited liability company, will serve as investment adviser to the Initial Fund. Each Advisor (as defined below) is or will be is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Advisor may in the future retain one or more subadvisers (''Subadvisors'') to manage the portfolio of a Fund (as defined below). Any Subadvisor will be an ''investment adviser'' as defined in section 2(a)(20) of the Act and will be registered under the Advisers Act or not subject to such registration. A registered broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''), which may be an affiliate of the Advisor, will act as the distributor and principal underwriter of the Funds (''Distributor''). SEI will serve as the initial Distributor.

3. Applicants request that the order for ETF Relief apply to the Initial Fund and any future series of the Trust or of any other existing or future open-end management companies that utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by ProShares or an entity controlling, controlled by, or under common control with ProShares (together with ProShares, an ''Advisor''), and (b) comply with the

terms and conditions of the ETF Relief.[1] The Initial Fund and Future Funds together are the ''Funds''. Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) as well as currencies and other assets and positions (''Portfolio Positions''). For any Fund that invests in derivatives, the Fund's board of trustees or directors (for any entity, the ''Board'') periodically will review and approve the Fund's use of derivatives and how the Fund's Advisor or any Subadvisor assesses and manages risk with respect to the Fund's use of derivatives. Each Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance. Funds may invest in ''Depositary Receipts.'' A Fund will not invest in any Depositary Receipts that the Advisor or Subadvisor deems to be illiquid or for which pricing information is not readily available.[2] Funds may also invest in ''to-be-announced transactions'' or ''TBA Transactions,'' [3] short sales and forward commitment transactions. Each Fund will operate as an actively managed exchange-traded fund (''ETF''). The Funds may invest in other open-end and/or closed-end investment companies and/or ETFs.

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) (''12(d)(1) Relief'') apply to: (i) any Fund that is currently or subsequently part of the same ''group of investment companies'' as an Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A broker or dealer registered under the Exchange Act (''Broker'') or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (such participant, ''DTC Participant''). The Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[4] On any given Business Day [5] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[6] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [7] or (c) TBA transactions, short positions and other positions that cannot be transferred in kind [8] will be excluded from the Creation Basket.[9] If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Balancing Amount'').

6. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Balancing Amount, as described above; (b) if, on a given Business Day, a 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) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a 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 Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Funds holding non-U.S. investments (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants, any Fund or any Subadvisor will serve as the depositary bank for any Depositary Receipts held by a Fund.

[3] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[4] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[5] Each Fund will sell and redeem Creation Units on any day the Fund is open for business, including as required by section 22(e) of the Act (each, a ''Business Day'').

[6] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[7] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[8] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[9] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments 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) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[10]

7. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. A Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the Fund's estimated NAV, which will be calculated and disseminated in accordance with the relevant listing standards.

8. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[11] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

9. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists (''Specialists'') or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[12] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[13] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

11. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

12. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described there will be an appropriate statement to the effect that Shares are not individually redeemable.

13. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[14]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from

[10] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[11] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. The determination whether or not to impose a Transaction Fee, and the amounts of such Transaction Fee, will be determined on the same basis regardless of the identity of the Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

[12] If Shares are listed on NYSE Arca, Nasdaq or a similar electronic Stock Exchange, one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on the Stock Exchange. On Nasdaq or BATS Exchange, Inc., no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. If Shares are listed on a Stock Exchange such as the NYSE, one or more member firms will be designated to act as a Specialist and maintain a market for the Shares trading on the Stock Exchange. No Market Maker or Specialist will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within section 2(a)(3)(A) or (C) of the Act due to ownership of Shares, as described below.

[13] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[14] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, the Funds 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.

section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains immaterial.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Positions to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction, up to a maximum of 14 calendar days, in the principal local markets where transactions in the Portfolio Positions of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the

Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Advisor''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Advisor''), any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor (''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [15] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees (''Board'') of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[16]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[17] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and also engage in any accompanying in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or a second-tier affiliates.[18]

[15] An ''Investing Fund Affiliate'' is any Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[16] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[17] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[18] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares

Continued

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units, nor by prohibiting Investing Funds and Funds transacting directly in Creation Units. Absent the circumstances discussed above, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Positions. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Positions currently held by the relevant Funds. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[19] Absent the circumstances discussed above, on each Business Day, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Positions. The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the policies set forth in its registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Positions held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover any in-kind transactions that would accompany such sales and redemptions.

[19] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute an FOF Participation Agreement with the Fund stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) Relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12637 Filed 5–28–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69628; File No. SR–ICEEU–2013–09]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, to Clear Contracts Traded on the LIFFE Administration and Management Market

May 23, 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 May 13, 2013, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as modified by Amendment No. 1, and as described in Items I, II, and III

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been prepared primarily by ICE Clear Europe.[3] The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe submits revised Parts 1, 2, 4, 5, 7, 8, 11, and 12 and new Part 18 of its Rules (along with other clarifying and conforming Rule amendments) and revisions to its Finance Procedures, Clearing Procedures, Delivery Procedures and Membership Procedures. As announced on December 20, 2012, ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on LIFFE Administration and Management, a recognized investment exchange under the UK Financial Services and Markets Act of 2000, including those processed through LIFFE Administration and Management's Bclear service. BClear is the service operated by LIFFE, which enables LIFFE Clearing Members to report certain bilaterally agreed off exchange trades to LIFFE, for the purposes of the LIFFE Rules. Upon trades being reported they will be eligible for clearing by ICE Clear Europe as a LIFFE Block Transaction under the ICE Clear Europe Rules.

The LIFFE contracts (''LIFFE Contracts'') that are proposed to be cleared by ICE Clear Europe include interest rate and government bond futures and options, certain agricultural futures and options, and futures and options on underlying equity securities and equity indices.

With respect to LIFFE Contracts that constitute securities for purposes of the U.S. securities laws (i.e., LIFFE futures and options on equity securities) (the ''LIFFE securities products''), LIFFE does not permit direct access by U.S. persons (including U.S. LIFFE members) to its trading facility for purposes of trading such products. In addition, only certain LIFFE securities products are made available for trading indirectly by U.S. persons, in accordance with applicable U.S. legal and regulatory requirements.[4] (Attached in Exhibit 5 hereto is a list of LIFFE securities products proposed to be cleared by ICE Clear Europe.) Consistent with these arrangements and U.S. legal and regulatory restrictions, ICE Clear Europe proposes to adopt new rule 207(f), which provides that FCM/BD Clearing Members and other clearing members of ICE Clear Europe that are organized in the United States will not be permitted to clear LIFFE Contracts that are futures or options on underlying U.S. securities (other than futures contracts on broad-based security indices). In addition to adopting this Rule, ICE Clear Europe will notify clearing members of these restrictions and is adopting procedures for monitoring and enforcing compliance by clearing members with these restrictions.

ICE Clear Europe's clearing activities with respect to the LIFFE securities products, and in particular those involving U.S. securities, will be conducted outside the United States. As noted above, all Clearing Members entitled to clear products involving U.S. securities will be located outside the United States. In addition, the internal ICE Clear Europe financial, managerial, operational and similar resources dedicated to the clearing function for LIFFE securities products are located in the United Kingdom or otherwise outside the United States. Specifically, the ICE Clear Europe management team and risk management personnel are located in London. There will be a dedicated LIFFE Risk Manager supported by a team of risk analysts in place on, or after, 1 July 2013, and further resources within the Operations, Corporate Development, Finance and Treasury Departments all situated in London.

ICE Clear Europe itself does not have employees or offices located in the United States. ICE Clear Europe is recognized as an interbank payment system by the Bank of England under the Banking Act 2009 in the UK. Physical settlement of any LIFFE securities products will also occur through facilities outside the United States, in particular through the Euroclear UK and Ireland systems as well as other European Central Securities Depositories (CSDs). ICE Clear Europe does obtain certain information technology services from its U.S. affiliates pursuant to intercompany services agreements. However, all clearing personnel and decision-making, including supervision of such information technology services by ICE Clear Europe, remains in London, and those U.S. affiliates do not have any other role in ICE Clear Europe' clearing operations for the LIFFE securities products.

The clearing of the LIFFE Contracts, including the LIFFE securities products, will be supported by the F&O Guaranty Fund. The F&O Guaranty Fund replaces the existing Energy Guaranty Fund, and will support the clearing of both the existing energy futures and options products cleared by ICE Clear Europe and the LIFFE Contracts. (The F&O Guaranty Fund will not support the clearing of credit default swap (''CDS'') or FX products cleared at ICE Clear Europe, and the CDS and FX Guaranty Funds will not support the clearing of energy or LIFFE contracts.) The F&O Guaranty Fund will be divided into two segments, an energy clearing segment and a LIFFE clearing segment, each of which is primarily allocated to losses from products in that segment and secondarily to losses from products in the other segment, as discussed below. The size of each segment will be determined separately based on ICE Clear Europe's risk assessment of the energy and LIFFE products, respectively, and each segment will be separately stress-tested in accordance with the clearing house's risk management policies and procedures. The energy segment will initially be the same size as the existing Energy Guaranty Fund, approximately USD650 million. The LIFFE clearing segment is expected to initially be approximately GBP370 million (the exact size will be determined prior to the commencement of LIFFE Contract clearing).

In the event of a default of a clearing member for which ICE Clear Europe needs to apply the F&O Guaranty Fund in accordance with the risk waterfall under the Rules, the energy segment will be applied first to losses resulting from cleared energy products, and the LIFFE segment will be applied first to losses resulting from cleared LIFFE Contracts. Once a segment has been exhausted by losses in its product category, remaining assets from the other segment may be applied to those losses.

The purpose of the rule and procedure changes is to implement this clearing relationship. The other proposed changes in the Rules and procedures reflect conforming changes to definitions and related provisions and other drafting clarifications and updates, as noted below. In order to effect these amendments, the Finance Procedures have been updated more

[3] On May 22, 2013, ICE Clear Europe submitted Amendment No. 1 to the proposed rule change to, among other things, clarify the scope of products proposed to be cleared, add new Rule 207(f) prohibiting FCM/BD Clearing Members and other Clearing Members organized in the U.S. from clearing LIFFE Contracts that are futures or options on underlying U.S. securities, add additional clarification surrounding the operation of the combined F&O Guaranty Fund and the margining of LIFFE Contracts, and supplement the statutory basis for the proposed rule change.

[4] *See, e.g.,* SEC No-Action Letter to LIFFE A&M, dated July 29, 2009; SEC No-Action Letter to LIFFE A&M, dated March 6, 1996; SEC No-Action Letter to LIFFE A&M, dated May 1, 1992.

generally, and the Finance Procedures and Delivery Procedures have been updated to reflect changes in EU Law with respect to Registry Regulations and the emissions markets operated by ICE Futures Europe.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections A, B, and C below, of the significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe submits revised Parts 1, 2, 4, 7, 8, 11, and 12 and new Part 18 of its Rules (along with other clarifying and conforming Rule amendments) and revisions to its Finance Procedures, Clearing Procedures, Delivery Procedures and Membership Procedures. As announced on December 20, 2012, ICE Clear Europe has agreed to act as the clearing organization for futures and option contracts traded on LIFFE Administration and Management, a recognized investment exchange under the UK Financial Services and Markets Act of 2000. The purpose of the rule and procedure changes is to implement this clearing relationship. The other proposed changes in the Rules and procedures reflect conforming changes to definitions and related provisions and other drafting clarifications, and do not affect the substance of the Rules and procedures. The text of the proposed rule and procedure amendments are attached, with additions underlined and deletions in strikethrough text.

Rules

The amendments revise Part 1 of the Rules, in which Rule 101, which provides definitions for certain terms, is modified to add new defined terms and revise existing definitions. Included in the changes to Rule 101 are the designation of LIFFE as a Market for which ICE Clear Europe provides clearing services, the addition of defined terms and other revisions to cover LIFFE Contracts and the creation of a new category ''F&O Contracts'' that will include Energy Contracts and LIFFE Contracts (and related definitions). The Energy Guaranty Fund will be redesignated as the F&O Guaranty Fund, which fund will be sub-divided with respect to Energy Contracts and LIFFE Contracts as discussed above.

Part 2 of the Rules has been revised to address requirements for LIFFE Clearing Members and other conforming changes. New Rule 207(f) would be adopted to prohibit U.S. clearing members from clearing LIFFE securities products involving underlying U.S. securities.

Part 3 of the Rules contain certain conforming changes.

Changes to Part 4 of the Rules address the submission of LIFFE Contracts for clearing and related matters. A new Rule 410 has been added to set out a framework for Link Agreements, which are generally defined as agreements entered into between ICE Clear Europe and another exchange for which ICE Clear Europe does not otherwise provide clearing services that provides for the transfer of contracts to or from that exchange (or its clearing house) to ICE Clear Europe. LIFFE currently has link arrangements with Tokyo Financial Exchange Inc. and Tokyo Stock Exchange Inc., which exchanges would constitute ''Participating Exchanges'' pursuant to the new Rules.

Part 5 of the Rules, which addresses margin requirements, contains certain conforming changes. Margin requirements for LIFFE Contracts will be calculated using the SPAN®1 v4 algorithm,[5] with modifications for concentration charges and a trinomial model used with respect to certain LIFFE option transactions. ICE Clear Europe will determine the margin parameters used in the SPAN algorithm for LIFFE Contracts cleared by ICE Clear Europe, and make appropriate modifications to those parameters from time to time, within the framework of the margin requirement policy approved by the ICEU F&O Risk Committee. The margin parameters applicable from time to time will be issued and amended by ICE Clear Europe via a circular posted on its Web site.

Part 6 of the Rules contain no changes.

The amendments revise Part 7 of the Rules, which deals with settlement and delivery of futures, to address settlement of LIFFE Contracts. Specifically, Rule 703 has been amended to address the treatment of tenders delivered in relation to Futures that are not settled in cash. Additionally, Rule 704, which deals with the credit and debit of accounts, has been amended to provide that any payment or other allowance payable by or to either the Buyer or Seller under the terms of the Contract shall be paid by or to the Clearing House for onward payment to the Buyer or Seller, as the case may be.

The amendments revise Part 8 of the Rules, which deals with Options, to provide additional terms with respect to the exercise of option contracts other than options on futures. Specifically, new Rule 806 provides that upon exercise of any Option with a Deliverable which is not a Future, a Contract for the sale and purchase of the relevant Deliverable (a ''Contract of Sale'') at the Strike Price (or such other price as is required pursuant to the Contract Terms) will arise pursuant to Rule 401 and in accordance with the Contract Terms for the Option and applicable Market Rules. Additionally, new Rule 806 provides that upon such Contract of Sale or Contracts of Sale having arisen and all necessary payments having been made by the Clearing Member and Clearing House pursuant to the Clearing Procedures, the rights, obligations and liabilities of the Clearing House and the relevant Clearing Member in respect of the Option shall be satisfied and the Option shall be terminated.

The amendments to Part 8 of the Rules also include the addition of new Rule 809, which clarifies the delivery and settlement procedures with respect to Contracts of Sale arising from Options. Pursuant to new Rule 809, the Clearing House has the authority to direct a Clearing Member, who is a seller under a Contract of Sale subject to delivery, to deliver the Deliverable under such Contract to another Clearing Member that is a buyer. New Rule 809 further provides that if a buyer under a Contract of Sale rejects a Deliverable delivered to it, the Clearing House as buyer under the back-to-back Contract with the Seller shall be entitled, if to do so would be in accordance with the applicable Contract Terms, to take the same action as against the seller under the equivalent Contract and the Clearing House shall not be deemed to have accepted such delivery until the relevant buyer has accepted delivery under the first Contract.

New Rule 810 addresses the cash settlement terms of Options with Deliverables other than Futures. New

[5] SPAN is a registered trademark of Chicago Mercantile Exchange Inc. and used by ICE Clear Europe under license. SPAN is a risk evaluation and margin framework algorithm.

Rule 811 provides that the Clearing House shall make any necessary credits or debits to or from Clearing Members' Proprietary Margin Account and Customer Margin Accounts, as appropriate, arising as a result of each cash settlement and delivery in accordance with Part 3 of the Rules.

Part 9 of the Rules contain certain conforming changes.

Part 10 of the Rules contain no changes.

The amendments revise Part 11 of the Rules, which deals with the Guaranty Funds. The clearing of LIFFE Contracts will be supported by the existing Energy Guaranty Fund, which will be re-designated the ''F&O Guaranty Fund.'' Contributions to the F&O Guaranty Fund will be primarily allocated to losses from either Energy Contracts or LIFFE Contracts, and secondarily allocated to the other such class of Contracts, as set forth in Rule 1103 and as discussed above.

The amendments also revise Part 12 of the Rules, which addresses UK Settlement Finality Regulations and the Companies Act 1989. Conforming changes have been made to incorporate LIFFE Contracts in the provisions addressing various categories of transfer orders.

The amendments include a new Part 18 of the Rules, which provide for transitional provisions concerning the novation of open contracts with LIFFE A&M and LCH.Clearnet Limited, under LIFFE A&M's existing clearing arrangements, to ICE Clear Europe, under the new clearing relationship, and the transfer of Clearing Member cash and securities from LCH.Clearnet Limited to ICE Clear Europe.

Membership Procedures

ICE Clear Europe Limited also submits revised Membership Procedures. ICE Clear Europe's Membership Procedures have been updated to provide for the clearing of LIFFE Contracts and to reflect a new membership category, ''F&O Clearing Members'', which identify Clearing Members seeking to clear LIFFE Contracts as well as existing Energy Clearing Members. The amendments reflect various other updates and changes to conform to other provisions of the Rules and procedures. In Section 4 (''Matters Requiring Notification by Clearing Members''), the chart governing all notifications, their timing and their form requirements have been generally updated to address the changes to the numbering of provisions and otherwise to reflect the latest version of ICE Clear's Clearing Rules. New subsections G (''Clearing Procedures''), H (''Finance Procedures''), I (''Complaint Resolution Procedures'') and J (''Business Continuity Procedures'') have also been added, reflecting the notifications, timing and form requirements contained in such procedures.

Finance Procedures

ICE Clear Europe also submits revised Parts 2, 3, 4, 5, 6 and 9 of its Finance Procedures, which reflect general updates as well as changes to the clearing of LIFFE Contracts.

Section 2.1 has been revised to clarify the currencies supported by ICE Clear Europe in various contexts. Initial and Original Margin obligations may be met only in USD, GBP and EUR currency. CAD, CHF and SEK currency may be used by Clearing Members only for the receipt of income on non-cash Permitted Cover with coupons payable in those currencies. CAD may also be used for Variation Margin and settlement payments only for Energy Contracts which settle in CAD. Certain additional currencies may be used for Variation Margin and settlement payments for LIFFE Contracts which settle in such currencies.

Similarly, Section 3.7 has been amended to clarify that currencies eligible for Triparty Collateral for Original or Initial Margin are limited to USD, GBP and EUR.

Section 4.1 governing currency requirements for the accounts of the Clearing Members has been slightly modified: All F&O Clearing Members must have an account, denominated in USD; all CDS Clearing Members must have an account denominated in EUR; all F&O Clearing Members must additionally have at least one further account denominated in either GBP or EUR; all CDS Clearing Members must additionally have at least one further account denominated in either GBP or USD; a Clearing Member which has an Open Contract Position in a contract for which EUR, GBP, USD or CAD is the settlement currency must have an account denominated in such currency; a Clearing Member which transfers non-cash Permitted Cover to the Clearing House which pays a coupon, interest or redemptions in USD, EUR, GBP, CAD, CHF or SEK must have an account in that currency; and an F&O Clearing Member that is a LIFFE Clearing Member and is party to LIFFE Contracts which settle in CAD, CHF, CZK, DKK, HUF, JPY, NOK, PLN, SEK or TRY must have an account in each such currency.

The procedures of the assured payment system have been updated under Section 5.5 of the Finance Procedures to conform to changes recently made to Rule 301(f) regarding the liability of Clearing Members for the remittance of funds through Approved Financial Institutions.

Section 6.1(h), which addresses the various payments that may be included in a cash transfer, has been modified to address intra-day call of additional Initial or Original Margin Call, the proceeds of which may be applied against future Variation Margin or Mark-to-Market Margin calls. Intra-day Calls will now only be processed in USD, GBP or EUR. Section 6.1(h)(vi) has been revised to address general procedures for rebates, fee discounts and incentive programs that the Clearing House may adopt from time to time. In addition, the provisions on Currency Holidays and payments on other currencies, Section 6.1(h)(viii), have also been updated and now include language on Force Majeure Events and Financial Emergencies.

In Section 9, the definitions relating to the use of Emission Allowances and Permitted Cover have been updated to reflect changes in EU Law with respect to Registry Regulations. Certain conforming changes are made in Part 10 of the Finance Procedures. Finally, Section 12.1 has been revised to reflect the sub-categories of Letters of Credit that might be used to satisfy Original Margin, being a ''Standard Letter of Credit'' and a ''Pass-Through Letter of Credit''. The relevant forms of the Letters of Credit have also been updated in Section 12.4.

Clearing Procedures

ICE Clear Europe submits its revised Clearing Procedures. ICE Clear Europe's Clearing Procedures have been updated to provide for the clearing of LIFFE Contracts as well as certain other updates and confirmations. Accordingly, amendments have been made to the provisions relating to ICE Clear Europe's post-trade administration, clearing and settlement systems, position management and position accounts in Sections 1, 2 and 3, respectively.

Delivery Procedures

ICE Clear Europe submits its revised Delivery Procedures. ICE Clear Europe's Delivery Procedures have been amended to provide for the delivery of LIFFE Contracts. The following provisions have been added to the Delivery Procedures, which set out the new delivery arrangements:

- Section 8 (''Alternative Delivery Procedure: LIFFE White Sugar and Raw Sugar'');
- Section 17 (''LIFFE Guardian''), which describes the LIFFE Guardian electronic grading and delivery system

which will be used in certain LIFFE deliveries; and

Parts I–Q, which set out the delivery arrangements for the additional LIFFE Contracts as follows:

- Part I: ''LIFFE Cocoa Contracts''
- Part J: ''LIFFE Coffee Contracts''
- Part K: ''LIFFE White Sugar Contracts''
- Part L ''LIFFE Wheat Contracts''
- Part M: ''LIFFE Deliveries''
- Part N: ''LIFFE Common Delivery Procedures''
- Part O: ''LIFFE Gilt Contracts''
- Part P: ''LIFFE Japanese Government Bond Contracts''
- Part Q: ''LIFFE Equity Futures/Options''

Further, the Schedule of Forms and Reports has been updated and lists additional delivery forms used for the LIFFE Contracts.

Part A of the Delivery Procedures relating to emissions contracts has also been amended, reflecting changes to EU legislation, certain new emission contracts previously launched by ICE Futures Europe and the use of a single EU registry together with additional conforming and updating changes to the Delivery Procedures generally.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule and procedure changes are consistent with the requirements of Section 17A of the Act [6] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[7] The amendments will provide for clearing of LIFFE Contracts by ICE Clear Europe, consistent with ICE Clear Europe's existing clearing arrangements and related financial safeguards, protections and risk management procedures, as discussed herein. Acceptance of LIFFE Contracts for clearing, and conditions set out in these rule and procedure amendments, will promote the prompt and accurate clearance of and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[8] The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. Clearing of LIFFE Contracts will satisfy relevant requirements of Rule 17Ad–22,[9] as discussed below.

Financial Resources. As discussed above, ICE Clear Europe has structured the F&O Guaranty Fund to provide sufficient additional financial resources to support the clearing of LIFFE Contracts consistent with the requirements of Rule 17Ad–22.[10] The proposed amendments do not impact ICE Clear Europe's financial resources devoted to its security-based swap related (i.e., credit default swap) clearing business. Moreover, new policies were approved covering margin requirements, mark-to-market margin, capital to margin, membership, internal rating, backtesting, wrong-way risk, concentration charges, intraday margin and stress testing in respect of the LIFFE A&M clearing relationship. Relevant models applicable to the clearing of LIFFE Contracts were subjected to independent validation as required by ICE Clear Europe's model governance framework.

Operational Resources. ICE Clear Europe believes it will have the operational and managerial capacity to clear the LIFFE Contracts as of the commencement of clearing, consistent with the requirements of Rule 17Ad–22(d)(4).[11] Staffing levels and resources at ICE Clear Europe related to operational and technology needs for the clearing of LIFFE Contracts will be subject to ongoing review. ICE Clear Europe believes that its existing systems are appropriately scalable to handle the expected increase in volume. ICE Clear Europe may also enter into services arrangements with LIFFE A&M from time to time in connection with the clearing of LIFFE Contracts, under which LIFFE A&M or its personnel may assist with certain clearing functions, particularly with respect to contracts that go to delivery.

Participant Requirements. ICE Clear Europe believes that the Amendments and the clearing of LIFFE Contracts are consistent with the requirements of Rule 17Ad–22(d)(2) [12] to provide fair and open access through participation requirements that are objective and publicly disclosed. ICE Clear Europe believes that the Amendments establish fair and objective criteria for the eligibility to clear LIFFE Contracts. ICE Clear Europe clearing membership is available to participants that meet such criteria. ICE Clear Europe clearing members that wish to clear LIFFE Contracts will have to satisfy the financial resources requirements to clear these products and continue to do so in order to preserve their eligibility to clear LIFFE Contracts. Clearing member compliance with the requirements to clear LIFFE Contracts will be monitored by ICE Clear Europe.

Settlement. ICE Clear Europe believes that the Amendments will improve the finality and accuracy of its daily settlement process and reduce the risk to ICE Clear Europe of settlement failures, consistent with the requirements of Rule 17Ad–22(d)(5), (12) and (15).[13] The proposed Amendments require ICE Clear Europe clearing members that clear LIFFE Contracts to maintain accounts at approved financial institutions and that are denominated in the settlement currency of the LIFFE Contracts such clearing member clears. Also, the Finance Procedures Amendments clarify the steps a clearing member (and its approved financial institutions) must take in order for the clearing member's obligations to pay ICE Clear Europe to be deemed satisfied and complete.

Likewise, the proposed Amendments to the delivery procedures clarify the obligations of ICE Clear Europe and its clearing members in respect of physically-settled LIFFE Contracts. The proposed Amendments contemplate that ICE Clear Europe may, from time to time, enter into clearing services arrangements with LIFFE A&M, in respect of LIFFE Contracts, pursuant to which certain functions may be performed by LIFFE A&M for ICE Clear Europe. In general, the terms to be added to the ICE Clear Europe delivery procedures in large part reflect the terms currently applicable to the LIFFE Contracts under their existing clearing arrangements.

ICE Clear Europe believes these changes are thus in furtherance of, and are consistent with, the requirements of Rule 17Ad–22 [14] and will facilitate the continued operation of the clearing house's settlement process. ICE Clear Europe believes that its Rules and procedures related to settlements (including physical settlements), as amended, appropriately identify and manage the risks associated with settlements under LIFFE Contracts.

Default Procedures. ICE Clear Europe believes that the Rules and its relevant procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults, including in respect of LIFFE Contracts,

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 240.17Ad–22.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

in accordance with Rule 17Ad–22(d)(11).[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition. LIFFE A&M is an established market for the LIFFE Contracts, and ICE Clear Europe does not anticipate that its becoming the clearing house for the LIFFE Contracts will adversely affect the trading market for those contracts on LIFFE A&M. Moreover, ICE Clear Europe has established fair and objective criteria for eligibility to clear LIFFE Contracts, and accordingly ICE Clear Europe does not believe that the proposed rule changes will impose any burden on competition among clearing members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the rule changes have been solicited and one comment has been received to date but was not in connection with the specific rule and procedure changes. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

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–ICEEU–2013–09 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–ICEEU–2013–09. 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 Europe and on ICE Clear Europe's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEU_SEC_051313_3.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–ICEEU–2013–09 and should be submitted on or before June 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12704 Filed 5–28–13; 8:45 am]

BILLING CODE 8011–01–P

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69620; File No. SR–NSCC–2013–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing Amendment No. 1 and Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, To Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed To Increase Liquidity Resources To Meet Its Liquidity Needs

May 22, 2013.

On March 21, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2013–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on April 10, 2013.[3] As of May 17, 2013, the Commission had received eight comment letters on the proposal contained in the proposed rule change and its related advance notice.[4] Pursuant to Section 19(b)(1) of the Act[5] and Rule 19b-4 thereunder,[6] notice is hereby given that on April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the proposed rule change. Amendment No. 1 revised NSCC's original proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4. NSCC also filed the proposal contained in the proposed rule change, as modified by Amendment No. 1, as an advance notice (File No. SR–NSCC–2013–802) pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) thereunder. *See* Release No. 34–69451 (Apr. 25, 2013), 78 FR 25496 (May 1, 2013). On May 20, 2013, the Commission extended the period of review of the advance notice so that the Commission shall have until July 19, 2013 to issue an objection or non-objection to the advance notice. Release No. 34–69605 (May 20, 2013). The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

[3] Release No. 34–69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013).

[4] *See* Comments Received on File Nos. SR–NSCC–2013–802 (*http://sec.gov/comments/sr-nscc-2013-802/nscc2013802.shtml*) and SR–NSCC–2013–02 (*http://sec.gov/comments/sr-nscc-2013-02/nscc201302.shtml*). Since the proposal contained in the proposed rule change was also filed as an advance notice, *see* Release No. 34–69451, *supra* note 2, the Commission is considering all public comments received on the proposal regardless of whether the comments are submitted to the proposed rule change (File No. SR–NSCC–2013–02) or the advance notice (File No. SR–NSCC–2013–802).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

filing to include as Exhibit 2 a written comment received by NSCC from National Financial Services, LLC relating to the proposed rule change.[7] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and to designate a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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–NSCC–2013–02 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–NSCC–2013–02. 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 NSCC and on NSCC's Web site at *http://dtcc.com/legal/rule_filings/nscc/2013.php.*

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–NSCC–2013–02 and should be submitted on or before June 19, 2013.

II. Designation of a Longer Period for Commission Action

Section 19(b)(2) of the Act 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.[8] The 45th day from the publication of notice of the original filing of the proposed rule change is May 25, 2013. The Commission is extending this 45-day time period.

The proposed rule change would permit NSCC to require certain NSCC members to provide supplemental liquidity deposits to NSCC's Clearing Fund, in order to increase NSCC's liquidity resources to meet its liquidity needs. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the complex issues under the proposed rule change and the comments received to the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates July 9, 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–NSCC–2013–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12659 Filed 5–28–13; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Letter from National Financial Services dated Mar. 19, 2013, *available at http://sec.gov/rules/sro/nscc.shtml,* File No. SR–NSCC–2013–02, Additional Materials.

[8] *See* 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12) and (31).

SMALL BUSINESS ADMINISTRATION

VPC SBIC I, LP, License No. 05/05 0308; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that VPC SBIC I, LP, 227 West Monroe Street, Suite 3900, Chicago, IL 60606, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). VPC SBIC I, LP proposes to Provide debt financing to Global Employment Holdings, Inc., 10375 Park Meadows Drive, Suite 475, Littleton, CO, 80124 (''GEYB''). The proceeds will be used to redeem maturing debt and fund an acquisition.

The financing is brought within the purview of § 107.730(a) of the Regulations because Victory Park Credit Opportunities, L.P., Victory Park Credit Opportunities Intermediate Fund, L.P., and Victory Park Capital Advisors, LLC, Associates of the Licensee, are majority owners of and control GEYH, and because portions of the financing will be used to repay obligations to Victory Park Credit Opportunities Intermediate Fund, L.P. and Victory Park Credit Opportunities, L.P., and additional Associates of the Licensee, VPC Fund II, L.P. and VPC Intermediate Fund II (Cayman), L.P.; this transaction is considered Financing an Associate and Providing Financing to discharge an obligation to an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Administration, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: May 15, 2013.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 2013–12501 Filed 5–28–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Escalate Capital Partners SBIC I, L.P., License No. 06/06–0335; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Escalate Capital Partners SBIC I, L.P., 300 W. 6th Street, Suite 2250, Austin, TX 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Escalate Capital Partners SBIC I, L.P. proposes to make a debt investment in Windwood I Development Co., Inc., a wholly owned subsidiary of Lincoln Renewable Energy, LLC, which is portfolio company of its Associate Austin Ventures.

The financing is brought within the purview of § 107.730(a)(l) of the Regulations because Austin Ventures, an Associate of Escalate Capital Partners, SBIC I, L.P., owns more than ten percent of Lincoln Renewable Energy LLC, parent company of Windwood I Development Co., Inc. Therefore, this transaction is considered a financing of an Associate requiring an exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: May 15, 2013.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 2013–12500 Filed 5–28–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

DeltaPoint Capital IV, L.P., DeltaPoint Capital IV (New York), L.P., License No. 02/02–0662,02/02–0661; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that DeltaPoint Capital IV, L.P. and DeltaPoint Capital IV (New York), L.P., 45 East Avenue, 6th Floor, Rochester, NY 14604, Federal Licensees under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). DeltaPoint Capital IV, L.P. provided financing to Switchgear Acquisition, Inc., 1211Stewart Avenue, Bethpage, NY 11714. The financing was contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because DeltaPoint Capital IV (New York), L.P., an Associate of DeltaPoint Capital IV, L.P., owns more than ten percent of Switchgear Acquisition, Inc.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 2013–12497 Filed 5–28–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Escalate Capital Partners SBIC I, L.P., License No. 06/06–0335; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Escalate Capital Partners, SBIC I, L.P., 300 W. 6th Street, Suite 2250, Austin, TX 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Escalate Capital Partners, SBIC I, L.P. proposes to provide loan financing to SailPoint Technologies, Inc., 6034 West Courtyard Drive, Suite 309, Austin, TX 78730. The financing is contemplated to provide working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because AV• EC Partners I, L.P., an Associate of Escalate Capital Partners, SBIC I, L.P., owns more than ten percent of SailPoint Technologies, Inc. Therefore, this transaction is considered a financing of an Associate requiring an exemption.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: May 15, 2013.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 2013–12499 Filed 5–28–13; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Main Street Capital II, L.P., License No. 06/06–0332; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Main Street Capital ll, L.P., 1300 Post Oak Boulevard, Suite 800, Houston, TX 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Main Street Capital ll, L.P. proposes to provide loan and equity financing to Pacific Consolidated Industries, Inc., 12201 Magnolia Avenue, Riverside, CA 92503 (''PCf').

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because Main Street Capital ll, L.P. proposes to purchase the investment in PCI from Main Street Capital Corporation, an Associate of Main Street Capital ll, L.P. Therefore

this transaction is considered a financing constituting a conflict of interest requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, 409 Third Street SW., Washington, DC 20416.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 2013–12496 Filed 5–28–13; 8:45 am]

BILLING CODE;P

SUSQUEHANNA RIVER BASIN COMMISSION

Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold its regular business meeting on June 20, 2013, in Harrisburg, Pennsylvania. Details concerning the matters to be addressed at the business meeting are contained in the Supplementary Information section of this notice.

DATES: June 20, 2013, at 1:30 p.m.

ADDRESSES: North Office Building, Hearing Room 1 (Ground Level), North Street (at Commonwealth Avenue), Harrisburg, PA. 17120.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436.

Opportunity to Appear and Comment

Interested parties are invited to attend the business meeting and encouraged to review the Commission's Public Meeting Rules of Conduct, which are posted on the Commission's Web site, *www.srbc.net.* As identified in the public hearing notice referenced below, written comments on the Regulatory Program projects and proposed fee schedule that were the subject of the public hearing, and are listed for action at the business meeting, are subject to a comment deadline of June 3, 2013. Written comments pertaining to any other matters listed for action at the business meeting may be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically through *http://www.srbc.net/pubinfo/publicparticipation.htm.* Any such comments mailed or electronically submitted must be received by the Commission on or before June 14, 2013, to be considered.

SUPPLEMENTARY INFORMATION: The business meeting will include actions or presentations on the following items: (1) Presentation on upgrades to the Commission's Susquehanna Early Warning System program; (2) election of officers for FY–2014; (3) the proposed Water Resources Program; (4) release for public review and comment of the 2013 update of the Comprehensive Plan for the Water Resources of the Susquehanna River Basin; (5) adoption of a FY–2015 budget; (6) amendments to its Regulatory Program Fee Schedule; (7) ratification/approval of contracts and grants; (8) Furman Foods, Inc. and Carrizo (Marcellus) LLC compliance matters; and (9) Regulatory Program projects.

The Regulatory Program projects and the proposed Regulatory Program Fee Schedule listed for Commission action are those that were the subject of a public hearing conducted by the Commission on May 23, 2013, and identified in the notice for such hearing, which was published in 78 FR 24785, April 26, 2013. Please note that the following additional project has been scheduled for rescission action:

- Project Sponsor and Facility: Albemarle Corporation, Borough of Tyrone, Blair County, Pa. (Docket Nos. 20010203 and 20010203–1).

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: May 17, 2013.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2013–12724 Filed 5–28–13; 8:45 am]

BILLING CODE 7040–01X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC); Public Meetings of the CSA and Motorcoach Subcommittees

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of MCSAC subcommittee meetings.

SUMMARY: FMCSA announces that the Motor Carrier Safety Advisory Committee's (MCSAC) Compliance, Safety, Accountability (CSA), and Motorcoach Hours of Service (HOS) subcommittees will meet from Monday–Thursday, June 17–20, 2013, in Arlington, VA. On Monday and Tuesday, June 17 and 18, the CSA subcommittee will meet to discuss ideas, concepts, and suggestions on FMCSA's CSA program. On Wednesday and Thursday, June 19 and 20, the Motorcoach HOS subcommittee will meet to complete its draft recommendations for the full MCSAC to consider on hours-of-service for motorcoach drivers. Both meetings are open to the public for their entirety and there will be a public comment period at the end of each day.

Times and Dates: The meetings will be held Monday–Thursday, June 17–20, 2013, from 9 a.m. to 4 p.m., Eastern Daylight Time (E.D.T.). The meetings will be held at the National Training Center, 1310 N. Courthouse Road, Suite 600, Arlington, VA 22201.

Copies of all MCSAC Task Statements and an agenda for the entire meeting will be made available in advance of the meeting at *http://mcsac.fmcsa.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Luis Mejias at (617) 494–2041, *luis.mejias@dot.gov*, by Wednesday, June 12, 2013.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish the MCSAC. The MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

Task 12–03: CSA Subcommittee

The CSA Subcommittee will discuss information, concepts, and ideas concerning FMCSA's CSA program. The subcommittee will continue its efforts to:

1. Identify and make recommendations for enhancements of

the CSA program. These topics should include but not be limited to Safety Measurement System (SMS) and the interventions/investigative processes.

2. Prioritize recommended enhancements of CSA to enable the Agency to direct its efforts to the most important or timely needs of the program.

Task 11–06: Motorcoach HOS

The Motorcoach HOS Subcommittee will meet to discuss information, concepts, and ideas it believes the full MCSAC should provide to FMCSA relating to the hours-of-service (HOS) requirements for drivers of passenger-carrying vehicles. A copy of the full task statement is posted at FMCSA's Web site: *http://mcsac.fmcsa.dot.gov*.

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, June 12, 2013, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

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

Issued on: May 22, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–12693 Filed 5–28–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Second Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy: Response, Recovery & Resiliency

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of allocation of Emergency Relief funds.

SUMMARY: The Federal Transit Administration (FTA) announces the allocation of $3.7 billion under the Public Transportation Emergency Relief Program (Emergency Relief Program, Catalogue of Federal Domestic Assistance #20.527) to the four FTA recipients most severely affected by Hurricane Sandy: the Metropolitan Transportation Authority, New Jersey Transit Corporation, the Port Authority of New York and New Jersey, and the New York City Department of Transportation. This amount is in addition to the initial $2 billion allocation announced in the March 29, 2013 **Federal Register** notice, bringing the total amount of Hurricane Sandy Emergency Relief funds allocated to-date to $5.7 billion. Within the $3.7 billion announced in this notice, FTA is allocating $2.4 billion for additional recovery and rebuilding projects and $1.3 billion for project elements or freestanding projects that increase the resiliency of the affected transit systems to future disasters. Such resiliency investments shall be subject to specific conditions cited in this notice. FTA is allocating funds consistent with the requirements of the Disaster Relief Appropriations Act of 2013 (Pub. L. 113–2), Interim Final Rule for the Emergency Relief Program, 49 CFR part 602, published in the **Federal Register** on March 29, 2013, the Notice of Availability of Emergency Relief Funds published in the **Federal Register** on February 6, 2013, and additional requirements and program guidance included in the March 29, 2013 **Federal Register** notice.

FTA anticipates allocating additional funding for recovery and rebuilding and announcing the availability of competitive funding for eligible resiliency projects in areas impacted by Hurricane Sandy in a subsequent notice.

Prior to submitting grant applications to FTA for the funds allocated in this notice, recipients should develop a list of potentially eligible projects, consistent with the Emergency Relief Program rule, at 49 CFR 602.17, and submit and review the list of projects with the applicable FTA Regional Office.

Affected recipients are granted pre-award authority as of the publication date of this notice for recovery and rebuilding projects; pre-award authority for the $1.3 billion allocated for resiliency projects may be contingent upon FTA's prior approval as described later in this notice. Prior to exercising pre-award authority, recipients should work with the appropriate Regional Office to ensure that the applicable Federal requirements are followed.

All funds allocated in this notice must comply with FTA and other Federal requirements as described in the Interim Final Rule. Recipients may request waivers of FTA administrative requirements by submitting a request to *www.regulations.gov*, FTA docket number FTA–2013–0001, as described in the Emergency Relief Program rule at 49 CFR § 602.15, however, recipients should not proceed with a project under the expectation that waivers will be provided. Additional program requirements, considerations and grant application procedures specific to these funds are included in this notice.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Office found at *http://www.fta.dot.gov* for application-specific information and other assistance needed in preparing a TEAM grant application. For program-specific questions, please contact Adam Schildge, Office of Program Management, 1200 New Jersey Ave SE., Washington, DC 20590, phone: (202) 366–0778, or email, *Adam.Schildge@dot.gov*. For legal questions, contact Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366–4011, or email, *Bonnie.Graves@dot.gov*. For questions about direct transfers to other modes within Department of Transportation, please contact Vinn White, Office of Policy, Office of the Secretary, same address, phone: (202) 366–9044, or email, *Vinn.White@dot.gov*; or Ed Beightel, Office of Policy, Office of the Secretary, same address, phone: (202) 366–8154, or email, *Ed.Beightel@dot.gov*.

SUPPLEMENTARY INFORMATION:

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I. Considerations for Recipients of Emergency Relief Funds

A. Allocation of Funds

FTA's Emergency Relief Program (49 U.S.C. 5324) was authorized by Congress in the Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) and provides FTA with primary responsibility for reimbursing emergency response and recovery costs after an emergency or major disaster that affects public transportation systems. The Disaster Relief Appropriations Act provides $10.9 billion for FTA's Emergency Relief Program for recovery, relief and resiliency efforts in areas affected by Hurricane Sandy. However, as a result of the Office of Management and Budget's March 1, 2013, report to Congress required by the Balanced Budget and Emergency Deficit Control Act of 2011 (Pub. L. 112–25) for fiscal year (FY) 2013, approximately five percent, or almost $545 million of the $10.9 billion, is subject to sequestration and is unavailable for Hurricane Sandy disaster relief. That leaves approximately $10.3 billion available. FTA is allocating the remaining $10.3 billion in multiple tiers for response, recovery and rebuilding, for locally-prioritized resiliency projects, and for competitively selected resiliency projects, which will be solicited in a future notice of funding availability.

FTA is allocating funding in this notice for recovery and rebuilding and for locally-prioritized resiliency projects based on detailed damage assessments submitted by affected agencies and prepared in cooperation with FTA and Federal Emergency Management Administration (FEMA) staff. FTA contractors validated the methodologies affected agencies used to estimate the costs of the damage. These affected agencies included the following major transit agencies:

- The Metropolitan Transportation Authority (MTA), doing business as:
  - MTA New York City Transit (NYCT);
  - MTA Bus Company (MTA Bus);
  - MTA Metro-North Railroad (MNR);
  - MTA Long Island Railroad (LIRR);
  - MTA Capital Construction Division (MTACC);
- The New York City Department of Transportation (NYCDOT);
- The Port Authority of New York and New Jersey (PANYNJ) which operates Port Authority Trans Hudson (PATH) rail service and the rebuilding of the World Trade Center Transportation Hub and site; and
- New Jersey Transit.

The damage assessments include an initial overall cost of recovery and rebuilding for the affected agencies, excluding projects to improve the resiliency of the affected systems to future disasters, which totals approximately $5.83 billion.

On March 29, 2013, FTA published an allocation of $2 billion to affected recipients for eligible emergency response and recovery costs, less a takedown for program implementation and oversight. FTA allocated funds in that notice in two parts: First, FTA allocated approximately $576.6 million to affected agencies based on specific emergency response and recovery costs that were incurred or budgeted to date. Second, FTA allocated approximately $1.4 billion to the four agencies most severely impacted by Sandy proportional to each agency's projected overall recovery costs. Of this $1.4 billion, FTA set aside approximately $28 million for other affected agencies that may have additional response and recovery expenses not reimbursed to-date. The funding allocated under that notice was equivalent to approximately 32 percent of the projected total recovery costs for the four most severely affected public transportation systems, not including the costs of improvements designed to increase the resiliency of the affected transit systems to future disasters. Both the current and previous allocations are based on detailed damage assessments compiled by the affected agencies in cooperation with FTA and FEMA.

FTA is now allocating an additional $3.7 billion in Emergency Relief Program funding to the four agencies above, based on a percentage of the anticipated full cost of recovery and rebuilding. Of the $3.7 billion allocated in this notice, FTA is allocating $2.4 billion for eligible recovery and rebuilding projects, as outlined in the previous allocation notice and the Interim Final Rule. Combined with the previous allocations (see *78 FR 19357,* March 29, 2013), total allocations for recovery and rebuilding are equivalent to approximately 70 percent of the total projected recovery costs for the hardest hit agencies. The remaining $1.3 billion allocated in this notice is being provided on a pro-rated basis to these recipients for the cost of projects and project components that are intended to increase those public transportation systems' resiliency to future disasters (resiliency projects). As a result of these allocations to date, the four hardest hit agencies will be permitted to use approximately 23 percent of their Emergency Relief allocations for locally prioritized resiliency projects and improvements, subject to FTA approval.

Based on FTA's earlier damage assessment efforts and applications submitted for immediate response and recovery costs, FTA is aware that other public agencies suffered serious damage and may request funding for resiliency projects, including, but not limited to, Massachusetts Bay Transportation Authority, Southeastern Pennsylvania Transportation Authority, Connecticut Department of Transportation, New York State Department of Transportation and many smaller transit agencies such as the City of Long Beach and Nassau County Intercounty Express (NICE); and the counties of Putnam, Rockland and Westchester. FTA has funded response and recovery costs for these agencies under the previous allocation, and has reserved approximately $28 million for additional longer-term recovery and rebuilding projects for these and other affected agencies, which may not have received a pro-rated allocation. These and other eligible entities, which may not be limited to transit agencies, will be permitted to apply for competitive resiliency project funding in a subsequent notice. Evaluation criteria and project eligibility for competitive resiliency project funding will be published in a notice of funding availability.

Recipients of local prioritized resiliency funds made available under this notice are encouraged to pursue projects of a scale and nature commensurate with the funding distribution levels made herein. Primarily, recipients are encouraged to coordinate, as appropriate, resiliency improvements in tandem with recovery and rebuilding projects where joint implementation will prove cost effective. Local prioritized resiliency funds allocated under this notice are also intended for lower cost, stand-alone resiliency improvements that can be implemented relatively quickly. Conversely, larger scale, high cost resiliency investments—particularly those that involve major new infrastructure projects with longer, more complex planning and pre-construction activities; and/or that involve multiple agency contributions beyond a single recipient—will likely be better suited to the subsequent competitive resiliency funding, subject to a future notice that will specify appropriate eligibility and evaluation criteria.

FTA encourages eligible project sponsors to secure funding available under the Disaster Relief Appropriations Act through the formula allocation set forth in this and prior notices and the

competitive application process that will be announced in a future notice. FTA nonetheless recognizes that there may be some projects that are eligible for funding under the Disaster Relief Appropriations Act that are not readily fundable through FTA's Emergency Relief Program. In those limited cases, the Secretary may use his authority under the Act to directly transfer resiliency funds to other agencies to fund programs authorized under titles 23 and 49, United States Code, in order to carry out resiliency projects in areas impacted by Hurricane Sandy. Necessity and urgency are among the factors the Department of Transportation (DOT) will consider in allocating funding to a project outside the formula or competitive processes. While project sponsors are encouraged to use the formula and competitive sponsors if feasible, interested parties may contact the Office of the Secretary for additional information about the direct transfer process. Should the Secretary make any such transfers, those funds would be administered by the agency receiving the transfer, separate and apart from FTA administrative requirements outlined in this notice.

The following chart [1] illustrates the overall allocation of funding under the FTA Emergency Relief Program:

Award type	Applicants	Available funding	Damage assessment/criteria
Response, Recovery & Rebuilding.	Affected FTA Recipients ...	$4.4 billion	Damage assessments submitted by affected agencies and reviewed by FTA, and costs incurred by affected agencies.
Locally-Prioritized Resiliency	MTA, NJT, PANYNJ, NYCDOT.	$1.3 billion	Resiliency Projects and Project Components as outlined in this notice.
Competitive Resiliency	Statutorily Eligible	TBD in subsequent notice	TBD in subsequent notice.
Response, Recovery & Rebuilding.	Affected FTA Recipients ...	$1.1 billion (to be announced in a subsequent notice).	Damage assessments submitted by affected agencies and reviewed by FTA, and costs incurred by affected agencies.
Direct Transfer Resiliency ...	Eligible DOT grantees/ funding recipients implementing programs authorized under titles 23 and 49 U.S.C.	TBD	TBD.

B. Use of Funds for Recovery and Resiliency Projects

Consistent with the February 6, 2013, **Federal Register** notice, funds allocated in this notice for recovery and rebuilding projects must be used by affected agencies for the cost of emergency operations, emergency protective measures, and emergency and permanent repairs to (or the replacement of) assets that suffered serious damage as a result of the storm. Eligible projects include the repair or replacement of public transportation vehicles, infrastructure and other assets that were seriously damaged by Hurricane Sandy.

Since a significant portion of the seriously damaged transit infrastructure was technologically obsolete, and hence not appropriate to replace in-kind or to restore to the exact previous condition, FTA will fund recovery and rebuilding projects that bring transit assets up to a state of good repair. For the purposes of this allocation, a project is considered to bring the transit assets up to a ''state of good repair'' if it consists of the installation of comparable equipment that meets the same basic function, class, or capacity of the equipment replaced and also meets current technological or design standards, or a like-new condition. FTA may permit some adjustment to meet current needs, for example, to match other recent equipment purchases of an agency and to ensure compatibility or consistency (e.g. replacing a 35′ bus with a 40′ bus, purchasing a bus with a different propulsion system; installing the same fare payment systems as other recent acquisitions). Projects that significantly alter the function or capacity of the underlying transit asset or infrastructure are not eligible recovery and rebuilding projects.

Specifically, when repairing or replacing facilities and infrastructure damaged or destroyed by Hurricane Sandy, the following activities are eligible for Emergency Relief funding: (1) Replacement of older features with new ones; (2) incorporation of current design standards, including those that decrease an asset's vulnerability to future disasters or that increase access to persons with disabilities, including those who use wheelchairs, to the extent practicable; (3) replacement of a destroyed facility to a different location (from its existing location) when driven by resiliency decision-making or when replacing it at the existing location is not practical or feasible; and (4) additional required features resulting from the National Environmental Policy Act (NEPA) process. Rolling stock and other equipment used in public transportation that was damaged or destroyed before the end of its useful life may be replaced with new rolling stock and equipment. The cost of improvements or changes designed solely to improve the resiliency of transit infrastructure is not eligible as a recovery and rebuilding project expense, and must be funded from the $1.3 billion allocated in this notice specifically for resiliency projects or resiliency funds made available in the future.

Resiliency projects funded from the $1.3 billion must be intended to reduce the risk of serious damage from future disasters. As defined in the Interim Final Rule, resiliency is defined as ''a capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.'' Further, a resiliency project is ''a project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns.''

As such, resiliency projects include eligible FTA transit capital projects as defined under 49 U.S.C. 5302(3) that are designed and built to reduce the risk of serious damage to a vulnerable asset or

[1] The Secretary is authorized by the Disaster Relief Appropriations Act to transfer emergency relief resiliency funding to other DOT operating administrations for eligible projects.

aspect of the public transportation system. Resiliency projects may also consist of the costs of specific improvements associated with eligible recovery and rebuilding projects that increase the resiliency of the transit asset or system once rebuilt. All resiliency projects funded from the agency's resiliency allocation must be reviewed and approved by FTA, either individually or as part of a program of projects.

Examples of resiliency projects may include: The relocation of critical infrastructure above projected flood levels; waterproofing sensitive equipment and facilities; installing additional or higher capacity water pumps; implementing infrastructure improvements to reduce the intrusion of water into the transit system; improving communications equipment used in disaster management; and the installation of alternate or redundant sources of power for lighting, flood pumps, and dispatch facilities. Specific resiliency projects and improvements should be identified in relationship to the identified vulnerabilities of the transit system to future disasters.

As indicated in section I.A. ''Allocation of Funds,'' resiliency funding allocated in this notice is intended primarily for local priority improvements that can be implemented in tandem with restoration and recovery projects; as well as lower cost stand-alone projects that can be implemented relatively quickly. To inform their project priorities, recipients should use information such as damage assessments from past disasters, including Hurricane Sandy, FEMA's Advisory Base Flood Elevation (ABFE) Maps (see, e.g., *http://www.region2coastal.com/sandy/abfe*), or other hazard vulnerability assessments, and should consider identifying and prioritizing projects for funding based on at least these five considerations:

(1) the identification of and assessment of the reasonable likelihood of a potential hazard or disaster,

(2) the vulnerability of a particular system or asset to a particular hazard or disaster, and the criticality of that asset to the overall performance of the transit system,

(3) the potential extent of damage to the asset or system from the identified hazard(s),

(4) the total cost of implementing the proposed hazard mitigation or resiliency improvement, and

(5) the anticipated reduction in damage or other negative impacts that will result from the proposed project.

In addition, with regard to a Hurricane Sandy-related resiliency project located in a floodplain, FTA recipients should consider the requirements of Executive Order 11988 discussed later in this notice.

Recipients are encouraged to consult resources published by FTA for transit agencies under FTA's Climate Change Adaptation Initiative (*http://fta.dot.gov/climatechange*), including the report ''Flooded Bus Barns and Buckled Rails: Public Transportation & Climate Change Adaptation.'' Although the procedures for developing and selecting resiliency projects may differ between FTA and FEMA programs, FTA recipients are also encouraged to review FEMA's hazard mitigation planning and project development resources at *http://www.fema.gov/hazard-mitigation-planning-resources.*

C. Pre-Award Authority

In the February 6, 2013, **Federal Register** notice, FTA granted pre-award authority to affected recipients for expenses incurred in preparation for Hurricane Sandy (e.g., evacuation, relocation, protecting and safeguarding assets) and for response and recovery expenses incurred as a result of Hurricane Sandy. Pre-award authority allows affected recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval.

If a recipient intends to use pre-award authority for the recovery and rebuilding funds allocated in this notice, FTA recommends the recipient submit a proposed program of projects to FTA to verify that all pre-requisite requirements have been met, and that the proposed costs are all eligible under the Emergency Relief Program, in advance of incurring any costs. Pre-award authority for resiliency projects is not automatic; FTA may require a resiliency project funded from the agency's resiliency allocation be reviewed and approved by FTA, either individually or as part of a program of projects, prior to incurring costs. Since this program is new and interim final regulations were published in March 2013, recipients may not be familiar with all applicable statutory and regulatory requirements for this program, including those that might be different from other FTA grant programs. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (e.g., prior to environmental review completion), FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

Pre-award authority is described in the Emergency Relief Program rule at 49 CFR 602.11. In considering the use of pre-award authority, recipients should be aware of the following:

(i) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project.

(ii) Except as provided for Categories One, Two and Three in section II.D. of the February 6, 2013, **Federal Register** notice, or waived pursuant to the waiver process described in section J of this notice, all FTA statutory, procedural, and contractual requirements must be met.

(iii) The recipient must take no action that prejudices the legal and administrative findings that FTA must make in order to approve a project.

(iv) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(v) When FTA subsequently awards a grant for the project, the Federal Financial Report in TEAM-Web must indicate the use of pre-award authority.

D. Planning Requirements

Emergency Relief projects, excluding initial response and recovery projects under Categories 1, 2 and 3, for which FTA has issued a waiver of the planning requirements, are subject to the joint Federal Highway Administration (FHWA)-FTA planning rule (23 CFR 450.324). The joint planning rule requires that capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under title 23 U.S.C. and 49 U.S.C. chapter 53 be included in the Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) prior to incurring costs, unless the project qualifies as one of the exceptions listed in the rule. The planning rule at 23 CFR 450.324 provides that emergency relief projects are not required to be included in the TIP (and STIP) except for those involving substantial functional, locational, or capacity changes.

To qualify for this exception, the recipient must certify in writing that the emergency relief project does not involve substantial functional, locational or capacity changes and that the local share is available. The recipient must submit this documentation to FTA in order for the project to be eligible for federal participation. Absent such certification, FTA expects Emergency Relief projects, including resiliency projects, to be included in the TIP/STIP prior to incurring costs. Recipients may petition FTA for a waiver from this requirement by using the FTA docket process outlined in section J of this notice. FTA encourages recipients to work closely with their metropolitan planning organization (MPO) in determining whether to include emergency relief projects in the TIP, and ultimately in the STIP.

E. 24 Month Expenditure Requirement

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation, unless this requirement is subsequently waived for this program in accordance with guidance to be issued by the Office of Management and Budget. Absent a waiver, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

F. Treatment of Insurance Proceeds

If a recipient receives or allocates insurance proceeds to a cost for which FTA either allocated or awarded Emergency Relief Program funds, the recipient will be required to amend the grant to reflect a reduced Federal amount, and will be required to reimburse FTA for any FTA payments (drawdown of funds) in excess of the new Federal amount. FTA will deobligate any excess funds from the grant. FTA will subsequently reallocate these funds through the Emergency Relief Program for other eligible Hurricane Sandy emergency relief projects.

If a recipient receives an insurance settlement that is not entirely allocable to specific losses, FTA may require the recipient to allocate a percentage of the settlement to response, recovery and resiliency projects funded by FTA in proportion to the amount of damage that is eligible for funding under the Emergency Relief Program relative to the overall damage sustained by the transit agency. FTA will publish further guidance regarding the treatment of insurance proceeds.

G. Executive Order 11988, Floodplain Management

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accordance with the Executive Order, recipients shall not use grant funds for any activity in an area delineated as a 'special flood hazard area' or equivalent, as labeled in FEMA's most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain. To guide decision making, recipients shall use the ''best available information'' as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the ''best available information'' in accordance with Executive Order 11988.

For Hurricane Sandy, the Secretary of Transportation has determined that if a Federally-funded project or activity is located in a floodplain, that the ''best available information'' requires a minimum baseline standard for elevation no less than that found in FEMA's Advisory Base Flood Elevations, at the 1 percent elevation (also referred to as the 100 year flood elevation), where available, plus one foot (ABFE+1). This determination recognizes that some of the existing FIRMs were developed more than 25 years ago. Updated FIRMs are yet to be finalized and will not be available in time to provide updated information to support vital and immediate reconstruction efforts. This determination is based on FEMA's assessment that, following recent storm events including Hurricane Sandy, the base flood elevations shown on some existing FIRMs do not adequately reflect the current coastal flood hazard risk. FEMA recognizes that the ABFEs are based on sound science and engineering, and are derived from more recent data and improved study methodologies compared to existing FIRMs. To reduce the likelihood of future damage from such risks as storm surge, coastal hazards, and projections of sea level rise, the application of an ABFE+1 standard provides a limited safeguard against the natural recurrence of flood hazards.

Thus, for projects in floodplains, when considering alternatives to avoid adverse effects and determining how to design or modify actions in order to minimize potential harm to or within the floodplain consistent with Executive Order 11988, recipients should consider that the ''best available information'' for baseline elevation is ABFE at the 1 percent elevation, or, if that is not available, FIRM, +1 foot. This standard does not necessarily mean that transit agencies will be required to move existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients must consider the best available information (ABFE or FIRMs), including sea level rise consistent with the addition of at least one foot over the most up-to-date elevations. Particularly with respect to existing facilities where relocating them may not be feasible, examples of actions to minimize potential harm to or within the floodplain and reduce the risk of damage from future disasters may include but are not limited to updated design features or added protective features (resiliency projects). Recipients must also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding. Consistent with FTA's interim final rule, if State or locally-adopted code or standards require higher elevations, those higher standards would apply.

H. Use of Force Accounts

Force accounts refer to the use of a recipient's own labor force to carry out a capital project. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, if eligible for reimbursement under the grant. Incremental labor costs from flagging protection, service diversions, or other activities directly related to the capital grant may also be defined as force account work. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account work also does not include preventive maintenance or other items under the expanded definition of capital (i.e. security drills, mobility management) which are traditionally not a capital project.

Any one of the following four conditions may warrant the use of a recipient's own labor force. These are: (1) Cost savings, (2) exclusive expertise, (3) safety and efficiency of operations,

and (4) union agreement. Recipients are required to maintain a force account plan for projects funded under the Emergency Relief program and the plan should be in place prior to incurring costs, unless waived by FTA pursuant to the waiver process described in section J of this notice. Recipients are not required to obtain prior FTA approval of force account plans (including justifications for the use of force accounts) for emergency response and recovery work, however, recipients are encouraged to update force account plans as needed for response and recovery projects on which force account labor will be used.

I. Eligible Sources of Local Match

The non-Federal share of Emergency Relief grants may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. In addition, recipients may utilize the following provisions for complying with the non-Federal share requirement.

The Community Development Block Grant (CDBG) statute at 42 U.S.C. 5305(i) provides that ''payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under [chapter 53 of title 42]'' is an eligible activity. Since the CDBG statute specifically is available to fund the ''non-Federal share'' of other Federal grant programs, if the activity is eligible under the CDBG program, FTA will accept CDBG funds as local match.

Recipients may also utilize Transportation Development Credits (TDCs), formerly known as Toll Revenue Credits, in place of the non-Federal share. The use of TDCs must be approved by the State, which must send a letter to the FTA Regional Office certifying the availability of sufficient TDCs and approving their use prior to submitting a grant application. Recipients are advised that the use of TDCs means that no local funds will be required for projects in the grant, and that the funds allocated by FTA will not alone be sufficient to fund the entirety of the proposed Emergency Relief projects. FTA will not allocate additional Federal funds to recipients that use TDCs in place of the non-Federal share, so sufficient alternative funds will need to be located to fully finance projects utilizing TDCs. FTA will not approve a retroactive application of TDCs.

J. Waiver Process

Recipients may request waivers of FTA administrative requirements by submitting a request to *www.regulations.gov,* FTA docket number FTA–2013–0001, as described in the February 6, 2013 **Federal Register** notice, and in the Emergency Relief Program rule at 49 CFR § 602.15, however, recipients should not proceed with a project with the expectation that waivers will be provided.

II. Award Administration

A. Grant Application

Once FTA allocates Emergency Relief funds to a recipient, the recipient will be required to submit a grant application electronically via FTA's TEAM system. Prior to submitting a grant application or modification for new recovery and rebuilding projects and for resiliency projects, recipients must submit a proposed list of projects and expenses to FTA's Regional Office for review, consistent with 49 CFR § 602.17. This review will ensure that all proposed projects and costs are eligible under the Emergency Relief Program.

Distinct project identification numbers have been assigned for recovery/rebuilding projects and for resiliency projects. Recipients should work with the FTA Regional Offices to determine when, if appropriate, multiple grant applications may be required. While there is nothing that precludes the obligation of funding allocated for resiliency projects in the same grant as recovery and rebuilding projects, recipients will be required to track these costs separately and to include a separate non-add scope for costs associated with resiliency projects. This will allow FTA to track the obligation of funds for resiliency costs.

Recipients are required to maintain records, including but not limited to all invoices, contracts, time sheets, and other evidence of expenses to assist FTA in periodically validating the eligibility and completeness of a recipient's reimbursement requests under the Improper Payment Information Act.

B. Payment

Upon award, payments to recipients will be made by electronic transfer to the recipient's financial institution through FTA's Electronic Clearing House Operation (ECHO) system.

C. Grant Requirements

Emergency Relief funds may only be used for eligible purposes as defined under 49 U.S.C. 5324 and as described in the Emergency Relief Program Rule (49 CFR part 602) and the February 6, 2013, Notice of Availability of Emergency Relief Funds.

Recipients of section 5324 funds must comply with all applicable Federal requirements, including FTA's Master Agreement. Each grant for section 5324 funds will include special grant conditions, including but not limited to, application of insurance proceeds, application of any FEMA funds received, section 904(c) of the Disaster Relief Appropriations Act of 2013, Federal share, and enhanced oversight. These special conditions will be incorporated into the grant agreement for all Hurricane Sandy Emergency Relief funds.

D. Reporting Requirements

Post-award reporting requirements include a monthly submission of the Federal Financial Report and Milestone reports in TEAM consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

E. Oversight and Audits

Recipients are advised that FTA is implementing an enhanced oversight process for Disaster Relief Appropriation Act funds awarded under the Emergency Relief Program. FTA intends to undertake a risk analysis of each recipient and grant to determine the appropriate level of oversight. Within a grant or for scopes in multiple grants FTA will review projects (or scopes) over $100 million separately. Based on these assessments FTA may assign program level reviews such as procurement system reviews or financial management oversight reviews. FTA also will review random samplings of payments to examine eligibility of costs and proper documentation. FTA will monitor the use of insurance proceeds to ensure they meet program requirements. FTA may undertake other reviews of projects, such as Technical Capacity and Capability Assessments; Risk Assessments; Cost, Schedule, and Scope Reviews; and other reviews FTA determines are necessary.

Project scopes with over $100 million in Federal funds, or those that are generally expected to exceed $100 million in Federal funds, will be declared Major Capital Projects (MCPs) and subject to the requirements of Project Management Oversight in 49 CFR 633 Project Management Oversight. However, approval of Project Management Plans will be required before funds drawdown rather than before grant award. All MCPs will be required to have a review meeting at least once every quarter. The meeting requires the participation of FTA and the project sponsor and shall include the FTA Regional Administrator or his or her designee and the project

sponsor's Chief Executive Officer or designee. The objective of the meeting is for FTA and the project sponsor to discuss the overall health of the agency, the status of its project(s), address project issues and discuss potential solutions. Project scopes less than $100 million may also be declared MCPs at FTA's discretion under the criteria set forth in 49 CFR 633.5.

Construction Grant Agreements will be required for all projects over $500 million and will be considered for all projects over $100 million. These construction agreements will: (a) Serve as the legal instrument by which section 5324 funds will be provided to the sponsoring recipient consistent with the Appropriations Act and the interim final rule; (b) describe the project with particularity, and set forth the mutual understandings, terms, conditions, rights and obligations of FTA and the implementing recipient; (c) establish certain limitations on the Federal financial assistance for the project and the manner in which Federal funds will be awarded and released to the implementing recipient; (d) establish the implementing recipient's obligations to complete the project with a specified amount of Federal funds; and (e) ensure timely and efficient management of the project by the implementing recipient.

Any recipient receiving over $100 million in Disaster Relief Appropriations Act funds will be required to hire and use independent Integrity Monitors. It is FTA's expectation that such Integrity Monitors will conduct an initial review of all existing procedures and processes for susceptibility to fraud, corruption and cost abuse; recommend and assist in implementing procedures designed to mitigate all risks identified in its initial review; conduct forensic reviews of payment requisitions and supporting documentation, payments, change-orders, and review for indications of bid rigging and overcharging; provide investigative services, as necessary; conduct periodic, unannounced headcounts of workers to detect and deter the practice of no-show jobs; attend bid openings, scope reviews, and meeting with prospective contractors and vendors to ensure procurements are conducted in accordance with the recipient's rules and regulations and that a ''level playing field'' is being maintained for all involved; and make recommendations to tighten controls on the procurement process.

In addition, recipients should anticipate a high likelihood of additional scrutiny by the Government Accountability Office (GAO) and the Department of Transportation's Office of the Inspector General (OIG).

FEDERAL TRANSIT ADMINISTRATION

State(s)	Agency	Discretionary funding ID	Previous allocation	Additional recovery and restoration	Resiliency	Total allocations
FTA Section 5324 Emergency Relief Program Allocations for Hurricane Sandy, by Agency*						
NY	New York Metropolitan Transportation Authority.	D2013–SAND–014 (recov.); D2013–SAND–015 (resil.).	$1,194,309,560	$1,702,462,214	$897,848,194	$ 3,794,619,968
NY	New York City Department of Transportation.	D2013–SAND–016 (recov.); D2013–SAND–017 (resil.).	33,918,813	2,834,128	8,561,124	45,314,065
NY, NJ	Port Authority of New York and New Jersey.	D2013–SAND–018 (recov.); D2013–SAND–019 (resil.).	489,120,634	583,904,018	287,391,637	1,360,416,289
NJ	New Jersey Transit Corporation.	D2013–SAND–020 (recov.); D2013–SAND–021 (resil.).	231,191,117	110,799,640	106,199,045	448,189,802
Mult.	Other affected agencies.	.....	2,456,379	.....	2,456,379	
Multi	Reserved for future allocation.	.....	28,048,497	.....	.....	28,048,497
Grand Total			1,979,045,000	2,400,000,000	1,300,000,000	5,679,045,000

* Allocation amounts reflect reductions due to sequestration.

Issued in Washington, DC, this 23rd day of May, 2013.

Peter Rogoff,

Administrator.

[FR Doc. 2013–12766 Filed 5–28–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 23, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before June 28, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer,

1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0037.

Type of Review: Revision of a currently approved collection.

Title: Certification of Material Events Form.

Abstract: This specific information collection will capture information related to Community Development Entity (CDE)/New Markets Tax Credit material events, as well as Community Development Financial Institutions (CDFI) material events, in a single form. The document will provide a more comprehensive list of potential material events to inform CDE's and CDFI's of the events that need to be reported to the CDFI Fund and will require the CDE or CDFI to affirmatively indicate, through a series of specific questions, whether or not the event will have an impact on areas of operations that are of particular concern to the CDFI Fund. This information will enable the CDFI Fund to better manage the Material Events review process and monitor the effects of Material Events on certification or compliance status.

Affected Public: Private Sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Annual Burden Hours: 50.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–12658 Filed 5–28–13; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Renewal of the Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (Pub. L. 92–463; 5 U.S.C. App. 2), with the concurrence of the General Services Administration, the Secretary of the Treasury is renewing the Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association (the ''Committee'').

FOR FURTHER INFORMATION CONTACT: Fred Pietrangeli, Acting Director, Office of Debt Management (202) 622–1876.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Treasury responsibilities for Federal financing and public debt management. The Committee meets to consider special items on which its advice is sought pertaining to immediate Treasury funding requirements and pertaining to longer term approaches to manage the national debt in a cost effective manner. The Committee usually meets immediately before the Treasury announces each mid-calendar quarter funding operation, although special meetings also may be held. Membership consists of up to 20 representative members, appointed by Treasury. The members are senior level officials who are employed by primary dealers, institutional investors, and other major participants in the government securities and financial markets.

The Treasury Department is filing copies of the Committee's renewal charter with appropriate committees in Congress.

Dated: May 14, 2013.

Fred Pietrangeli,

Acting Director of the Office of Debt Management.

[FR Doc. 2013–12686 Filed 5–28–13; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury Department.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of three entities and three individuals, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on May 10, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined

by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On May 10, 2013, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated one entity and one individual whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. CHANG, Wen-Fu (a.k.a. CHANG, Tony; a.k.a. ZHANG, Wen-Fu); DOB 01 Apr 1965; Nationality Taiwan; Passport 211606395 (Taiwan) (individual) [NPWMD].
2. TRANS MULTI MECHANICS CO. LTD. (a.k.a. FENG SHENG CO., LTD.), 19, Chin Ho Lane, Chung Cheng Rd., Taya District, Taichung City, Taiwan; No 19, Jinhe Lane, Zhongzheng Road, Daya District, Taichung City, Taiwan [NPWMD].

Dated: May 10, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–12684 Filed 5–28–13; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Entity Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''; Identification of Entity Pursuant to Executive Order 13582 of August 17, 2011 ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria;'' Identification of Aircraft Pursuant to Executive Orders 13224 and 13582

AGENCY: Office of Foreign Assets Control, Treasury Department.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of one entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'' and Executive Order 13582 of August 17, 2011 ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria'' (collectively, the ''Orders''). OFAC is also publishing identifying information relating to thirty-eight (38) aircraft detailed below, which OFAC has determined to be property in which this entity has an interest, and which are blocked pursuant to the Orders.

DATES: The designation and identification of the entity pursuant to the Orders by the Director of OFAC, and the identification of the 38 aircraft identified in this notice were publicly announced, and identifying information relating to the entity and the aircraft was added to OFAC's List of Specially Designated Nationals and Blocked Persons (''SDN List''), on May 16, 2013..

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, Department of the Treasury Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information regarding sanctions programs administered by OFAC is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On May 16, 2013 the Director of OFAC, in consultation with the Departments of State, Homeland Security, and Justice designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of Executive Order 13224, the entity listed below. On that same date, the Director of OFAC, in consultation with the Department of State, identified the entity listed below as falling within the definition of the Government of Syria set forth in section 8(d) of Executive Order 13582. Additionally, the Director of OFAC identified the 38 aircraft whose identifying information is detailed below, as property in which the entity listed below has an interest, which is blocked pursuant to the Orders.

The listings for the entity and aircraft on the SDN List appear as follows:

Entity

1. SYRIAN ARAB AIRLINES (a.k.a. SYRIAN AIR; a.k.a. SYRIANAIR), Syria; Social Insurance Building, Youssef Al Azmeh Square, Down Town, PO Box 417, Damascus, Syria [SDGT] [SYRIA] [IRGC] [IFSR].

Aircraft

1. YK–AGA; Aircraft Construction Number (also called L/N or S/N or F/N) 1188; Aircraft Manufacture Date 20 Feb 1976; Aircraft Model B.727–294; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 21203 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
2. YK–AGB; Aircraft Construction Number (also called L/N or S/N or F/N) 1194; Aircraft Manufacture Date 18 Mar 1976; Aircraft Model B.727–294; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 21204 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
3. YK–AGC; Aircraft Construction Number (also called L/N or S/N or F/N) 1198; Aircraft Manufacture Date 09 Apr 1976; Aircraft Model B.727–294; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 21205 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
4. YK–AGD; Aircraft Construction Number (also called L/N or S/N or F/N) 1670; Aircraft Manufacture Date 26 Sep 1980; Aircraft Model B.727–269; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 22360 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
5. YK–AGE; Aircraft Construction Number (also called L/N or S/N or F/N) 1716; Aircraft Manufacture Date 06 Feb 1981; Aircraft Model B.727–269; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 22361 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
6. YK–AGF; Aircraft Construction Number (also called L/N or S/N or F/N) 1788; Aircraft Manufacture Date 12 Nov 1981; Aircraft Model B.727–269; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 22763 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
7. YK–AIA; Aircraft Manufacture Date Jan 1985; Aircraft Model Tu-154M; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number

(MSN) 708 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).

8. YK–AIC; Aircraft Manufacture Date Mar 1985; Aircraft Model Tu-154M; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 710 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
9. YK–AKA; Aircraft Manufacture Date 02 Sep 1998; Aircraft Model A320–232; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 886 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
10. YK–AKB; Aircraft Manufacture Date 26 Oct 1998; Aircraft Model A320–232; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 918 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
11. YK–AKC; Aircraft Manufacture Date 26 May 1999; Aircraft Model A320–232; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 1032 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
12. YK–AKD; Aircraft Manufacture Date 17 Aug 1999; Aircraft Model A320–232; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 1076 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
13. YK–AKE; Aircraft Manufacture Date 06 Sep 1999; Aircraft Model A320–232; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 1085 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
14. YK–AKF; Aircraft Manufacture Date 11 Oct 1999; Aircraft Model A320–232; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 1117 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
15. YK–ANC; Aircraft Construction Number (also called L/N or S/N or F/N) 3007; Aircraft Manufacture Date 1975; Aircraft Model An–26; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 57303007 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
16. YK–AND; Aircraft Construction Number (also called L/N or S/N or F/N) 3008; Aircraft Manufacture Date 1975; Aircraft Model An–26; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 57303008 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
17. YK–ANE; Aircraft Construction Number (also called L/N or S/N or F/N) 3103; Aircraft Manufacture Date 1975; Aircraft Model An–26; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 57303103 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
18. YK–ANF; Aircraft Construction Number (also called L/N or S/N or F/N) 3104; Aircraft Manufacture Date 1975; Aircraft Model An–26; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 57303104 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
19. YK–ANG; Aircraft Construction Number (also called L/N or S/N or F/N) 10907; Aircraft Manufacture Date 1981; Aircraft Model An–26B; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 17310907 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
20. YK–ANH; Aircraft Construction Number (also called L/N or S/N or F/N) 11406; Aircraft Manufacture Date 1981; Aircraft Model An–26B; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 17311406 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
21. YK–AQA; Aircraft Construction Number (also called L/N or S/N or F/N) 3219; Aircraft Model Yak–40; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 9341932 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
22. YK–AQB; Aircraft Construction Number (also called L/N or S/N or F/N) 4304; Aircraft Model Yak–40; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 9530443 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
23. YK–AQD; Aircraft Construction Number (also called L/N or S/N or F/N) 5801; Aircraft Model Yak–40; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 9830158 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
24. YK–AQE; Aircraft Construction Number (also called L/N or S/N or F/N) 5802; Aircraft Model Yak–40; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 9830258 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
25. YK–AQF; Aircraft Construction Number (also called L/N or S/N or F/N) 5918; Aircraft Model Yak–40; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 9931859 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
26. YK–AQG; Aircraft Construction Number (also called L/N or S/N or F/N) 5919; Aircraft Model Yak–40K(F); Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 9941959 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
27. YK–ATA; Aircraft Construction Number (also called L/N or S/N or F/N) 1604; Aircraft Manufacture Date 1979; Aircraft Model Il–76T; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 93421613 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
28. YK–ATB; Aircraft Construction Number (also called L/N or S/N or F/N) 1605; Aircraft Manufacture Date 1979; Aircraft Model Il–76T; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 93421619 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
29. YK–ATC; Aircraft Construction Number (also called L/N or S/N or F/N) 2308; Aircraft Manufacture Date 1981; Aircraft Model Il–76T; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 13431911 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
30. YK–ATD; Aircraft Construction Number (also called L/N or S/N or F/N) 2309; Aircraft Manufacture Date 1981; Aircraft Model Il–76T; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 13431915 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
31. YK–AVA; Aircraft Manufacture Date 07 Oct 2008; Aircraft Model ATR–72–212A; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 836 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
32. YK–AVB; Aircraft Manufacture Date 24 Dec 2008; Aircraft Model ATR–

72–212A; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 845 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).

33. YK–AYA; Aircraft Construction Number (also called L/N or S/N or F/N) 6330; Aircraft Manufacture Date 1982; Aircraft Model Tu–134BK–3; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 63992 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
34. YK–AYB; Aircraft Construction Number (also called L/N or S/N or F/N) 6331; Aircraft Manufacture Date 1982; Aircraft Model Tu–134BK–3; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 63994 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
35. YK–AYC; Aircraft Construction Number (also called L/N or S/N or F/N) 6327; Aircraft Manufacture Date 1982; Aircraft Model Tu–134B–3; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 63989 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
36. YK–AYD; Aircraft Construction Number (also called L/N or S/N or F/N) 6328; Aircraft Manufacture Date 1982; Aircraft Model Tu–134B–3; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 63990 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
37. YK–AYE; Aircraft Construction Number (also called L/N or S/N or F/N) 6348; Aircraft Manufacture Date Sep 1984; Aircraft Model Tu–134B–3; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 66187 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).
38. YK–AYF; Aircraft Construction Number (also called L/N or S/N or F/N) 6349; Aircraft Manufacture Date 10 Oct 1984; Aircraft Model Tu–134B–3; Aircraft Operator Syrianair; Aircraft Manufacturer's Serial Number (MSN) 66190 (aircraft) [SDGT] [SYRIA] [IRGC] [IFSR] (Linked To: SYRIAN ARAB AIRLINES).SYRIAN AIRLINE [SDGT].

Dated: May 16, 2013.

John H. Battle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013–12450 Filed 5–28–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Advisory Committee on Tax Exempt and Government Entities (ACT) has been renewed for a two-year period beginning May 15, 2013.

FOR FURTHER INFORMATION CONTACT: Roberta B. Zarin, TE/GE Communications and Liaison, 202–283–8868 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of Treasury to announce the renewal of the Advisory Committee on Tax Exempt and Government Entities (ACT). The primary purpose of the ACT is to provide an organized public forum for senior Internal Revenue Service executives and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the ACT reviews existing tax policy and/or makes recommendations with respect to emerging tax administration issues. The ACT suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggests improvements with respect to issues having substantive effect on Federal tax administration. Conveying the public's perception on IRS activities to Internal Revenue Service executives, the ACT comprises of individuals who bring substantial, disparate experience and diverse backgrounds. Membership is balanced to include representation from employee plans, exempt organizations, tax-exempt bonds, and Federal, State, local, and Indian Tribal governments.

Dated: May 21, 2013.

Roberta B. Zarin,

Designated Federal Officer, Tax Exempt and Government Entities Division.

[FR Doc. 2013–12673 Filed 5–28–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting for the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Meeting notice.

SUMMARY: An open meeting of the Electronic Tax Administration Advisory Committee (ETAAC) will be conducted via telephone conference call. The ETAAC will discuss recommendations for electronic tax administration which will be published in the Annual Report to Congress.

DATES: *Meeting Date:* The meeting will be held on Wednesday, June 19, 2013, beginning at 9:00 a.m. eastern time, ending at approximately 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Cassandra Daniels at 202–283–2178 or email *etaac@irs.gov* to receive the call information. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION:

Background: The Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC) in 1998. The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. The ETAAC members convey the public's perceptions of the IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. The ETAAC's duties are to research, analyze, consider, and make recommendations on a wide range of electronic tax administrative issues and to provide input into the development and implementation of the strategic plan for electronic tax administration.

Meeting Access: The teleconference meeting is open to the public. Interested members of the public may listen to the ETAAC's discussion and submit written statements on issues in electronic tax administration to Cassandra Daniels, 5000 Ellin Road, C4–213 Lanham, MD

20706 or to *etaac@irs.gov* no later than 12 p.m. eastern on June 18, 2013. Written statements received after this date may not be provided to or considered by the ETAAC until its next meeting.

Dated: May 20, 2013.

Diane L. Fox,

Director, Relationship Management Branch.

[FR Doc. 2013–12668 Filed 5–28–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Baltimore, MD.

DATES: The meeting will be held June 27, 2013.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on June 27, 2013, at 31 Hopkins Plaza, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Ruth M. Vriend, C:AP:SO:ART, 1111 Constitution Ave. NW., Washington, DC 20224. Telephone (202) 435–5739 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on 31 Hopkins Plaza, Baltimore, MD 21201.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Sheldon M. Kay,

Chief, Appeals.

[FR Doc. 2013–12676 Filed 5–28–13; 8:45 am]

BILLING CODE 4830–01–P

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Part II

Nuclear Regulatory Commission

10 CFR Parts 30, 40, 70, et al.
Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 70, 170, and 171

[NRC–2009–0084]

RIN 3150–AH15

Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to require that the initial distribution of source material to exempt persons or to general licensees be explicitly authorized by a specific license, which includes new reporting requirements. The rule is intended to provide the NRC with timely information on the types and quantities of source material distributed for use either under exemption or by general licensees. In addition, the rule modifies the existing possession and use requirements of the general license for small quantities of source material to better align the requirements with current health and safety standards. Finally, the rule revises, clarifies, or deletes certain source material exemptions from licensing to make the exemptions more risk informed. This rule affects manufacturers and distributors of certain products and materials containing source material and certain persons using source material under general license and under exemptions from licensing.

DATES: *Effective Date:* This final rule is effective on August 27, 2013.

ADDRESSES: Please refer to Docket ID NRC–2009–0084 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0084. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gary Comfort, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8106, email: *Gary.Comfort@nrc.gov.*

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I. Background

A. Introduction

Source material is regulated by the NRC under part 40 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Source Material.'' Source material includes uranium and thorium in any physical or chemical form. Naturally occurring uranium and thorium and their decay chains emit alpha, beta, and gamma radiation. Uranium exhibits toxic chemical properties that can impair kidney function when ingested or inhaled in large quantities.[1] Thorium dioxide is classified as a ''known carcinogen'' by the U.S. Agency for Toxic Substances and Disease Registry and has been linked to lung and liver diseases.[2] Because of the potential for uranium and thorium to produce health effects from both chemical toxicity and radiological effects, it is important for the NRC to understand how and in what quantities uranium and thorium are being used under the general license and various exemptions in order to better evaluate potential impacts to public health and safety.

The last major modification of 10 CFR part 40 occurred in 1961 and established licensing procedures, terms, and conditions for source material that were substantially similar to those set forth, at the time, in 10 CFR part 30, ''Licensing of Byproduct Material.'' Since then, the health and safety requirements in 10 CFR part 20, ''Standards for Protection Against Radiation,'' have been revised. In particular, radiation dose limits for individual members of the public were significantly reduced in the revision to 10 CFR part 20. In addition, training and other requirements have been moved and revised from an earlier version of 10 CFR part 20 into 10 CFR part 19, ''Notices, Instructions and Reports to Workers: Inspection and Investigations.'' Although the requirements in 10 CFR part 30 have been revised to address the changes to the health and safety requirements in 10 CFR part 20 and the training requirements in 10 CFR part 19, these changed standards have generally not been addressed with respect to the use of source material in 10 CFR part 40.

In the 1990s, the NRC conducted a reevaluation of the exemptions from licensing for byproduct and source material in the NRC's regulations. The

[1] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry. ''ToxFAQs™ for Uranium,'' 1999.

[2] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry. ''ToxFAQs™ for Thorium,'' 1999.

assessment of doses associated with most of these exemptions can be found in NUREG–1717, ''Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials,'' published June 2001.[3] Doses were estimated for the normal life cycle of a particular product or material, covering distribution and transport, intended or expected routine use, accident and misuse scenarios, and disposal using dose estimation methods consistent with those reflected in the current 10 CFR part 20. The report identified potential and likely doses to workers and members of the public under the exemptions contained in 10 CFR parts 30 and 40. In general, the reevaluation concluded that no major problem exists with the use of products containing source material or byproduct material under the exemptions from licensing. Many products containing source material used under an exemption from licensing present the potential for higher exposures under routine use conditions than products containing byproduct material used under an exemption because of differences in allowed forms and uses; however, risks from accidents are generally smaller for products containing source material. Although containment is a key to safety for many products containing byproduct material, containment is generally less important for products containing source material because of the low specific activity of the source material contained in such products.

In 1999, the State of Colorado and the Organization of Agreement States (the petitioners) submitted a petition for rulemaking, PRM–40–27 (ADAMS Accession No. ML082261305), which stated their concerns regarding potential exposures to persons using source material under the general license in 10 CFR 40.22, ''Small quantities of source material.'' The NRC published a notice of receipt of this petition on July 7, 1999 (64 FR 36615), and noticed the resolution and closure of the petition on September 10, 2009 (74 FR 46512). The petitioners requested that the exemption for these general licensees from 10 CFR parts 19 and 20 be restricted such that any licensee that has the potential to exceed dose limits or release limits, or generates a radiation area as defined in 10 CFR part 20, should be required to meet requirements in both 10 CFR parts 19 and 20. The petition indicated that the State of Colorado had identified a site operated under the general license in § 40.22 at which there was significant source material contamination. The petitioners calculated that resultant exposures from the source material contamination were significantly above the exposure limits allowed to members of the public in 10 CFR part 20. The petitioners indicated that public dose limits were considered applicable because workers operating under the general license were exempt from training requirements that would normally be required for radiation workers under 10 CFR part 19. The petitioners also referenced other situations, which, based on their research, appeared to have resulted in § 40.22 (or Agreement State equivalent) general licensees potentially exceeding public health and safety or disposal limits that apply to most other licensees.

In order to evaluate potential impacts of the current limits in § 40.22, the NRC tried to collect additional information on the use of source material under the general license. However, although the NRC had identified six persons distributing source material to § 40.22 general licensees in the mid-1980's, the NRC was able to identify only one remaining distributor in 2005. In 2006, the NRC contracted Pacific Northwest National Laboratory (PNNL) to examine whether the regulations concerning general licenses and certain exemptions for source material were consistent with current health and safety regulations. In 2007, PNNL completed its evaluation and documented its findings in ''PNNL–16148, Rev. 1—Dose Assessment for Current and Projected Uses of Source Material under U.S. NRC General License and Exemption Criteria'' (the PNNL study) (ADAMS Accession No. ML070750105). The PNNL study used available information to identify and assess the primary operations conducted under the § 40.22 general license and equivalent provisions of the Agreement States. The available data was collected from information voluntarily submitted by specific licensees known to have distributed source material to general licensees in the past, through surveys to certain identified general licensees, and through use of searches from the Internet, publications, and professional societies. In this study, PNNL developed and evaluated bounding scenarios for the use of source material under the general license in § 40.22. The results suggested that reasonable scenarios exist for uses under the general license that could result in potential doses that can exceed 1 millisievert (mSv) per year (100 millirem (mrem) per year) to workers or members of the public. However, the available information was found to be limited and may not be representative of all current, or future, uses of source material under the existing general license.

B. Regulatory Framework

The NRC has the authority to issue both general and specific licenses for the use of source material and to exempt source material from regulatory control under Section 62 of the Atomic Energy Act of 1954, as amended (AEA). A general license is provided by regulation, grants authority to a person for particular activities involving source material as described within the general license, and is effective without the filing of an application or the issuance of a licensing document. Requirements for general licensees appear in the regulations and are designed to be commensurate with the specific circumstances covered by each general license. A specific license is issued to a named person who has filed an application with the NRC. Exemptions are provided in situations where there is minimal risk to public health and safety and allow the end user to possess or use the source material without a license. The NRC regulations contained in 10 CFR part 40 set forth the basic requirements for licensing of source material.

Section 40.13, ''Unimportant quantities of source material,'' sets forth several exemptions from the licensing requirements for source material. Some products containing uranium or thorium, now covered by the exemptions from licensing in 10 CFR part 40, were in use before the originally enacted Atomic Energy Act of 1946. Exemptions for the possession and use of many of these products were included in regulations noticed on March 20, 1947 (12 FR 1855). As beneficial uses of radioactive material have developed and experience with the use of such material has grown, new products intended for use by the general public have been invented, and the regulations have been amended to accommodate the use of new products. Unlike the regulations for the distribution of byproduct material, the regulations contained in 10 CFR part 40 do not include requirements to report how much source material is distributed in the form of products for use under the exemptions from licensing.

The regulations contained in 10 CFR part 40 authorize a number of different general licenses for source material, one of which is for small quantities of source material (§ 40.22). Because general licenses are effective without the filing of an application with the NRC, there are no prior evaluations of user qualifications, nature of use, or safety controls to be exercised. Some

[3] See *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1717/.*

general licenses do include reporting requirements for transfers of source material.

Section 40.22 provides a general license authorizing commercial and industrial firms; research, educational, and medical institutions; and Federal, State, and local governmental agencies to use and transfer not more than 15 pounds (lb) (6.8 kilograms (kg)) of source material in any form at any one time for research, development, educational, commercial, or operational purposes. Not more than a total of 150 lb (68 kg) of source material may be received by any one general licensee in any calendar year. Section 40.22 general licensees are exempt from the provisions of 10 CFR parts 19 and 20 and 10 CFR part 21, ''Reporting of Defects and Noncompliance,'' unless the general licensee also possesses source material under a specific license. The general license prohibits the administration of source material or the radiation emanating from the source material, either externally or internally, to human beings except as may be authorized in a specific license issued by the NRC. Unlike the regulations for the distribution of byproduct material, there are no reporting requirements for persons transferring source material, initially or otherwise, for use under this general license. Thus, the NRC does not have significant information on who, how, or in what quantities persons are using source material under this general license.

The regulations contained in 10 CFR part 40 also authorize specific licenses for source material. Basic requirements for submittal of an application for a specific license are found in § 40.31, ''Application for specific licenses,'' and general requirements for issuance of a specific license are found in § 40.32, ''General requirements for issuance of specific licenses.'' Terms and conditions of licenses are contained in § 40.41, ''Terms and conditions of licenses.'' With the exception of the requirements found in §§ 40.34, ''Special requirements for issuance of specific licenses,'' and 40.35, ''Conditions of specific licenses issued pursuant to § 40.34,'' related to the manufacture and initial transfer of products and devices containing depleted uranium to be used under the general license in § 40.25, ''General license for use of certain industrial products or devices,'' and the broad transfer authorizations contained in § 40.51, ''Transfer of source or byproduct material,'' there are no specific requirements applicable to the distribution of products and materials containing source material.

C. Why are revisions to 10 CFR Part 40 considered necessary?

The regulations contained in 10 CFR part 40 were initially based on the assumption that the health and safety impacts of source material were low and that considerations for protecting the common defense and security were more significant. When the AEA was initially written, one of the major focuses was to ensure that the United States Government would have an adequate supply of uranium and thorium as ''source material'' for atomic weapons and the nuclear fuel cycle. Exemptions from licensing were made for certain consumer products already in production, such as gas mantles containing thorium, and these exemptions have not been substantially modified since they were included in ''Schedule I: Exempted Product,'' in the original issuance of Title 11 of the *Code of Federal Regulations* part 40, ''Control of Source Material,'' in 1947.[4] These exemptions essentially accommodated existing practice at that time without any consideration about health and safety. Recent studies have indicated that the manufacture and use of such products has decreased as alternative products, not containing source material, have become more readily available. Consistent with a policy statement on consumer products published on March 16, 1965 (30 FR 3462),[5] the NRC has periodically evaluated potential doses from exempt products to ensure that the exposure from any individual exempt product does not exceed a small fraction of the overall recommended dose limit for the public and that the combined effect of exposures from various exempt practices does not significantly impact public health and safety. However, because the NRC has little data on distributions of source material to exempt persons, these evaluations for source material have been particularly difficult to conduct, and may not necessarily represent real world conditions.

As previously stated, currently, 10 CFR part 40 does not include any requirement to report information about source material being distributed for use under the general license in § 40.22 or under any exemption from licensing provided in § 40.13. Because the NRC does not require the reporting of products and materials distributed for use under the general license or exemptions, the NRC cannot readily determine if the source material is being maintained in accordance with the regulatory requirements for those uses, or how or in what quantities the source material is being used. As a result, the NRC cannot fully assess the resultant risks to public health and safety. Despite the limited availability of information, the NRC has assembled some data regarding the use of source material under both exemptions and the § 40.22 general license. Because of the difficulty of collecting such information and its limited reliability, the NRC has concluded that new reporting requirements on the distribution of source material to § 40.22 general licensees and persons exempt from licensing will significantly increase the NRC's ability to evaluate impacts and more efficiently and effectively protect the public health and safety from the use of source material.

Product Exemptions

NUREG–1717 identified that some source material product exemptions are obsolete and that certain products are no longer manufactured at the upper limits allowed under § 40.13(c). As a result, the NRC concludes that it is preferable to remove an unused exemption or reduce the concentration limits allowed in future products to reduce the potential for exposures to the general public from these products.

In addition, based upon numerous questions from industry in the past, the NRC has learned that industry has generally moved from the manufacture of optical lenses containing thorium to the manufacture of lenses with thin coatings of thorium. This has led to the question of the applicability of the product exemption in § 40.13(c)(7) to those lenses coated with thorium and whether § 40.13(c)(7) should be revised to clarify this issue.

Section 40.22 General License

When the current general license in § 40.22 was established in 1961, provisions were included to exempt the general licensees from 10 CFR parts 19 and 20. The exemption was based upon the known uses of source material and the health and safety requirements at that time. Because the § 40.22 general license was expanded to include commercial applications in 1961, it is likely that some current practices were not evaluated as part of that rulemaking. In addition, since that time, limits for protecting health and safety in 10 CFR part 20 were significantly lowered, and the training requirements in 10 CFR part

[4] In 1949, the regulations for atomic energy activities were moved to Title 10.

[5] On October 14, 2011, the Commission published a proposed revision to this policy (76 FR 63957). It does not present significant changes; rather, it is a general updating of the current policy. This updated version has not yet been finalized.

19 were expanded. This combination of events has led to the recognition that some general licensees could expose workers to levels above 1 mSv (100 mrem) per year, which would normally require radiation training under 10 CFR part 19.

In addition, because of the exemption to 10 CFR part 20, the NRC recognizes that some § 40.22 general licensees may dispose of source material in manners that would not be acceptable for other licensees where 10 CFR part 20 applies and may abandon sites with contamination at levels exceeding 10 CFR part 20 release limits. These actions could result in individual members of the public being exposed to dose levels above that permitted by 10 CFR part 20. The PNNL study indicated that most source material possessed under § 40.22 is likely handled in quantities, physical forms, or in uses and conditions that would justify the continued application of the exemptions to 10 CFR parts 19 and 20. However, as indicated by PRM–40–27, and by bounding dose calculations in the PNNL study, situations can occur where § 40.22 general licensees exceed limitations under which certain requirements in 10 CFR parts 19 and 20 would apply to a specific licensee. For example, because of the current exemption to 10 CFR part 20, a § 40.22 general licensee could abandon a site, resulting in a situation where the next occupant is exposed at levels above public dose limits in § 20.1301 and the unrestricted release limits in § 20.1402. As a result, the NRC determined that the § 40.22 general license should be revised to make it consistent with current training requirements and public health and safety standards, as set forth in 10 CFR parts 19 and 20.

Another issue of concern is that the current § 40.22 general license allows persons to obtain 15 lb (6.8 kg) of uranium or thorium in any form, including separated isotopes of natural uranium or thorium that meet the definition of source material. Specifically, thorium-228 (Th-228) has a high specific activity such that 15 lb of Th-228 could potentially result in a dose in excess of dose limits in 10 CFR part 20, and as a result, would normally require controls under other NRC regulations. Thus, although Th-228 is not normally commercially available in such quantities, the NRC has concluded that persons should not be allowed to obtain quantities of Th-228 or other naturally-occurring separated isotopes of uranium and thorium (excluding depleted uranium) under the general license. Instead, persons desiring to possess such isotopes (other than depleted uranium) must obtain a specific license prior to possession.

II. Discussion

A. What action is the NRC taking?

The NRC is adding new requirements for those persons who initially transfer for sale or distribution products and materials containing source material for receipt under an exemption or the general license in § 40.22. This final rule also makes a number of additional revisions to the regulations governing the use of source material under exemptions from licensing and under the general license in § 40.22. These changes are intended to better ensure the protection of public health and safety in an efficient and effective manner.

A.1 Specific Licensing for the Distribution of Source Material

The NRC is adding two new provisions, §§ 40.13(c)(10) and 40.22(e), which prohibit the initial transfer for sale or distribution of products or materials containing source material to persons exempt from licensing under § 40.13(c) or to a § 40.22 general licensee, respectively, without authorization by a specific license. New reporting requirements associated with these specific licenses will allow the NRC to track the amount and types of source material being distributed to those persons. Other new requirements will allow the NRC to better ensure that products for use under exemption are manufactured and distributed within the constraints of the exemptions, and that general licensees have a better understanding of their responsibilities under the regulations.

The initial transfer for sale or distribution is considered to be the first transfer of the product or material containing source material to a person who will be receiving the source material for possession under an exemption listed in § 40.13(c) or under the general license in § 40.22. Subsequent transfers of source material from exempt person to exempt person or from general licensee to general licensee continue to be allowed without the need to obtain a specific license authorizing such transfers.

Because new § 40.13(c)(10), in conjunction with § 40.52, requires a specific license authorizing initial transfers, a person currently operating under a § 40.22 general license that manufactures and initially transfers or distributes a product for possession under an exemption listed in § 40.13(c) will no longer be allowed to operate under the general license and, instead, needs to obtain a specific license under this final rule.

In response to public comments concerning the possibility of an analytical laboratory operating under a general license and the potential unintended consequences and costs to both the laboratory and clients, the final rule excludes transfers to or from analytical laboratories from being required to be made under a specific license for distribution. The NRC expects that such transfers would normally involve small quantities and would not provide useful information on use or amounts of source material being distributed in general. The process for obtaining a specific license to distribute source material is expected to be relatively straightforward.

Applications for specific licenses for distribution are made through the provisions of § 40.31 and an applicant is required to meet the applicable provisions of § 40.32. Under both §§ 40.13(c)(10) and 40.22(e), an initial distributor is allowed to continue distribution of products or materials containing source material without a specific license for 1 year beyond the effective date of this rule. Additionally, if an application for a specific license (or license amendment, in the case of an existing NRC specific licensee) has been submitted within 1 year of the effective date of this rule, the applicant will be allowed to continue their distributions until the NRC takes final action on the application.

A.2 Distribution of Products to Persons Exempt From Regulation

A specific license for the initial distribution of products for use under an exemption listed in § 40.13(c) may only be issued by the NRC, including for those persons located in an Agreement State. This license will be issued under a new provision § 40.52, ''Certain items containing source material; requirements for license to apply or initially transfer.'' Conditions for § 40.52 licenses are added in a new provision in § 40.53, ''Conditions of licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records and reports.''

In 10 CFR 150.15(a)(6), the NRC retains the authority to license the initial transfer of materials containing source material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements. The licensing of the export from and import into the United States of source material is also wholly reserved to the NRC by § 150.15(a)(2). Thus, a

distributor, whether a manufacturer or an importer, that is located in an Agreement State and involved in the initial transfer of materials or products containing source material to exempt persons, requires authority to distribute such material from the NRC. This NRC license is in addition to any Agreement State license that may be required for possession or use of the source material in the Agreement State. Because the Agreement State continues to license possession and use and, therefore, the health and safety of such activities, a person initially distributing source material is exempted by the NRC from meeting the requirements of 10 CFR parts 19 and 20.

Importers of products containing source material that meets the requirements for possession under an exemption also need a specific license for initial distribution under this final rule. If the importer does not modify the product in a manner inconsistent with the applicable exemption(s), the importer is exempt from the requirements in 10 CFR parts 19 and 20—this is different than the existing regulations governing the initial transfer of byproduct material, which do not provide an exemption from 10 CFR parts 19 and 20 for importers of finished products containing byproduct material. The exemption from 10 CFR parts 19 and 20 for importers of finished products is included, because the health and safety concerns for this type of distributor are no different than those for a secondary distributor of source material, who is neither currently, nor by the final rule, required to obtain a specific license for distribution. Importers of finished products are not expected to process or modify the products under the distribution license (except as would be expected under the normal use of the product as allowed by the conditions of the exemption). Persons processing or modifying the products must be authorized by a specific license for possession and use and are not entitled to the exemption from 10 CFR parts 19 and 20, if they are under the NRC's jurisdiction.

The new § 40.52 provides conditions for approval of a license application for initial distribution of source material to exempt persons. Additionally, § 40.53 contains a number of conditions for initial distributors including requirements for reporting and recordkeeping, quality control, and labeling.

For example, the new reporting and recordkeeping requirements in § 40.53(c) require an initial distributor of products for use under an exemption in § 40.13(c) to submit a report, by January 31 of each year, regarding transfers made in the previous calendar year. The report must identify the distributor and indicate what products, types of source material and amounts, and the number of units distributed.

The data collected by virtue of the new requirements will provide the NRC with a more accurate and complete representation of source material distributed to the public for use under the exemptions in § 40.13(c). This will allow the NRC to recognize trends in distribution that could alter earlier estimates of doses to workers and to members of the public. This information will also provide a better basis for considering future regulatory changes in this area and in allocating the NRC's resources. The data collected through the final reporting requirements will also aid in confirming that routine exposures to the public from all sources controlled by the NRC remain unlikely to exceed 1 mSv (100 mrem) per year.

These reporting and recordkeeping requirements are expected to impose a minimal burden on those persons requiring a specific license for initial distribution of source material, particularly given the current state of information technology. The first report may include information on transfers for which records have not previously been required; however, this information is expected to be available because of basic business recordkeeping practices. If detailed information is not readily available for this first report, a best estimate for the whole calendar year will be acceptable.

In addition to reporting and recordkeeping, there are a few additional requirements being added for initial distribution of products for use under exemption. The new requirements help to ensure that products being distributed are within the quantity or concentration limits for those exemptions that include such limits and that the products are properly labeled as currently required by the existing conditions in the exemptions. In addition, the new § 40.52(b)(4) requires distributors to propose a method of labeling or marking each unit and/or its container with information that identifies the manufacturer or initial distributor of the product and the type of source material in the product. In accordance with § 40.53(b), the proposed method of labeling must satisfy any exemption-specific labeling requirements.

In NUREG–1717, certain products containing source material and used under an exemption from licensing (e.g., welding rods and gas mantles) were identified as having the potential for routine exposures that are higher than is generally acceptable for use under an exemption. However, the use of source material in many of these products has significantly declined, being replaced by rare earth compounds, such as lanthanum and yttrium. For example, the routine use of thorium contained in welding rods and gas mantles is becoming less likely and typical exposures to users is likely less than previously estimated. At the same time, exposures can be limited by a user who is properly informed concerning the inherent risks of exposures and methods for reducing exposure. Thus, rather than eliminate these exemptions, the NRC is requiring distributors of gas mantles and welding rods containing thorium for use under the exemptions in § 40.13(c)(1)(i) and (iii), respectively, to include safe handling instructions along with the distributed product.

The expected information to be provided in an application, as required by § 40.52, and in reports, as required in § 40.53, is described in general terms because of its applicability to a broad range of industries and, therefore, different industries may be required to provide different details dependent upon their individual businesses. The exact information to be provided may be discussed with the NRC during development of an application with the intent that the information provided will be adequate for the NRC to ensure that products being distributed are within the limits of the exemption and will provide the NRC with reasonable approximations of the types and number of products being distributed and what kinds and amounts of source material are in those products.

New fee categories and initial fee amounts for this new specific license type are added as revisions to §§ 170.31 and 171.16. There is a category for distribution and a separate category for manufacturing or processing. Applicants and licensees under the new licensing provision § 40.52 fall under a newly established fee category, 2.C. ''Licenses to distribute items containing source material to persons exempt from the licensing requirements of 10 CFR part 40 of this chapter'' in both sections (the current 2.C. ''All other source material licenses'' is redesignated as 2.F. by this rule). This new fee category applies to all initial distributors of products containing source material for use under § 40.13(c). The fee associated with this category is the only fee required by the NRC of distributors whose possession and use of source material is licensed by an Agreement State or who only import finished products for distribution. However,

persons located in Agreement States may be subject to separate fees set forth by the Agreement State for the manufacture and processing of such products. This is similar to the breakdown of fees for manufacturers and distributors of exempt byproduct material. The initial fees associated with the distribution aspect of licensing for source material are lower than those related to distribution of products containing byproduct material to exempt persons, because this rule adds more limited requirements applicable to the distribution aspect of licensing for source material. Initial fee amounts for the new category 2.C. are as follows: $7,000 for an application; $10,000 for the annual fee.

The new fee category for manufacturing and processing is 2.E., ''Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution'' in §§ 170.31 and 171.16. This fee category is not applicable to persons located in Agreement States, although the Agreement State may impose their own fees for this category. The fees for this new category are $5,400 for an application and $12,400 for the annual fee and are the same as those for the current category 2.C., ''All other source material licenses.'' As stated in the proposed rule, these fees have been revised from those in the proposed rule to be consistent with the current category 2.C. fees.

After the implementation of this rule, the fee amounts for these new categories will change annually in accordance with NRC policy and procedures. Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories, which often results in changes to the flat application fees. In addition, results from the biennial review impact the annual fee for the small materials users, since the NRC bases the annual fees for each fee category within this class on the application fees and estimated inspection costs for each fee category. Each year, the annual fee for the materials users is calculated using a formula that distributes the NRC allocated budget amount for the small materials users to the various fee categories based on application fees, inspections costs, inspection frequency, and the number of licensees in the fee category. It should be noted that under § 171.16(c), a licensee who is required to pay an annual fee may qualify as a small entity. If a licensee qualifies as a small entity and provides the NRC with the proper certification along with its annual fee payment, the maximum annual fee would be currently limited to $500 or $2,300, depending on the size of the entity.

A.3. Conditions for the Distribution of Source Material to General Licensees

Unlike the specific license for the distribution of source material to an exempt person, a specific license for the initial distribution of products or materials for use under the § 40.22 general license may be issued by the NRC or, for persons located in an Agreement State, by the Agreement State. For licenses issued by the NRC, a specific license for the initial distribution of source material for use under the § 40.22 general license will be issued under a new provision in § 40.54, ''Requirements for license to initially transfer source material for use under the 'small quantities of source material' general license.'' Conditions for the § 40.54 licenses are added in a new section, § 40.55, ''Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.'' Section 40.54 provides conditions for approval of a license application for the initial distribution of source material to § 40.22 general licensees. Additionally, § 40.55 contains a number of conditions for initial distributors including requirements for reporting and recordkeeping, labeling, and notifications.

The final rule adds § 40.55(d) and (e) to establish reporting and recordkeeping requirements for initial distributors of source material to persons generally licensed under § 40.22 or equivalent Agreement State provisions. The rule requires that all initial transfers be reported to the NRC annually by January 31. Additionally, the distributor must also provide a separate report, annually by January 31, to each Agreement State (see *http://nrc-stp.ornl.gov/asdirectory.html* for Agreement State contact information) to which the distributor initially transfers source material to a general licensee. The reports cover transfers of source material completed in the previous calendar year. The reports will identify each general licensee receiving quantities of source material greater than 50 grams (g) (0.11 lb) within any calendar quarter by name and address, the responsible agent who may constitute a point of contact between the NRC or the Agreement State agency and the general licensee, and the type, physical form, and quantity of source material transferred. In addition, the distributor will be required to report the total quantity of source material distributed each calendar year, including any transfers of less than 50 g (0.11 lb) made to any person during the calendar year.

The reporting requirements, when also applied to distributors in Agreement States by those States, will help the NRC and the Agreement States identify § 40.22 general licensees using larger quantities of source material. This will enable the NRC and the Agreement States to better communicate with or inspect these general licensees, if necessary, to ensure that public and worker health and safety is adequately protected. The NRC will also use collected data to assess the extent of use of this general license in order to better evaluate alternatives for future revisions to this general license. Because the reporting requirement is intended to apply only to anyone initially distributing source material to § 40.22 general licensees, transfers of source material from general licensee to general licensee will still not be reported.

Records of the initial transfer of source material for use under § 40.22 are required to be retained for 1 year after inclusion in a report to the NRC or to an Agreement State agency. Maintaining records for this length of time will facilitate the licensee's preparation of the report and allows for verification of the accuracy of the report by the NRC or the Agreement State. This is shorter than the record retention requirements for transfers of generally licensed devices in byproduct material regulations. For generally licensed devices containing byproduct material, longer record retention is appropriate because of the possible need for tracking particular devices if generic defects were identified.

These reporting and recordkeeping requirements are expected to impose a minimal burden on those persons requiring a specific license for initial distribution of source material, particularly given the current state of information technology. The first report may include information on transfers for which records have not been required; however, this information is expected to be available because of basic business recordkeeping practices. If exact numbers cannot be given for this first report, a best estimate for the whole calendar year will be acceptable.

In addition to reporting and recordkeeping, there are a few requirements being added for distribution of material for use under § 40.22 and equivalent Agreement State provisions. The new requirements

primarily require the licensee to ensure that the quantity or concentration of material is as labeled. The initial distributors are required to provide to their customers copies of key relevant regulations and radiation safety precautions and instructions to help minimize exposures. Requiring initial distributors to provide copies of such regulations makes the recipient aware that the source material is possessed under a general license and what the requirements are under that general license.

New fee categories and fee amounts for this new specific license type are added as revisions to §§ 170.31 and 171.16. The applicants and licensees under the new licensing provision § 40.54 come under a newly established fee category, 2.D., ''Licenses to distribute source material to persons generally licensed under 10 CFR part 40 of this chapter,'' in both sections. Initial fee amounts are as follows: $2,000 for an application; $5,000 for the annual fee. These applicants and licensees are also subject to the new category, 2.E., ''Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution,'' in §§ 170.31 and 171.16. As discussed in section II.A.2 of this document, the initial fee amounts for this category are equal to the fee for current fee category 2.C. at the time this rule is made effective. These fee amounts will subsequently be revised in accordance with applicable NRC policy and procedures.

The NRC currently has no licensees under the existing licensing provision of § 40.34, which also authorizes distribution to a category of general licensees (those licensed under § 40.25 and Agreement State equivalent provisions). The new fee categories 2.D., for persons who initially distribute source material to general licensees, and 2.E., for manufacturing or processing of source material for commercial distribution, also cover future NRC applicants and licensees that apply for or possess a license under § 40.34.

A.4. Possession and Use of Source Material Under § 40.22

Section § 40.22, ''Small quantities of source material,'' is revised in its entirety. Under revised § 40.22(a), the general license is limited to thorium and uranium in their natural isotopic concentrations and depleted uranium. This differs from the previous § 40.22(a), which allowed possession of any naturally occurring isotopes of uranium and thorium in any isotopic concentration. In particular, Th–228, when isotopically separated, has the potential to present significantly higher doses because of its higher specific activity. The current provisions of § 40.22 may allow a person to receive quantities large enough in terms of activity to present a security concern without obtaining a specific license. The revised general license limits uranium and thorium to their natural isotopic concentrations or as depleted uranium to ensure that persons could not obtain significant quantities of high-specific activity source material in an isotopically separated form without the authorization and safety controls provided by a specific license.

Under the revised § 40.22(a)(1), the general licensee is limited to possession of less than 1.5 kg (3.3 lb) of uranium and thorium at any one time and 7 kg (15.4 lb) per calendar year for all uranium and thorium that is in a dispersible form or has been processed by the general licensee. A material is considered to be in a dispersible form if it can be readily ingested or inhaled (e.g., in a gaseous, liquid, or powder form) in normal or accidental situations or if it is processed in a manner such that the material containing source material is physically or chemically changed. Under the previous general license, assurance of safety was based primarily on two limiting conditions: (1) The amount of source material that could be used at any one time, and (2) the amount of source material that could be obtained in any calendar year. It had been assumed that the activities likely to be conducted under the general license would be unlikely to result in significant intakes of source material. These conditions, however, may not be totally effective in affording a proper level of safety as raised by PRM–40–27 and substantiated by the PNNL study. Both PRM–40–27 and the PNNL study suggest that situations could occur where the general licensee exceeded limitations under which certain requirements in 10 CFR parts 19 and 20 usually would apply to specific licensees. These situations primarily result from the use or possession of source material in a dispersible form.

In PRM–40–27, the petitioners stated that they had identified a site where source material was likely possessed under the general license in § 40.22 that had significant amounts of surface contamination. The petitioners indicated that resultant exposures for the source material contamination were above the dose limits allowed to members of the public in 10 CFR part 20 and were possibly as high as 1 rem (10 mSv) per year.

The PNNL study confirmed that such exposures were possible under the existing § 40.22 general license conditions and indicated that unprotected workers exposed to thorium and uranium powders during the lens manufacturing process, as licensed under a § 40.22 general license, can potentially receive an annual internal radiation dose up to 5.6 mSv (560 mrem) and an annual committed effective dose approaching 8 mSv (800 mrem) without regard to excess contamination. This type of manufacturing process uses source material in a powdered form, which allows for a greater chance of inhalation or ingestion of the source material. Although the NRC expects that the doses from manufacturing may be tremendously reduced if the process is performed in hot cells or if workers generally use respiratory protection (e.g., dust masks) in response to other regulatory requirements, the NRC is concerned about the potential exposures, because a § 40.22 licensee is not required to meet the health and safety requirements for protection against radiation in 10 CFR part 20, nor the training requirements in 10 CFR part 19.

The new limits in § 40.22(a)(1) are intended to reduce the likelihood that a person operating under the general license will exceed dose limitations in 10 CFR part 20, and criteria in 10 CFR parts 19 and 20, that would normally require additional controls if the person were specifically licensed. Based upon the bounding dose calculations in the PNNL study, the NRC expects the reduction in the possession and throughput limits will significantly decrease the potential for a worker to be exposed at levels exceeding 1 mSv (100 mrem) per year. The reduction in possession and throughput limits also reduces the likelihood that a person will exceed the chemical toxicity limits for soluble uranium in § 20.1201(e) that would normally apply to an NRC specific licensee. In addition, by limiting the amount of such source material allowed to be received in a calendar year, the NRC expects that the potential for surface contamination buildup (similar to that identified in PRM–40–27) will be also be reduced. By reducing the amount of source material that is available for inhalation and ingestion, the NRC has concluded that the exemptions to 10 CFR parts 19 and 20 continue to be acceptable. The exemption to 10 CFR part 21 also continues to apply, because 10 CFR part 21 addresses concerns that are unlikely to arise under § 40.22.

Under the final rule, persons currently possessing source material in dispersible forms, or processing source material, in quantities greater than 1.5 kg (3.3 lb) of uranium and thorium at any one time, or receiving more than 7 kg (15.4 lb) of uranium and thorium in 1 year, are required to obtain a specific license if they cannot reduce their possession and use of the source material to below the new limits. As a change from the proposed rule, in § 40.22(a)(1), a person requiring a specific license because of the reduction in possession limits has up to 1 year to apply for such license or reduce their possession of source material to below the new limits in § 40.22(a)(1). A person who decides not to apply for a specific license has additional time (up to the end of the calendar year following the effective date of the final rule) to reduce their throughput so that they are not affected by a mid-year change in a calendar year limit. A person applying for a new possession license is allowed to operate at the previous, higher possession limits until such license application is acted on by the NRC. This allows persons who require a specific license for initial distribution (if currently operating under the general license) to continue to possess and process source material while action on their license application is pending. It is expected that only a small number of persons currently possessing and using source material under the existing general license will be required to obtain a specific license for continued use of the source material as a result of the reduction in possession limits in § 40.22(a)(1). The NRC expects that most persons possessing source material above the limits in § 40.22(a)(1) are likely manufacturing products for use under exemption and, thus, will already be required to obtain a specific license under the new distribution requirements in § 40.52.

Under the new § 40.22(a)(2), the general licensee is allowed to possess up to a total of 7 kg (15.4 lb) total uranium and thorium at any one time—this limit must include any inventory of source material possessed under § 40.22(a)(1). Any source material possessed in excess of the limits in § 40.22(a)(1) must be in a solid, non-dispersible form (e.g., a metal or sintered object; contained in protective envelope or in a foil; or plated on an inactive surface) and not chemically or physically altered by the general licensee. The licensee is limited to the receipt of no more than 70 kg (154 lb) of uranium and thorium per calendar year under § 40.22(a)(2), including the inventory of source material possessed under § 40.22(a)(1). If the licensee does physically or chemically alter the solid source material, that altered source material must fall within the 1.5 kg (3.3 lb) at one time limit and no more than 7 kg (15.4 lb) per calendar year limits of the new § 40.22(a)(1). Because the greater impact from the possession and use of source material results from inhalation or ingestion, allowing source material in a solid, non-dispersible form to continue to be possessed at a limit of 7 kg (15.4 lb) at any one time is not expected to significantly impact health and safety of workers handling or near such material because of the unlikely chance of inhalation or ingestion.

The rule language of § 40.22(a)(1) and (2) was revised in response to comments received on the proposed rule and to better clarify the new requirements. The intent and limits of the requirements stated in the proposed rule were not changed by the final rule.

Under § 40.22(a)(3), persons treating drinking water by removing uranium for the primary purpose of meeting U.S. Environmental Protection Agency regulations continue to be allowed to possess up to 7 kg (15.4 lb) of uranium at one time and process no more than 70 kg (154 lb) of uranium per calendar year. The NRC has concluded that the types of activities used to remove uranium from drinking water will adequately contain the uranium and are not expected to result in unacceptable exposures to workers. The NRC also is concerned that the implementation of reduced possession limits on such persons could significantly impact operating costs, if such facilities are required to obtain specific licenses, and thereby impact their ability to provide safe drinking water. Although persons operating such facilities are not impacted by changes in possession limits, they are required to meet the other requirements of the final rule. However, these persons continue to have multiple options for operating within the NRC's regulations, including operation under a specific license.

In response to public comments concerning the possible use of the general license by analytical laboratories and the potential unintended impacts of the proposed changes to their activities, a new paragraph (a)(4) has been added to § 40.22 in the final rule. This new paragraph allows laboratories operating under the general license to continue to receive, possess, use, and transfer up to 7 kg (15.4 lb) of source material at one time, and to process no more than 70 kg (154 lb) of source material per calendar year, for the purpose of determining the concentration of the uranium and thorium contained within the material; however, the constraint that this material be in its natural isotopic concentrations or in the form of depleted uranium is included. It is expected that these analytical laboratories deal with a number of hazardous chemicals and likely have procedures that would limit the likelihood of inadvertent exposures from the source material as well as the hazardous chemicals normally used. In addition, under the revised definition of ''unrefined and unprocessed ore,'' a laboratory is allowed to analyze an unlimited amount of source material that meets the conditions of the exemption in § 40.13(b).

The revised § 40.22(b) primarily provides clarification of how existing regulations apply to § 40.22 general licensees. Paragraph (b)(1) in § 40.22 restates an existing requirement prohibiting the administration of source material to humans, unless authorized by a specific license.

Under the revised § 40.22(b)(2), the NRC is clarifying disposal requirements for source material possessed under § 40.22. Because § 40.22 currently exempts the general licensee from the requirements in 10 CFR part 20, one might infer that disposal of source material by these general licensees may be exempt from regulation because 10 CFR part 20 includes requirements for waste disposal. However, there is no exemption from § 40.51, which includes transfer provisions for licensees (including general licensees) and thus disposal opportunities under the general license are limited to only those persons authorized to receive the source material. In § 40.22(b)(2)(i), the NRC is specifically prohibiting abandonment of source material, but allowing up to 0.5 kg (1.1 lb) of source material per calendar year to be permanently disposed of without further NRC restrictions as long as the source material is in a solid, non-dispersible form (e.g., a metal brick, encapsulated in cement, etc.). The person receiving the source material to be permanently disposed is still required to meet the applicable regulations of other agencies regarding such disposals. The NRC concludes that such small quantities will allow general licensees who normally only possess very small quantities of source material at one time (e.g., uranyl acetate at educational institutions) to more economically dispose of the source material and will result in minimal impact to public health and safety because its form limits the ingestion and inhalation of the source material. The person receiving source material transferred under the

provisions of § 40.22(b)(2)(i) is not subject to further regulation by the NRC to the extent that the source material received under this provision was promptly and permanently disposed of by the recipient. Larger quantities of source material are required to be disposed of as radioactive material through the provisions of § 20.2001 (e.g., at an appropriately licensed disposal facility, or below the effluent release concentrations in 10 CFR part 20, etc.) or transferred to another person otherwise authorized to receive the source material.

Because § 40.22 does not currently exempt the general licensee from other requirements in 10 CFR part 40, the NRC is adding § 40.22(b)(3) to direct the general licensee's attention to other applicable sections of 10 CFR part 40. Similarly, § 40.22(b)(5) directs the general licensee's attention to regulations regarding exportation of source material.

Additionally, as part of its attempt to evaluate the current use of source material under the general license, the NRC found it difficult to obtain significant information voluntarily from general licensees. The new condition in § 40.22(b)(4) obligates general licensees to respond to the NRC's written requests for information within 30 days or as otherwise specified in the request.

As identified in PRM–40–27, contamination may be problematic for some persons using source material under the general license. The NRC is concerned that not only might a licensee not attribute what could be significant amounts of source material contamination to its possession limits but also, such as in the case identified in PRM–40–27, that a licensee might abandon significant amounts of source material in place. This abandonment could result in other persons that later inhabit the facility unknowingly exposing their workers or others to the source material contamination. As a result, the new § 40.22(c) requires the general licensee to minimize contamination at the site and ensure that the site is cleaned up so as to be protective of future worker and public health and safety. If the general licensee identifies evidence that there may be significant contamination, the licensee is required to notify the NRC and may consult with the NRC as to the appropriateness of sampling and restoration activities. The goal of this requirement is to reduce the likelihood that any remaining contamination would have the potential to result in the 25 mrem (0.25 mSv) limits in § 20.1401 being exceeded. The NRC expects a licensee to identify a concern about significant contamination based on both visual inspection (i.e., particulates remaining from operations) and operational and historical data (e.g., operations often resulted in airborne or dispersed particulates or there were history of spills, etc.). If there is any doubt as to whether remaining contamination may be considered significant, the licensee should consult with the NRC or a health physics consultant.

In § 40.22(d), the NRC continues to exempt persons generally licensed under § 40.22 from 10 CFR parts 19, 20, and 21, with the exceptions concerning disposal and decommissioning in revised § 40.22(b)(2) and (c). In addition, the NRC revised this exemption such that it no longer applies to any NRC specific licensee; in the current regulation only 10 CFR part 40 specific licensees are excluded. This modification is expected to provide minimal impact to specific licensees who possess source material under the general license, because they are already subject to 10 CFR parts 19, 20, and 21 for other licensed materials.

A.5 Revision of Exemption for Thorium Lenses

Paragraph (c)(7) in § 40.13 exempts thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium and meets certain use limitations, including that the thorium not be contained in contact lenses, spectacles, or eyepieces in binoculars or other optical instruments. Thorium is used in or on lenses to modify optical properties of the lens. The exemption, when originally established, was intended for uses where the thorium was homogeneously spread throughout the lens. This position was restated in the statement of considerations (SOC) for a 1977 proposed rule, ''General License for Government Agencies' Operational Use of Small Quantities of Source Material,'' (42 FR 43983; September 1, 1977). In that SOC, the NRC confirmed that the exemption in § 40.13(c)(7) was not intended to be applicable to coated lenses because the thorium was not evenly distributed in the finished lens. The SOC for final rule (42 FR 61853; December 7, 1977), did not change the position that the exemption applied only to thorium that is homogeneously spread throughout the lens.

In the past, the categorization of coated lenses was not a major concern, because such lenses could be possessed under the § 40.22 general license, which currently works similarly to an exemption. Because of the increased usage of coated lenses along with the planned new requirements introduced for the § 40.22 general license and for initial distribution, the categorization of coated lenses has become more important.

To clarify the regulatory status of these coated lenses and to address coatings on mirrors, the final rule makes three changes to the existing exemption: (1) It expands the exemption to include source material in *or on* finished coated lenses *and mirrors;* (2) it reduces the source material limit from 30 percent by weight to 10 percent by weight for products distributed in the future; and (3) it expands the exemption to include uranium. The remaining limitations on use continue to apply.

Although historical information indicates that lenses containing up to 28 percent by weight of thorium oxide were manufactured in the past, most lenses that have been possessed under this exemption have contained concentrations less than 10 percent by weight of thorium. The NRC has not been able to identify any manufacturers or distributors of lenses containing homogeneous amounts of thorium since 1980, because the industry appears to have moved to using thorium as a thin-film coating on the surface of lenses. The NRC's evaluation found that thin-film coated lenses contain a significantly lower total mass of thorium than that generally found in the same size homogeneous lenses. In addition, the NRC has learned that certain lens manufacturers also use thorium in combination with uranium to achieve desired properties. Although a coated lens does not contain the source material homogeneously within the lens (as is the case with lenses that may currently be possessed under the exemption), the PNNL study indicated that doses from both normal and accident conditions from lenses coated with either or both uranium and thorium were estimated to be well below 10 microsievert (μSv) per year (1 mrem per year). As a result, the NRC is expanding the exemption to include lenses, as well as mirrors, with thin-film coatings and to also apply the exemption to lenses and mirrors containing uranium. The NRC's expectation is that the source material will be fixed onto the lens or mirror and not readily removed from the surface. The exemption prohibits, and will continue to prohibit, shaping, grinding, polishing, and any other manufacturing process other than assembling the finished lens into an optical system or device.

The final rule also revises § 40.13(c)(7) to limit the source material

contained on or in the lens to no more than 10 percent by weight of source material across the volume of the lens, although lenses containing up to 30 percent by weight of thorium that were produced prior to the effective date of this rule will continue to be covered by this exemption from licensing. Based on information that the manufacture of lenses containing homogeneous thorium is no longer occurring and that the majority of lenses currently being manufactured contain concentrations less than 10 percent by weight of thorium, this reduction in the limit is expected to have minimal impact on industry. The actual percent by weight of source material on a thin-coated lens is expected to be well below this limit as averaged over the entire lens.

A.6 Revision of Exemption for Glassware

Paragraph (c)(2)(iii) in § 40.13 exempts glassware containing up to 10 percent source material by weight. Although the estimated doses associated with this exemption are acceptable, the benefit from this use of source material is limited to achieving a unique color and glow in the glassware. Such glassware has been used in products such as dinnerware and toys. This use of source material might be considered frivolous, which is not in keeping with the policy of the Commission with regard to consumer products. However, this use predates the AEA, has been ongoing for decades, and continues today. Current manufacturing is relatively limited, and the concentration in any recently produced items appears to be less than 2 percent source material (uranium). The one remaining NRC-licensed manufacturer for glassware containing source material maintains concentration in its products to within 1 percent by weight uranium. This rule limits products manufactured in the future to no more than 2 percent by weight source material. This will have minimal impact on the industry, limited to any costs associated with ensuring and documenting that products do not exceed this limit. It will ensure that doses to members of the public exposed to products distributed for use under this exemption in the future would be unlikely to exceed 10 μSv (1 mrem) per year. This is more appropriate for products with minimal societal benefit and is consistent with the concept of as low as reasonably achievable (ALARA).

A.7. Obsolete Exemptions

Some exemptions from licensing are considered obsolete in that no products are being distributed for use under the exemption. In at least one case, no products covered by the exemption remain in use. Generally, this has occurred because new technologies have made the use of radioactive material unnecessary or less cost-effective.

The NRC is deleting exemptions for products that are no longer being used or manufactured, and is restricting further distribution while allowing for the continued possession and use of previously distributed items. The various products covered by the individual exemptions are described in NUREG–1717. Two of the conclusions in that report concerning distribution are:

- For § 40.13(d): It is believed that fire detection units containing source material have not been manufactured for commercial use; and
- For § 40.13(c)(2)(i): The exemption for ceramic tableware containing source material could result in significant doses, which might be of concern, if used as one's every day dinnerware.

Although the exemption in § 40.13(d) is removed, in the event that persons possess products covered by this provision, this action does not change the regulatory status of any products previously manufactured in conformance with the provisions of the regulations applicable at that time. In the case of ceramic tableware, the final rule limits the exemption to previously manufactured products. This action provides assurance that health and safety are adequately protected from possible future distribution. Preliminary estimates indicated a potential for exposures higher than is appropriate for radioactive material being used under an exemption. However, exposures for the ceramic tableware were estimated using particularly conservative assumptions for routine use as everyday dinnerware, rather than the more typical use as a collectable.

Deleting the provision in § 40.13(d) simplifies the regulations by eliminating extraneous text. Also, the NRC periodically reevaluates the exposure of the general public from all products and materials distributed for use under exemption, to ensure that the total contribution of these products to the exposure of the public will not exceed small fractions of the allowable limits. Eliminating obsolete exemptions adds to the assurance that future use of products in these categories will not contribute to exposures of the public and also eliminates the need to reassess the potential exposure of the public from possible future distributions of these products.

There are other products covered by the exemptions in § 40.13(c) for which distribution is very limited and may have ceased; however, without the new distributor requirements, it is difficult to confirm whether any distribution continues. This risk-based approach to exemptions is in line with the strategic plan of the NRC.

A.8 Revision of Definition of ''Unrefined and unprocessed ore,'' as Used in § 40.13(b)

Based upon comments received regarding the transfer of source material samples to laboratories, the NRC has included a clarifying amendment to the definition of ''Unrefined and unprocessed ore'' in § 40.4, ''Definitions,'' in the final rule to indicate that activities related to the sample analysis of an unprocessed ore and a few other specified activities are not considered to be processing and that the ore would remain exempt under § 40.13(b). This amendment alleviates potential violations where a laboratory may unexpectedly identify source material in an unprocessed ore that would normally require licensing but the laboratory does not already have a license for the unexpected source material; instead, the laboratory may treat the processed sample as unprocessed ore under the exemption in § 40.13(b). This change is consistent with section 65 of the AEA, which states that ''reports shall not be required with respect to (a) any source material prior to its removal from its place of deposit in nature, or (b) . . . or the reporting of which will discourage independent prospection for new deposits.'' The other examples of activities not considered to be processing, i.e., sieving or encapsulation of ore, are activities that were not considered when this definition was initially established. Sieving is considered to be a simple mechanical technique for separating particles of different sizes in an ore where the actual physical particles themselves are not modified (e.g., separating rocks from sand). Encapsulation would be an activity in which the unprocessed ore is coated, for example with glass or polyurethane, but again, the ore itself is not physically or chemically changed.

A.9 Other Revisions

Minor clarifying changes and administrative corrections have been made to rule language text from that found in the published proposed rule language.

B. Whom will this action affect?

This final rule will affect manufacturers and distributors of certain products and materials containing source material, and persons

using source material under the general license in § 40.22. Certain persons initially transferring source material to exempt persons or general licensees will be required to obtain a specific license for such distribution. Certain persons currently possessing a general license under § 40.22 may be required to obtain a specific license for the continued possession and use of source material if they cannot adapt their operations to the new possession limits or if they initially transfer products containing source material. The final rule exempts persons who possess thorium or uranium coated lenses or mirrors from licensing requirements for those lenses and mirrors through a revision to § 40.13(c)(7).

C. When do these actions become effective?

The regulations in this final rule become effective August 27, 2013. However, persons requiring a new license for initial distribution have up to 1 year from this date to apply for a new specific license or discontinue such distributions. Similarly, persons in possession of source material in excess of the limits in § 40.22(a)(1) have up to 1 year from this date to apply for a specific license for possession with the previous throughput limit applying until action is taken by NRC on their license application. If they choose not to apply for a license, they have through December 31, 2014, to reduce the quantity of source material under their possession to below the new limits.

D. In what situations do I now need a license?

The new requirements in this rule require a person to obtain a specific license in three situations: (1) If the person is an initial distributor of source material to another person for use under an exemption in § 40.13(c); (2) if the person is an initial distributor of source material to another person for use under the general license in § 40.22; or (3) if the person possesses and uses source material in excess of the new limits in § 40.22(a)(1) and the source material is in a dispersible form or the material is processed such that it modifies the material's physical or chemical form. Normally a person requiring a specific license for initial distribution will also be required to obtain a specific license for possession and use of the source material.

E. With whom do I apply for a specific license?

For any activity requiring a specific license associated with the use of source material, persons located in a State under the NRC's jurisdiction are required to apply for the specific license in accordance with the requirements in § 40.31. Persons located in Agreement States are required to apply for possession and use licenses from the Agreement State in which they are located; however, persons located in an Agreement State who are initially distributing products containing source material for use under the exemptions in § 40.13(c) are also required to apply to the NRC for a specific license, authorizing the initial distribution of those products, in accordance with the requirements in § 40.31 (and specifically § 40.52 in this case).

F. What guidance is available for the rule?

The NRC is issuing interim guidance for the implementation of the revised requirements of 10 CFR part 40. A notice of the public availability of the interim guidance will be published in the **Federal Register** within the next 2 weeks. The interim guidance, ''Guidance for Implementation of the Final Rule, 'Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions,' in 10 CFR parts 30, 40, 70, 170, and 171'' (ADAMS Accession No. ML13051A824), may be obtained through the Federal Rulemaking Web site, *www.regulations.gov*, by searching on Docket ID NRC–2011–0003 or through ADAMS, when it is publically available.

The interim guidance will be reflected in the next updates of NUREG–1556, Vol. 8, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Exempt Distribution Licenses,'' and NUREG–1556, Vol. 16, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Licenses Authorizing Distribution to General Licenses.'' These two documents will contain the final guidance for the rule and will be published for comment after they are revised.

III. Summary and Analysis of Public Comments on the Proposed Rule

The proposed rule was published on July 26, 2010 (75 FR 43425), for a 75-day public comment period that ended on November 23, 2010. The NRC published an extension notice on November 18, 2010 (75 FR 70618), that extended the public comment period until February 15, 2011, to allow time to review proposed implementation guidance that was announced on January 7, 2011 (76 FR 1100). The NRC received 15 comment submittals from 10 organizations and individuals. The commenters on the proposed rule included an individual, a radiation safety officer from a university, an Agreement State, and representatives of industry organizations and individual companies. Copies of the public comments can be accessed using any of the methods provided in the **ADDRESSES** section of this document. In general, all commenters opposed one or more aspects of the rulemaking. One commenter requested significant revision or withdrawal of the rule. Two commenters voiced concerns that the impacts of the rule will be widespread and more significant than the NRC envisions. One commenter did state that the process for initial licensing appears the same as that in place for exempt byproduct material, and that that process has worked well. The comments and responses have been grouped into the following areas: (a) Changes to the small quantities of source material general license (§ 40.22); (b) distribution of source material for possession under a product exemption; (c) distribution of source material for possession under the general license; (d) exemptions; (e) fees; (f) miscellaneous; and (g) future rulemaking considerations. To the extent possible, all of the comments on a particular subject are grouped together. In the notice of proposed rulemaking, the NRC also specifically requested input on a variety of subjects. These questions are identified within the related response group, along with any comments received on the question. A discussion of the comments and the NRC staff's responses follow.

A. Changes to the Small Quantities of Source Material General License (§ 40.22)

A.1 Definition of ''Person''

Comment: One commenter stated that the NRC issues the general license to organizations but places the quantity limitations under 10 CFR 40.22(a)(1) & (2) on ''a person.'' The commenter stated that § 20.1003 defines a person as ''[a]ny individual, corporation, partnership, firm, association, trust, estate, public or private institution, group . . . and any legal successor, representative, agent, or agency of the foregoing.'' The commenter suggested that if an organization can treat an ''individual'' as the general licensee rather than the organization itself, it would greatly reduce the potential problem of needing to obtain a specific license.

Response: Although the term ''person'' is used in these paragraphs of the general license and the definition of ''person'' identified by the commenter is

the same definition as that included in § 40.4, the applicability of the general license is limited to ''commercial and industrial firms; research, educational, and medical institutions; and Federal, State, and local government agencies,'' which is a subset of ''person.'' The 1960 SOC for the proposed rule to revise 10 CFR part 40 (25 FR 8619; September 7, 1960), specifically identified the classes of users under the general license and stated that ''[i]ndividual members of the general public therefore would not be generally licensed.'' Although the identified class of users has changed since that time, the general license authorized specific classes of users that still do not include individual members of the general public. However, a ''person'' under § 40.22 is not necessarily the largest entity in a class of user. The SOC for a 1977 final rule (42 FR 61853; December 7, 1977), amending § 40.22 stated ''[m]oreover, in order to permit the greatest flexibility in use of small quantities of source material under the general license, the rule does not restrict application of the general license to the largest unit in any class of person specified.'' The SOC further states, ''this general license is applicable to any size unit, other than individuals, which is physically separate from other units. The purpose of the physical separation is to make it unlikely that more than 15 lb of source material could be brought together in a single location.'' Therefore, it is not appropriate to consider each individual in an organization as a separate general licensee. However, the NRC has normally considered separate facilities operated by the same entity to be separate general licensees, even if both facilities are in different parts of the same city.

A.2 Restriction to Only Naturally Occurring Isotopic Concentrations and Depleted Uranium

Comment: One commenter stated that by definition, the term ''source material'' as applied to uranium, already only includes natural uranium and depleted uranium. The commenter stated that the definition of ''special nuclear material'' effectively removed two isotopes (U–233 and U–235) from being source material. Similarly, the commenter stated that there are only 3 isotopes of uranium found in nature (U–234, U–235, and U–238) and that 11 other isotopes are only manufactured as a product of reactions occurring in nuclear reactors or accelerator produced and should thus be considered byproduct material.

Response: After review, the NRC agrees that uranium (other than that deemed special nuclear material) yielded from reactions in a nuclear reactor or that is accelerator produced should be considered to be ''byproduct material'' (under Section 11e.(1) and (3) of the AEA); this would also be true for isotopes of thorium yielded in a nuclear reactor or that are accelerator produced. Historically, the few persons that have possessed these separated isotopes of uranium and thorium have held a specific license for both byproduct and source material that did not segregate the two types of materials and so a distinction was not necessary. Although the definition of ''source material'' by itself would appear to leave little question that any isotope of uranium or thorium would be considered to be source material, Section 62 of the AEA discusses requirements for licensing source material as beginning ''after removal from its place in nature.'' As isotopes of uranium and thorium yielded in a reactor or from an accelerator are not obtained from nature, the NRC believes that the intent of the AEA was for these isotopes to be considered byproduct material. However, the text of the final revision of § 40.22(a) remains as proposed because Th-228 is still considered to be source material and could be possessed under the general license, if § 40.22(a) were not revised in this way. In addition, because of the past ambiguity related to this issue, the revision would make it clear that these isotopes cannot be possessed under the general license in § 40.22.

The notice of proposed rulemaking included a specific request for comment on whether the limitation to natural or depleted uranium and natural thorium is the most appropriate way to prevent persons from obtaining source material radionuclides with high specific activities without applying for a specific license. In addition the specific request for comment asked if this approach would adequately protect public health and safety from, for example, thorium-230 (Th-230) extracted from ore high in uranium content.

Comment: One commenter indicated that the proposed description appeared adequate while a second commenter asked, relative to the example case regarding the potential use of Th-230 extracted from ''high grade uranium ores'' for some nefarious activity, if the NRC had any evidence that the toxicity of this isotope, a secular equilibrium daughter of U–238, is a significant health hazard at any concentration. The second commenter also stated that the benefit from developing uranium ore bodies to support nuclear power generation far outweighs the risk of terrorists utilizing a pure alpha emitter as a weapon of mass destruction. In addition, the second commenter stated that it should be noted that currently unlimited quantities of one percent solutions of both natural thorium and natural uranium analytical metal standards may be purchased by non licensed facilities.

Response: The restriction of the general license to natural and depleted uranium and natural thorium will have no impact to the development of ore bodies. The question concerned whether this limitation was adequate to control both safety and security concerns with the possible high concentration of Th-230 relative to Th-232 normally dominant in natural thorium. The specific activity of Th-230 is higher than the specific activity of Th-232 or natural thorium, by roughly five orders of magnitude. Because of its low concentrations in ore, the NRC is not particularly concerned about Th-230 when contained within ores or ore wastes. However, as Th-230 could be independently separated from natural uranium and still be considered to be in its natural isotopic concentration, persons could potentially possess enough Th-230 under the general license to cause significant exposures. The NRC is currently not aware of any instances of this practice and believes that there is minimal probability of such occurring.

The statement about one percent solutions being available to non-licensed facilities is incorrect. These materials are likely being obtained and possessed under the § 40.22 general license and the revisions to 10 CFR part 40 will not change this. As there has been little communication with this category of general licensees in the past, and a person does not have to apply for a license, many persons are not aware of their general license status and may, instead, incorrectly infer that the material is possessed under exemption. Under the final rule, persons initially distributing source material for possession and use under the § 40.22 general license will be required to provide copies of the applicable regulations to their customers to inform the recipient about the requirements of the general license.

A.3 New Possession Limits

Comment: One commenter recommended that based on the general license being limited to only naturally occurring isotopes and depleted uranium, that there was no risk basis to lower the possession limits under the general license. The commenter argued that the primary human health issue

with natural or depleted uranium is chemical toxicity and not radiological toxicity, making uranium's primary toxicological hazard no different than that of other heavy metals. The commenter supported its arguments with a reference to ''Toxicological Profile for Uranium,'' (U.S. Department of Health and Human Services, Public Health Service Agency for Toxic Substances and Disease Registry; September 1999), with a supporting quote indicating that ''uranium is a chemical substance that is also radioactive'' and ''no human cancer of any type has ever been seen as a result of exposure to natural or depleted uranium.'' The commenter also supported its argument by indicating that the chemical toxicity limits for uranium in § 20.1201(e) provided a lower limit than the limits established based on radiologic toxicity provided in 10 CFR part 20, appendix B, Table 1 for natural uranium and fully depleted uranium (U–238). The commenter indicated that these additional restrictions on uranium are not necessary and are being driven more by perceived radiological risk than real chemical risks. Similarly, the commenter added that NRC's concerns about thorium should be alleviated by the proposal to only allow natural isotopic concentrations of thorium under the general license without requiring the possession limits to be lowered, because natural thorium is predominantly Th-232, which has a very low specific activity.

Response: The commenter is correct that the NRC's regulations provide multiple limitations for source material in 10 CFR part 20, including toxicity limits in § 20.1201(e) and inhalation and ingestion limits based on radiological impacts in Table B of 10 CFR part 20. However, the current and revised § 40.22 both exempt the licensee from these requirements and instead institute the quantity possession limit. The additional chemical risks add to the reasons for better controlling quantities of materials in a readily inhalable or ingestible form. If the inhalation and ingestion limits in Table B were implemented for general licensees instead of the current quantity limit, a licensee would be expected to incur additional costs and possibly be required to meet numerous other requirements in 10 CFR parts 19 and 20 that they are currently exempt from because the inhalation and ingestion limits in Table B are based on occupational exposures. For example, a licensee would likely need to meet the requirements in § 19.12, ''Instructions to workers,'' to be consistent with NRC's health and safety protections to better protect workers who may exceed exposures of 100 mrem (1 mSv) per year. Because the regulation continues to exempt the licensee from the requirements in 10 CFR part 19, the NRC concluded that it is best to limit potential exposures to the extent possible below which instruction would normally be required by § 19.12. Additionally, if the limits in Table B were applied, the licensee would need to purchase appropriate monitoring equipment and likely need to obtain the services of a health physicist to ensure that the limits are being met. The reduced possession limits also help to ensure that general licensees will not exceed the chemical toxicity limit in § 20.1201(e). The PNNL report used reasonable assumptions based on 150 lb of uranium being received in a calendar year in their scenarios; using these same assumptions for uranium intake, the NRC has concluded that the weekly average inhalation levels of uranium should be below the limit in § 20.1201(e) for uranium. The reduction in the possession and throughput for dispersible source material further reduce the chance of this limit being exceeded without having to require more elaborate monitoring that may be required if the limit in § 20.1201(e) were used instead as a control. Finally, the lowered limits were also chosen to limit the likelihood of large amounts of contamination being left behind by a general licensee, which could result in a later property owner unknowingly exposing his employees to the radiological contamination.

Comment: Four commenters identified potential impacts on industries from the proposed reduction in possession limits. One of these commenters indicated that chemical suppliers routinely sell uranium and thorium compounds in quantities of 25 to 250 g and, in the past, sales of quantities of 500 g were not unusual, thus it would be easy for universities or large institutions with many laboratories to quickly exceed the new possession limits. Another of these commenters voiced concern that their customers may be modifying exempt products under the provision of the general license, but may no longer be able to do so under the reduced limits in the proposed § 40.22(a)(1) limits. Two of these commenters also indicated that it would be difficult for analytical laboratories and their customers who rely on the current general license to stay within the new limits, thus potentially driving up industry costs. One of these commenters indicated that the restrictions on the end user seemed rather harsh and would be very limiting for research and steel industry users, as well as manufacturers of various ceramic valves and coatings for the steel industry and manufacturers of metal halide lamps.

Response: The records that were voluntarily provided by the largest supplier of generally licensed thorium and uranium identified by the NRC showed that relatively few general licensees were receiving quantities near the existing limits, and that many were receiving much lower amounts. The revised regulations will allow a person to possess up to 1.5 kg (3.3 lb) of uranium and thorium in any form. A monthly transfer of 500 g (1.1 lb) would not reach the throughput limit of 7 kg (15.4 lb). Most general licensees with a significant throughput that exceeds the new limit are very likely manufacturers of products or distributors that would be required to obtain a specific license because of other provisions in the final rule. In practice, some general licensees who use uranium and thorium in the form of ore (considered by definition to be source material in its entirety) will actually see allowable possession limits significantly increase under the final rule because they only need to account for the mass of the uranium and thorium itself rather than the ore mass. In addition, the final rule includes a provision specifically for analytical laboratories, which essentially maintains the limits, in order to reduce unforeseen impacts on that particular category of user.

Comment: One commenter stated concerns that while the inventory reduction in § 40.22(a)(1) from 15 lb to 3.3 lb was a 78 percent reduction, the reduction in the annual receipt limit from 150 lb to 15.4 lb was a 90 percent reduction. The commenter indicated that the reason for this discrepancy was unclear and that to be consistent the NRC should only reduce the annual usage threshold to 33 lb in the proposed § 40.22(a)(1).

Response: There is no historical record of a specific rationale for the ratio; therefore, maintaining the ratio of quantity limit to throughput limit was not considered to be important in establishing the criteria for the revised rule. For readily inhalable or ingestible materials, intake and contamination likelihoods are typically more related to throughput than the maximum quantity of source material present at any one time. On the other hand, external hazards are more directly related to the quantity present. As a result, the NRC concluded that the greater reduction in

the annual throughput level for dispersible source material was merited. The new limits were developed using the bounding doses calculated in the PNNL study by reducing possession limits by a factor that would limit the likelihood that a person could possess source materials in quantities that would result in doses exceeding 100 mrem (1 mSv) per yr. Additionally, activities involving larger throughput are generally going to involve distribution, which will be required to be done under the authorization of a specific license under the final rule; as a result, the NRC expects that only a few persons will be directly impacted by the reduction in possession limits.

A.4 Clarification of Chemical or Physical Form

Comment: One commenter requested clarification of what would constitute chemical, physical, or metallurgical treatment or processing. The commenter provided an example that some of its customers using thoriated tungsten alloys under § 40.13(c)(4) may very well perform some sort of physical operation on the piece (e.g., machining, heat treatment, welding, etc.), which would appear to invalidate the § 40.13(c)(4) exemption. However, the amount of thorium sold to those end users typically meets the current definition of small quantities in § 40.22, thus they do not require a specific license. The commenter recommended that, in order for users of source material under § 40.13(c)(4) and § 40.22(a)(2) to better understand the limitations on the use of source material under these paragraphs, that the NRC provide a clear definition in § 40.4 of ''altering chemical or physical form'' and ''chemical, physical, or metallurgical treatment or processing.''

Response: Although the rule is not amending § 40.13(c)(4), as the commenter indicated, § 40.13(c)(4) does not authorize the chemical, physical or metallurgical treatment or processing of a product possessed under the exemption, similar to the constraint proposed in § 40.22(a)(2). Under this exemption, an activity such as machining or heat treatment, where the primary purpose of the action is to modify the product, is not allowed; however, welding the final product to another component would be acceptable even though there might be slight modifications of the product while installing it as intended. As also indicated by the commenter, these activities could be accomplished under the general license in § 40.22; however, the resulting products, if distributed for further use under the exemption in § 40.13(c)(4) or another exemption, would require the person modifying the product to obtain a § 40.52 distribution license because it would be considered to be the initial distribution of a new product. If the person physically or chemically modified the material containing source material under § 40.22 but does not plan to distribute the new product for use under an exemption, the person would be subject to the lower possession limits found in § 40.22(a)(1) because they actively processed the source material. The NRC believes these restrictions are necessary because chemically or physically processing material containing source material may increase the likelihood of some source material entering into forms that could be more easily ingested or inhaled. If the person were allowed to modify the exempt product without restriction, the person could create unanalyzed health and safety issues for his workers or the public (particularly in the form of accumulated contamination that may be more easily ingested or inhaled). Rather than broadly restricting these modifications, the NRC could instead implement limits on inhalation and ingestion to prevent exposures; however, such requirements would likely introduce additional costs in the form of air monitoring equipment and the need for a health physicist. As a result, the NRC concluded that limiting possession limits by use (chemical or physical alteration) would be easier and less costly for the general licensee to identify when the lower limits were necessary. The NRC has also concluded that the terms ''altering chemical or physical form'' and ''chemical, physical, or metallurgical treatment or processing'' are sufficiently clear and do not require a specific definition in § 40.4.

A.5 Disposal of Source Material Under General License

Comment: One commenter requested clarification as to whether the disposal limit of 0.5 kg (1.1 lb) of source material proposed in § 40.22(b)(2)(i) applies to just the uranium or thorium content or to the material that contains the uranium and thorium.

Response: The limit is intended to account for only the mass of the uranium and thorium and not the material that contains the source material.

Comment: One commenter stated that the proposed disposal limit of 1.1 lb, only in a non-dispersible form, was very restrictive. The commenter indicated that most users would have to resort to expensive disposal options as a result of the rulemaking, including certain government agencies that collect this material from schools and labs for disposal.

Response: Unrestricted disposal of source material was never specifically permitted under the § 40.22 general license. Although § 40.22 provided an exemption to the requirements in 10 CFR part 20, a general licensee was still required to make transfers in accordance with § 40.51, which requires the transfer be to someone authorized to receive the source material. The revised § 40.22 clarifies the disposal requirements and adds an allowance for very small quantities. As a result, schools and laboratories should be able to do direct disposal of their very small quantities of source material rather than requiring state government agencies to collect the source material. There are no restrictions in the general license that prevent the possessor from modifying the form of the source material to place it into a solid form or other appropriate form for the chosen disposal pathway.

In the notice of proposed rulemaking, the NRC proposed in § 40.22(b)(2)(i) that quantities of source material greater than 0.5 kg (1.1 lb) per year would be required to be disposed of as radioactive material through the provisions of § 20.2001 or transferred to another person otherwise authorized to receive the source material. The notice of proposed rulemaking asked if the NRC should consider other disposal alternatives for these larger quantities, such as in U.S. Environmental Protection Agency's Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste disposal facilities or RCRA Subtitle D municipal Solid waste landfills. The following comments were provided in response to this question:

Comment: One commenter recommended that given the low radioactivity of source material, the NRC should consider a wide variety of disposal options. These options already include disposal in sanitary sewers and could also include uranium mill tailings impoundments, processing as alternative feed, and other types of disposal sites that can safely contain the material. A different commenter recommended that the NRC should establish guidelines for municipal landfills to accept naturally occurring radioactive material (NORM), not covered by the AEA, and certain forms of source material and byproduct material based on a combination of mass and activity.

Response: Many of the suggested disposal alternatives have been used to dispose of source material from specific licensees, after receiving authorization

from the NRC, including disposal at Resource Conservation and Recovery Act subtitle C facilities. The general licensee may request approval for alternative disposals under § 20.2002, ''Method for obtaining approval of proposed disposal procedures.''

With the exception of source material and discrete sources of radium-226, all other NORM is currently not subject to the NRC's regulations. The NRC can only exempt persons from the requirements of NRC's regulations, including those regulations related to specific disposal requirements for radioactive material, if the material under consideration is subject to the NRC's jurisdiction. Local jurisdictions have separate authorities that may come into play that may limit the disposal of materials containing source material (and other radioactive materials) at municipal landfills or other locations.

A.6 Contamination Control

In the notice of proposed rulemaking, the NRC requested specific comments on whether the NRC should require general licensees to complete surveys in accordance with the provisions of § 20.1501 to ensure that the limits in § 20.1402 are not exceeded.

Comment: One commenter indicated that the enforcement aspects of the rulemaking needed to be further explored because the proposed requirement in § 40.22(c) had no enforcement value whatsoever. The commenter indicated that because there is no requirement to possess or use survey instruments, much less perform a closeout survey, most general licensees may be long gone before any contamination is located by authorities. The commenter recommended that if the proposed possession limit poses a significant enough contamination hazard, the source material should not be allowed to be possessed under a general license and should instead be required to be possessed under a specific license.

Response: The NRC is hesitant to require all users of source material to formally survey their locations upon cessation of activities because many persons likely conduct activities with source material where there is little concern regarding contamination. The intent of the requirements in § 40.22(c) are to allow a general licensee to consult with the regulator to determine if surveys are necessary. Under the regulations currently in place, there are no clear requirements for a general licensee to take any decommissioning action because of the current exemption to the requirements in 10 CFR part 20. Although the NRC could limit operations under the general license such that contamination is unlikely by limiting the use of source material to only non-dispersible forms and not allowing any processing, such limitations would significantly reduce the benefit of the general license while increasing the costs to licensees who would then require a specific license. The NRC has concluded that the reduced possession limits will satisfactorily limit most contamination concerns while the requirements proposed in § 40.22(c) will allow the regulator to have a specific regulation to enforce in rare circumstances where contamination is detected. As a result, the NRC concluded that no changes to the proposed version of § 40.22(c) are necessary.

A.7 Initial Distribution and Transfer Under § 40.22(e)

Comment: Two commenters stated concerns about the requirement proposed in § 40.22(e) that a person, initially transferring or distributing source material to a person receiving the source material under the general license in § 40.22, would be required to obtain a specific license for distribution under the proposed § 40.54. Their concerns were focused on transfers of samples containing source material to analytical laboratories. One of these commenters also voiced concerns about the potential impact on calibrators using depleted uranium sources. The commenter was concerned that calibrators may encounter additional problems or expense obtaining calibration sources because organizations that distribute calibration disks made of depleted uranium under a general license would be required to obtain a specific license increasing costs to calibrators. The same commenter was also concerned that laboratories that provide standards for use under the general license would also be required to obtain a specific license for distribution thus increasing costs for their customers. The second commenter requested clarification on whether a driller identifying uranium ore deposits would require a specific license to distribute samples for analytical characterization. Both commenters believed this requirement could have significant impacts on the persons exploring for and mining uranium and that it could increase costs to their customers or deal a ''death warrant'' to exploration.

Response: The NRC acknowledges that some persons operating under the § 40.22 general license and their customers may have increased costs as a result of needing to obtain a specific license for distribution of their products, including calibration sources. However, the NRC has concluded that the benefit of being able to identify who is distributing source material, and how much material is being distributed, outweighs those increased costs, because it will allow the NRC to better ensure that the products do not significantly impact public health and safety.

The NRC acknowledges that the proposed rule would have resulted in an unclear situation concerning the transfer of analytical samples to and/from laboratories, particularly in relation to sampling ores where the source material content level would not be known until the sample is analyzed. Although no laboratories provided comment on the proposed rule, other commenters indicated that some analytical laboratories may currently operate under a general license rather than a specific license and thus a person providing samples to the laboratory may need a distribution license under the proposed requirements. In addition, a laboratory operating under a specific license that returns samples to a general licensee would also have been required to obtain a distribution license under the proposed requirements. The NRC agrees that this would be overly burdensome for those parties and has revised the final rule to maintain the current limits for laboratories doing sample analyses by creating a separate provision for laboratories in § 40.22(b). The NRC concluded that reporting such common transfers would not provide sufficient benefit versus the burden associated with obtaining a specific license. As a result, § 40.22(e) allows initial transfers of source material to or from a general licensee for the purpose of analytical sampling without a § 40.54 (or equivalent) specific license. However, this would not change the need for a laboratory to obtain a distribution license issued under § 40.54 if the laboratory manufactured and initially transferred standards or calibration sources containing source material for use under the § 40.22 general license.

B. Distribution of Source Material for Possession Under a Product Exemption

B.1 Requirement To Obtain a Specific License for Distribution To Exempt Persons Only From the NRC

Comment: Four commenters questioned the requirement that they may only obtain a specific license from the NRC for distribution of products containing source material to persons receiving them under exemption even if

they are located in an Agreement State. The commenters voiced concerns that this would lead to unnecessary dual jurisdiction (having to obtain a possession and use license from the Agreement State and a distribution license from the NRC), result in the need for significant procedure modifications, and could lead to confusion as to which agency's requirements were applicable. Two of these commenters stated that their Agreement State license already authorized them to distribute their products. Further, the commenters were concerned that the additional costs associated with obtaining and maintaining the second license could result in products being noncompetitive, particularly in the international marketplace. The commenters requested that this requirement be reconsidered to allow the Agreement States to issue such licenses.

Response: When the Agreement State program was implemented with the publication of 10 CFR part 150 (27 FR 1351; February 14, 1962), the authority to regulate distribution of products intended for use by the general public was reserved to the Commission, then the Atomic Energy Commission, in § 150.15. Later, § 150.15(a)(6) was expanded to apply to all products for which the user is exempt from licensing requirements (34 FR 7369; May 7, 1969). However, before the current rulemaking, the NRC had not established any requirements specific to distribution of exempt products for source material; thus, the NRC did not require manufacturers and distributors in Agreement States to obtain NRC licensees. Although the case of distribution of exempt products from Agreement States will require the distributor to get two licenses, one from the NRC and one from the State, there is no dual jurisdiction over the same activities. In this situation, the NRC concerns itself only with what is being distributed and actions necessary to ensure that the product(s) is safe and within any constraints of the exemption, while the State regulates such matters as in-plant safety, emissions, and decommissioning. This regulatory system has been in place and working effectively for decades in the case of byproduct material. In the absence of NRC regulations over the distribution of source material to exempt persons, some States may have included some license conditions that pertain to distribution. If this is the case, these requirements should be removed from the Agreement State license when the distributor comes under an NRC distribution license. Current distributors of source material to persons exempt under § 40.13(c) (and equivalent Agreement State provisions) have a year after the effective date of this rule to apply to NRC for the required license in order to continue distribution. This will allow time to answer questions and resolve any confusion as to which agency's requirements are applicable. This change should not require significant procedural modifications, presuming that the distributor was already ensuring that its product met any constraints in the exemptions. Furthermore, these requirements only cover domestic distribution and are not applicable to international distribution. Competitors that manufacture or import similar products for distribution will be required to meet the same requirements, thus there should be no competitive disadvantages.

Comment: Three commenters indicated that they already held possession and use licenses issued by an Agreement State. The commenters stated that this rule would add excessive costs by requiring the licensee to prepare and submit an application to the NRC for a specific license to distribute products under exemption and also introduce costs for modifying their procedures and existing programs to accommodate the rule's additional requirements. One of these commenters estimated that these costs (including new annual fees) would add more than $37,000 per year to their current annual regulatory costs. The costs were broken down to include $5,000 for preparation of the application, $7,000 for the application fee, and at least $25,000 to modify existing procedures to incorporate both NRC and Agreement State regulatory requirements and to train employees accordingly. One additional commenter indicated that it did not currently possess a specific license from an Agreement State and, under the proposed rule changes, would need to bear the new costs of procuring and maintaining a possession license from the Agreement State and an NRC distribution license. Associated costs would include application fees, annual fees, and the cost of developing an Agreement State-focused compliance program.

Response: The NRC acknowledges that some persons currently operating under the current general license will be required to obtain new licenses for both possession and use as well as for initial distribution or transfer. As indicated by the comments, in the case of a person, located in an Agreement State, who initially distributes source material to exempt persons, the person may be required to obtain separate licenses from two regulatory agencies (one from the Agreement State for possession and use, and a separate license from the NRC for distribution). When proposing the rule, the NRC considered these costs and believes that there are significant benefits to requiring a distribution license. The requirements will better ensure that products being distributed meet the constraints of the exemptions and will allow the NRC to accumulate information about the amount of, and to estimate the impacts of, source material being distributed for use under exemption. This information will then be used to make better informed regulatory decisions concerning the distribution of products to be used under exemption. Some of the costs noted by the commenters are actually onetime costs, such as those costs for preparing and submitting the application, and do not continue annually. However, as a commenter identified, there are new annual fees. The annual fee for the initial distribution of source material to exempt persons will be $10,000, but could be as low as $500 if the distributor qualifies as a small entity under § 171.16(c). In the past, costs of the resources spent in attempts to gather information about these products and to estimate the extent and the conditions of their use would be recovered from fees for other activities that the NRC regulates. Thus, this rule helps ensure that fees are appropriately allocated.

As discussed in the previous response, the need for two licenses cannot be avoided; however, because each agency will have separate roles, there is not expected to be any significant or conflicting duplicative regulation.

B.2 Obligations of the Distributor of Source Material to Persons Receiving it Under an Exemption

Comment: Four commenters voiced questions about the obligations of a person initially distributing products to a person for use under the exemption if the recipient subsequently modifies the product (presumably in compliance with the § 40.22 general license). The commenters questioned whether they would be considered as the initial distributors of material for use under the § 40.22 general license and thus obligated to obtain a specific license under § 40.54 (or its Agreement State equivalent) along with their § 40.52 distribution license. One of the commenters was also concerned that if there is an obligation to determine how a product is used by the recipient,

particularly in light of the understandable reticence customers may have with sharing information about their operations, the initial distributor may be forced to undertake undue burdens. One of the commenters stated that this issue could result in increased enforcement risk. The commenters requested that the rule or guidance be written to clearly absolve the initial distributor of products containing source material and received under an exemption of any responsibility of determining the licensing status of the end user of their products. One of the commenters also requested that the proposed rule be modified to clearly specify the limits of a specific licensee's liability with respect to the requirements of § 40.51(c) and (d).

Response: An initial distributor of source material may only transfer source material in accordance with the requirements in § 40.51. If a distributor transfers a product that meets the conditions of an exemption to a recipient that is authorized to receive the source material under an exemption from licensing, then the initial distributor has met its obligations. If the recipient subsequently uses the product in a way that is inconsistent with the exemption (e.g., modifies a product in a way that the exemption does not allow) or contrary to the requirements of other regulations (e.g., a specific license or general license), the recipient would be solely responsible for its misuse. In some cases, persons who receive a product for use under an exemption may modify it under the general license in § 40.22; however, if they subsequently transfer the modified product for use under an exemption, the transfer would be considered an initial transfer of a new product and the person who modified the product would require a specific license for initial distribution under § 40.52.

B.3 Construction and Design Information

Comment: Four commenters indicated concerns with the requirements in the proposed § 40.52(b), which would require a licensee distributing exempt products to provide details of the construction and design of each product as part of the license application. The commenters indicated that submitting such information on every product may be impracticable because they manufacture a large number of different products of similar type (e.g., lenses of different shapes and sizes), many of which may be manufactured infrequently or even on a one-time basis to meet customer specifications and are subject to change during the production process. The commenters are concerned about the excessive burden if they had to amend their license each time they developed a new design. The commenters requested clarification and guidance on whether more generic information about their operations and products, rather than model specific information, would be considered acceptable as a means of avoiding multiple license amendments.

Response: The exemptions in § 40.13(c) cover a wide range of products. Only in limited cases are these manufactured as specific models with model numbers. When such products are distributed, the model information makes the recordkeeping and reporting aspects more efficient; however, the NRC does not intend to create a situation where licensees must amend licenses frequently because of normal variations in products. Because of the variety of product types identified in § 40.13(c), the extent of information to be provided about the details of construction and design may vary depending on the product. If there are significant variations in similar product types planned to be initially distributed, an applicant should provide some general information on the ranges of sizes and weights, or lists of models with more specific information. For some products, such as welding rods; rare earth metals, compounds, and mixtures; and glassware, sufficient information may include a description of the product and variations planned to be distributed. For other products, such as incandescent gas mantles, electric lamps, and tungsten parts, drawings and other details of the products may be necessary in addition to a description, because such additional information may be important in evaluating the safety of the product. Operating manuals, descriptive sales literature, or similar documents may be submitted as part of an application. If applicable to the type of product, the applicant should describe construction aspects of the product, including components of the product, materials of construction, dimensions, and assembly methods, particularly if a product may depend upon certain design considerations to meet the conditions of the exemption or increase safety. An overall drawing of the product identifying primary components and indicating overall dimensions may be useful as a complement to the written description of the product.

B.4 Labeling

Comment: Three commenters provided comments on the proposed requirement in § 40.52(b)(4) that an applicant or licensee provide the proposed method of labeling or marking for each unit, and/or its container, with the identification of the manufacturer or initial transferor of the product and the source material in the product. Specifically, the commenters requested clarification if the requirement means that the label can simply state that ''this product contains source material'' or if the specific source material type (e.g., thorium or uranium) and concentration are required to be on the label. One of the commenters was concerned that specifying the type or concentration of source material on the label could unnecessarily alarm users who may not understand the weight designation or are unable to comprehend that the amount listed on the label is a trivial amount of activity. All three commenters requested that the guidance be modified to provide better clarification regarding the expectation for labeling. Four commenters stated that there would be significant costs associated with designing new packaging that meets the new labeling requirements. One commenter indicated that it would be difficult to estimate packaging costs in light of the fact that many of their products are small, infrequent and/or ''one time only'' orders.

Response: Only two of the exemptions currently have labeling requirements specified by the exemption itself: 10 CFR 40.13(c)(5) for counterweights, and 10 CFR 40.13(c)(6) for shipping containers. Paragraph (b) of 10 CFR 40.53, ''Conditions for licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records and reports,'' requires that products be labeled to meet the constraints of the exemptions. In 10 CFR 40.52(b)(4), the NRC requires all applicants to submit information on labeling to identify the manufacturer or distributor and the source material. Similar requirements already exist for the distribution of byproduct material and applicants typically provide samples or copies of labels or packaging, although descriptions could be acceptable. The NRC does not intend to make significant changes to industry practice with this requirement. Many of the products covered by the exemptions are not practical to label; and it is possible that in some cases only the packaging would be labeled. Glassware is typically labeled either with impressions or small stickers to identify the manufacturer. For some products, the initial recipient would need some information about the

identity and quantity or concentration of source material. In such cases, packaging or accompanying paperwork would provide the information. In most cases, the identification of the manufacturer or distributor and the fact that thorium or uranium is present should appear on point-of-sale packaging. The term, ''source material,'' should not be used in lieu of ''uranium'' or ''thorium.''

B.5 Instructions on Safe Handling and Radiation Safety Precautions

Comment: Two commenters requested clarification on what would be considered acceptable in meeting the requirement in § 40.52(b)(5), which requires that the distributor provide information on safe handling and radiation safety precautions. The commenters stated that they currently provide such information in Material Safety Data Sheets (MSDSs). The commenters were not sure if this requirement meant that the information needed to be placed inside each container or whether the information could be provided as part of other purchase documentation or just referenced as being available for review. In addition, the commenters stated that it was not clear whether this information had to be provided before the purchase or only along with the purchase. One of the commenters requested that the NRC consider requiring only annual submittals to the customer instead of including them with each shipment.

Response: The requirements in § 40.52(b)(5) require the inclusion of radiation safety precautions and instructions relating to handling, use, and storage of products to be used under § 40.13(c)(1)(i) and (iii), which apply only to thorium contained in gas mantles and welding rods. The commenter's concerns appeared to be associated with coated lenses, which the commenter's company manufactured; therefore, the requirement in § 40.52(b)(5) will not apply to their products, because the products are not welding rods or thorium mantles. In the case of welding rods and thorium mantles, safe handling instructions can aid in significantly reducing exposures associated with usage. Under § 40.52(b)(5), the NRC would expect individual packages to be labeled or include safety instructions because these products may often be sold through intermediary distributors. In the case of welding rods, the MSDS would be an acceptable means of informing users; provided that the radiological aspects of hazards are specifically addressed in the MSDS.

B.6 Quality Control

Comment: Four commenters stated that there would be significant costs for developing and implementing a quality control program as required in § 40.52(b)(3). One commenter estimated the associated costs would add more than $30,000 to their existing product quality control program. These costs were broken down as $10,000 per year for sample analysis, $10,000 for program development/management, and $10,000 for data management, verification and reporting.

Response: The new requirement in § 40.52(b)(3) only applies to those products where there is an applicable quantity or concentration limit associated with the product exemption. The information necessary to satisfy this requirement would only need to describe how the manufacturer will ensure that the product does not exceed the limits associated with the exemption and is likely already accomplished under existing quality control programs. The assurance may be shown through calculation, description of existing quality assurance programs, or, if necessary, through batch sampling. The NRC expects that most manufacturers would already have some quality assurance program in place to ensure that the customer is receiving what is advertised and, therefore, it is not anticipated that there would be significant costs associated with providing assurances that the limits are met. For example, the NRC expects that most optics require a relatively high precision on the amount of source material that is contained in a coating in order to achieve the desired optical effect and that procedures are used to ascertain that the amount is correct. A description of these procedures or how this precision is achieved would be sufficient to satisfy the requirement for describing the quality control program. As a result, the NRC expects that, in most cases, the added costs from this requirement would be minimal. The NRC's analysis of the costs associated with this rule is contained in the regulatory analysis (ADAMS Accession No. ML13079A302) associated with the rule.

B.7 Annual Reports

Comment: Three commenters indicated that the requirement to provide an annual report to the NRC, as proposed in § 40.53(c), would result in significant burden to their operations. The commenters stated that, contrary to the NRC's conclusion in the notice of proposed rulemaking, the information requested was not part of their existing business recordkeeping practices and therefore the information would not be a minimal burden to provide. One commenter indicated that they sold optics with thorium coatings and without thorium coatings and that this requirements would result in the commenter needing to institute separate tracking and reporting systems for both types of optics. The commenters indicated that they would have to develop, implement, and staff a data acquisition management system for which they would have no need other than this rulemaking at a cost of significant resources.

Response: The NRC recognizes that a distributor's current data handling system may not be designed to provide the required information; however, with the capabilities of current information technology, the NRC expects information could be readily assembled and provided in a form and content that is acceptable to the NRC without imposing significant burden on the licensee. In the past, the NRC has occasionally requested distributors of source material to general licensees to voluntarily assemble and provide not only product and quantity information, but also to provide information about recipients of the source material. These distributors were able to fulfill requests without significant notice and did not voice concerns about the burden associated with the requests. Under the regulations in § 40.53(c), distributors of products for use under an exemption are not required to submit as much information, as there is no obligation to submit information about customers. The NRC does not expect the distributor to have to develop, implement, and staff a data acquisition management system to fulfill this requirement and leaves it up to the distributor how best to fulfill the requirement. Byproduct material distributors have been required to submit such reports for decades. Also, source material distributors have one year to apply for a license, and are not required to submit such a report until the year after their specific license is issued, which should allow the distributors sufficient time to develop cost-effective systems to meet the requirement. The information to be provided in these reports is important for the NRC to understand how much source material is distributed for use under exemption and to ensure that the products distributed for use under exemption are and continue to be safe. The NRC has concluded that these benefits outweigh the costs associated with providing this information.

Comment: Four commenters requested clarification about the level of

precision that was expected under the proposed requirements in § 40.53(a) and (c)(3)(ii). The commenters indicated uncertainty as to whether each item had to be assessed individually or if they could provide alternative verifications and indicate that the amount of source material was below the percentage or quantity limit. The commenters were concerned that being required to determine the actual source material content on a per product or batch basis would increase the contamination potential of operations and increase the product costs, delivery times, and personnel exposures. The commenters requested that guidance clarifying these requirements be provided and recommended that the NRC allow the reporting of nominal concentrations (i.e., less than 10 percent) or quantities rather than product specific numbers or per individual product in the annual report. One commenter also requested clarification on whether the reporting units should be weight percent (i.e., ppm) or activity (i.e., Ci or Bq).

Response: Simply providing information that the source material was below a concentration or quantity limit would not generally be acceptable. The better the characterization that can be provided by the distributor, the better the NRC will be able to refine its estimates of impacts to the public from exempt products in the future. However, the intent is not to require additional sampling or any significant analysis that is not already performed. The form of the information that is appropriate will vary for the type of product. Nominal values for specific products and total quantity of source material distributed in those products may be adequate. If products can be categorized by type, one approach may be to give the range of source material content for each type and provide the total quantity for each type distributed. While information on weight percent may be provided, total weight would also be needed to meet the requirement of reporting the total quantity of source material in each type of product. While it would be more convenient for the NRC to receive information in consistent units from all distributors, the final rule does not specify the units so as to allow distributors to report in whatever units they are currently keeping records.

Comment: Four commenters stated concerns about the requirements in the proposed § 40.53(c) that require the distributor to provide the NRC with annual reports detailing who their customers were and frequency, type, and amount of sales to those customers. The commenters indicated that this was proprietary information, which would have to be submitted as such and would be burdensome.

Response: The proposed § 40.53(c) does not contain any language that would require the submittal of customer information or any information specifically related to individual customers. This was not changed in the final rule. The commenters also addressed a similar concern with respect to the annual reporting requirement proposed in § 40.55(d), which applies to initial distributors of source material for use under the general license in § 40.22. The § 40.55(d) reports must include information about certain customers and frequency, type, and amount of sales to those customers. A response to that concern is provided in section III.C.4, of this document.

Comment: One commenter indicated that the reporting requirement in § 40.53(c) appeared to be parallel to the general licensing reporting system currently in place for devices containing byproduct material. The commenter requested clarification on what kind of regulatory oversight is intended for these reports. For example, would the NRC and the Agreement States need to establish databases and tracking systems and would there be inspections in the field?

Response: Although the NRC may develop databases internally to evaluate reports, the NRC does not plan to institute a database capable of tracking materials similar to that currently used for tracking generally licensed devices containing byproduct material. The reporting requirement in § 40.53(c) parallels the various 10 CFR part 32 reporting requirements concerning distribution of products for use under the exemptions from licensing in 10 CFR part 30. The NRC plans to periodically aggregate the collected information related to distribution of products to exempt persons and assess the information to ensure that the exemptions are being properly used and that the overall impact of all such products is not inappropriate. The data would also be analyzed to determine if additional changes to the regulations are required to improve or verify the safety of the exemption. Although field inspections solely to verify records of transfers are not envisioned as a normal practice, review of a licensee's recordkeeping practices may be included as part of any routine inspection of the specific licensee.

B.8 Cost/Benefit Considerations

Comment: Four commenters provided comments regarding their concerns about costs associated with implementing the proposed new requirements. One commenter argued that the summations of the additional costs will impact the competitive nature of their products in the national and international marketplace. Two commenters stated that they were not convinced that the risks associated with the use of source material under the current regulations, as described in NUREG–1717, justified the significant costs that would be associated with implementing the proposed rule requirements. One of these commenters added that their products, which entailed the use of thorium in finished optics, were estimated to be well within the range of normal background radiation exposures incurred by the U.S. population. Another commenter summarized that it was not clear how the benefits of the proposed rule, in light of the trivial risk of using their products, outweigh the significant increase in cost. This same commenter was also concerned that due to the contractual nature of their business, they may not be able to recover costs until their current contracts expire thus placing them in financial jeopardy.

Response: The costs of these requirements are projected by the NRC to be less than the costs indicated by the commenters, who mostly represent the optics industry. The NRC's analysis of the costs associated with this rule is contained in the regulatory analysis (ADAMS Accession No. ML13079A302) associated with the rule.

In addition, although products used under exemptions from licensing generally present low risks, comparison with normal background radiation exposures is not appropriate for judging the acceptability of these products. It has been difficult for the NRC to adequately ensure that the products distributed are as they should be, and that the overall impact to the public from all of the products distributed for use under exemption is acceptable. Requiring distributors to be specifically licensed and to provide transfer reports will greatly improve the NRC's ability to do these things and will improve the efficiency and effectiveness of the NRC in carrying out these responsibilities. The NRC has, to the extent possible with only incomplete information available, designed this rule to minimize the impacts on industry while establishing a basic regulatory framework for control of distribution of source material to exempt persons. Finally, although the distributor may undertake some additional costs, they will have one year to submit a license application and additional time until that license may be approved, during which the distributor can potentially

alter or implement new contracts with customers. This time is in addition to the advance notice already provided by the proposed rule about these new requirements. Additionally, competitors will equally face similar issues.

C. Distribution of Source Material for Possession Under the General License

C.1 Notifications to Customers

Comment: Four commenters stated that there would be significant costs associated with developing a program to track and distribute applicable regulations and safety instructions to customers (estimated to be $10,000 annually by one commenter). A separate commenter noted that general licensees have in the past had very few responsibilities other than those related to disposal. The commenter recommended that, because the rulemaking adds significant new requirements to persons possessing source material under the § 40.22 general license, the NRC should place additional responsibilities on the distributor to require the distributor to not only provide the customer with a copy of the applicable regulations, but to also obtain documentation from the general licensee acknowledging their understanding of their responsibilities under the general license.

Response: The NRC is concerned that some persons receiving source material for possession or use under the general license may not be aware of the specific regulatory requirements applicable to their possession and use of that material. For example, one commenter provided an observation that currently unlimited quantities of one percent solutions of both natural thorium and natural uranium analytical metal standards may be purchased by non-licensed facilities. This conclusion may have been reached because some persons have incorrectly assumed that these materials were being possessed under exemption instead of the § 40.22 general license as a result of the lack of specific requirements in the former § 40.22 general license and the fact that no information was provided by the distributor to indicate otherwise. The costs to initial distributors of source material for use under the § 40.22 general license to make and provide copies of applicable safety information and the regulations to recipients of the source material is justified to ensure that the recipient is aware of the existing regulations that are applicable to its possession and use of the source material. This requirement should help ensure the safe use of the material by the recipient. The NRC is currently aware of only one primary distributor of source material to general licensees and did not receive any comments from this distributor. As indicated by one commenter, general licensees in the past have had very few responsibilities and these notifications would help alert them of the final rule changes in § 40.22. Although one commenter requested that the rule require the distributor to obtain an acknowledgement of receipt of the notifications, at this time, the NRC believes this will place unnecessary burden on the distributor and the general licensee without providing significant additional benefit. After the NRC has these requirements in place for a few years, the NRC will be better able to determine if the additional burden of such a requirement is warranted.

Comment: One commenter requested that the regulations be modified to require that any person who transfers source material to a general licensee, where the person receiving the material also possesses a specific license of any kind issued by an Agreement State or the NRC, be required to report to and receive acknowledgement from the radiation safety officer or other official named on the recipient's license of such transfer.

Response: The commenter is part of an organization that may hold a single specific license but may have numerous, distinct operations that use source material under separate general licenses. Such a requirement would likely be useful in helping an organization to ensure that it does not surpass the possession limits of the general license or face other violations because the exemptions to 10 CFR parts 19 and 20 do not apply to the source material held by a specific licensee. The NRC believes this will place unnecessary burden on the distributor. An organization can implement internal procedures to achieve the same results, such as by allowing purchases of source material to be made only through the radiation safety officer, without the need for NRC to implement new regulations.

C.2 Quality Control

Comment: Four commenters stated that there would be significant costs for developing and implementing a quality control program as required in § 40.55. One commenter estimated the associated costs would add more than $30,000 to their existing product quality control program. These costs were broken down as $10,000 per year for sample analysis, $10,000 for program development/management, and $10,000 for data management, verification and reporting.

Response: Paragraph (a) in § 40.55 requires that each person licensed under § 40.54 label the immediate container of each quantity of source material with the type of source material and quantity of material. Paragraph (b) in § 40.55 requires that the licensee ensure that the quantities and concentrations of source material are as labeled and as indicated in any transfer records. The information required to meet § 40.54(b), with respect to quality control, should be sufficient if it includes a description of an existing quality control or quality assurance program or how the amount of source material in a material or product will be controlled (e.g., through batch sampling). The NRC expects that most manufacturers would already have some quality assurance program in place to ensure that the customer is receiving what was ordered and that costs to meet this new requirement would therefore be minimal.

C.3 Labeling Requirements

Comment: Four commenters stated that there would be significant costs associated with designing new packaging that meets the new labeling requirements. One commenter indicated that it would be difficult to estimate packaging costs in light of the fact that many of their products are small, infrequent and/or ''one time only'' orders.

Response: The NRC expects that most products are already delivered in some type of individual packaging or bulk packaging for similar products. It is expected that the manufacturer, in most cases has an idea of the specific amount of material included in the product. For most uses, the recipient would be ordering a specific amount and/or concentration and would expect that the package/container or invoice would tell them what they received. Although there may be some costs associated with modifying the labeling, the NRC believes that the benefit of the customer knowing this information outweighs the costs of modifying the label because the customer will have better knowledge of how to safely deal with the material. Also, existing distributors are being given one year to apply for a license to allow for an easy transition. At that point, the existing distributors would provide plans for meeting the requirements of the license for which they are applying and would not have to implement them until the license is issued.

The NRC acknowledges that some products may fall under a general license only because the source material is contained within an ore that was processed and so exact amounts of

uranium or thorium contained within the ore may not be known. Instead, average or maximum concentrations, as approved by the NRC in a specific license, could be used to reduce the costs that would be required by sampling each batch. In many cases, incoming ores may already have such concentrations listed. This labeling is important such that the recipient of the material under a general license can ensure that they are staying within the possession limits.

C.4 Annual Reports

Comment: Under § 40.55(d), the NRC proposed that each initial distributor must provide an annual report to the NRC, which is to include certain information as specified in the proposed regulation. Two commenters indicated that this requirement would result in significant burdens to their operations. The commenters stated that, contrary to the NRC's conclusion in the notice of proposed rulemaking, the information requested is not part of their existing business recordkeeping practices and therefore the information would not be a minimal burden to provide. The commenters indicated that they would have to develop, implement, and staff a data acquisition management system for which they would have no other need than this rulemaking at a cost of significant resources.

Response: The NRC recognizes that a distributor's current data handling may not be designed to instantly provide the required information; but, with the capabilities of current information technology, the NRC expects information could be readily assembled and provided in a form and content that is acceptable to the NRC without incurring significant burden on the licensee. In the past, the NRC has occasionally requested distributors of source material to general licensees to voluntarily assemble and provide not only product and quantity information, but also to provide information about recipients of the source material. These distributors were able to fulfill the requests without significant notice and did not voice concerns about the burden associated with the requests. The only currently identified distributor of source material to general licensees has voluntarily provided similar information in the past and so requiring an annual submission does not seem overly burdensome. The NRC does not expect the distributor to have to develop, implement, and staff a data acquisition management system to fulfill this requirement and leaves it up to the distributor how best to fulfill the requirement. Byproduct material distributors have been required to submit such reports, at least annually, for decades. Also, source material distributors will have one year to apply for a license, and would not be required to submit such a report until the year after their specific license is issued. This should allow sufficient time to develop a cost-effective system to meet the reporting requirement. The NRC has concluded that the information to be provided in these reports is important for the NRC to understand and ensure that products and materials distributed for use under the general license are, and continue to be, safe. In addition, such reports will help identify who currently is operating under a general license.

Comment: Four commenters stated concerns about requirements in the proposed § 40.55(d) requiring the distributor to provide the NRC with annual reports detailing who their customers were and frequency, type, and amount of sales to those customers. The commenters indicated that this was proprietary information, which would have to be submitted to the NRC as such and the process would be burdensome. Two of these commenters indicated it was unclear how this information would be protected. One of these commenters indicated that because their transactions are subject to security restrictions they may be prohibited from submitting the information in such a report. Three of these commenters stated that having to file to protect this information pursuant to § 2.390 for each report would be burdensome and recommended that NRC eliminate the requirements for providing customer specific data from the annual reporting requirement. One of these commenters recommended that the annual report only include generic information transferred on a state basis, while the other two commenters recommended that they be allowed to maintain such records at their site for NRC review during inspections.

Response: The NRC has procedures in place for protecting proprietary information. Generally, the Agreement States have procedures in place that are designed to protect proprietary information to the extent permissible under state law. Similar requirements have applied to the distribution of byproduct material for decades, in most cases on a quarterly basis. The information is pertinent to allow both the NRC and the Agreement States to understand who is receiving source material under their jurisdiction to better ensure that the source material is being properly handled. The NRC recognizes that customer information may be considered proprietary under § 2.390 and would treat it as such in accordance with the NRC's regulations and procedures. Distributors would need to mark the information as proprietary to ensure that it is treated accordingly. For annual reports related to the distribution of byproduct material, after the first annual report and associated affidavit is submitted under § 2.390(b), the NRC typically waives the affidavit requirements under § 2.390(b)(ii), for subsequent annual reports if the reports are appropriately marked as proprietary and reference a previously submitted affidavit. The NRC anticipates that the annual reports provided for under § 40.55(d) will be handled in a similar manner. Thus, the requirements for requesting withholding of proprietary information under § 2.390 for annual reports required by § 40.55(d) are not as burdensome as they may appear. Although the information could be held at the distributor's facility, such a plan would not allow individual Agreement States to be notified of who is receiving source material under their regulatory jurisdiction. Upon the request of a distributor who believes they are prohibited from providing information to the NRC in an annual report because of security restrictions imposed by other agencies, the NRC will evaluate the security restrictions on a case-by-case basis.

Comment: Three commenters identified that the proposed § 40.55(d) only requires the name and address of general licensees who received greater than 50 g (0.11 lb) of source material but that the reporting requirement under § 40.53 have no such threshold. Two of these commenters questioned why there is a difference and requested clarification of why the threshold is only 50 g. These commenters recommended that the threshold be raised to be consistent with the possession limit in § 40.22(a).

Response: As indicated earlier, the reporting requirement in § 40.53(c) does not require the reporting of customer information and so a comparison between the reporting requirements under § 40.53(c) and § 40.55(d) is not appropriate. In § 40.55(d), the NRC is requesting the reporting of customer names who receive source material under the general license to better ensure that persons operating under the § 40.22 general license can be identified by the regulator. This will allow the regulator to better ensure the general licensee meets the requirements of § 40.22. The threshold of 50 g was determined by looking at distribution reports that were voluntarily submitted to the NRC in the past and intended to

reduce burden on distributors who distribute significantly smaller quantities of source material that are less likely to result in significant health and safety or contamination issues. Using the possession limit for the cutoff for reporting identities of general licensees would result in no general licensees being identified.

Comment: Three commenters requested clarification as to whether the reports required to be filed with a responsible Agreement State under § 40.55(d)(2) only need to be submitted to the Agreement State in which the distributor was located or to, effectively, all the Agreement States and the NRC.

Response: Paragraph § 40.55(d)(1) requires that the distributor provide a complete report of all distributions to the NRC, including for those transfers made to general licensees in Agreement States. Paragraph (d)(2) in § 40.55 requires that the distributor issue a separate report to each Agreement State into which the material was distributed to provide those Agreement States with a better understanding of who is receiving source material and how much under the equivalent Agreement State regulation. The reports to the Agreement States are only required to identify those persons within that individual Agreement State that received more than 50 g of source material; however, even if each person received less than 50 g within an individual Agreement State, the distributor would still be expected to provide a report of how much source material in total was distributed into the individual Agreement State. If no source material was distributed into an Agreement State in the previous calendar year, the distributor does not need to provide a report to the Agreement State, unless the particular State requests it. In that case, the distributor must provide a report to that Agreement State that indicates that no source material was distributed in the previous calendar year. As a result of comments and to better clarify that reports should be sent to each Agreement State into which source material is transferred, § 40.55(d)(2) was revised.

Comment: The Agreement State commenter indicated that the reporting requirement in § 40.55(d) appeared to be parallel to the general licensing reporting system currently in place for byproduct material devices. The commenter requested clarification on what kind of regulatory oversight the NRC intends for these reports—for example, will the NRC and the Agreement States need to establish databases and tracking systems and will there be inspections in the field?

Response: Although the NRC may develop databases internally to evaluate reports, the NRC does not plan to institute a database capable of tracking materials similar to that currently used for tracking generally licensed byproduct devices. The NRC plans to periodically aggregate the collected information related to distribution of source material to general licensees. The data would be used to identify general licensees and to determine if additional changes in the regulations are required to improve safety. Identifying general licensees will allow the NRC to contact them to provide or to request information, or to inspect them if it deems it appropriate. Although field inspections solely to verify records of transfers are not envisioned as a normal practice, review of a licensee's recordkeeping practices may be included as part of any routine inspection of the specific licensee.

D. Exemptions

The notice for proposed rulemaking included a request for comments on whether or not it is appropriate to limit source material on coated lenses through use of a concentration limit.

Comment: One commenter suggested that an activity per unit area (square centimeter) would seem more appropriate. The commenter did not suggest a limit.

Response: The NRC is concerned that a concentration limit may not be the best method to limit uranium and thorium content in the coating of a lens because the activity is concentrated on the outer boundary. Although an activity per unit of surface area is likely a better control, the NRC is hesitant to impose such a limit at this time, without receiving more complete information on the range of products, sizes, quantities of source material, coating thicknesses, etc. Based on the evaluation and findings in the PNNL study, the total source material content is normally significantly less for a coated lens than a lens with a homogeneous content. As a result, the NRC has concluded that the proposed limit is acceptable. One of the key assumptions for these lenses, however, is that the coating is not easily removable. As the key concern with safety for these lenses is how easily removable the coatings might be, § 40.52(b)(2) will require the manufacturer to submit a description of its manufacturing process, as part of a license application, that would ensure that the coating is not easily removable. After the NRC receives more information regarding the distribution of these lenses as a result of the new reporting requirements, the NRC may reconsider the issue.

E. Fees

The notice of the proposed rulemaking included a request for comments on whether the proposed categories and fees in § 170.31 and § 171.16 were appropriate and reasonable.

Comment: One commenter indicated that any additional fees would be burdensome. This commenter was concerned that under the proposed rule, a facility providing sample characterization for source and [10 CFR part 30] byproduct material for licensees and non-licensees could potentially be charged greater than $30,000 annually and more than $15,000 in applications fees. These costs did not include the cost of preparing an application or implementing the new regulatory programs. The commenter stated that these fees eclipse the cost for both conventional and *in situ* recovery facilities that produce millions of pounds of source material annually.

Response: The commenter is correct that a person distributing source material and byproduct material for use under exemptions and general licenses could be subject to fees under a number of different fee categories. However, the fee categories for byproduct material distribution are not new and should not be addressed as new costs. The commenter is correct that a person manufacturing and distributing byproduct material and source material for use under exemptions and general licenses (thereby being affected by up to six separate fee categories) could have a total annual fee that exceeds the annual fees for conventional or *in situ* recovery facilities. This is because the NRC handles each of these (possession, distribution, source material, byproduct material, etc.) as a separate activity. In the past, costs of the resources spent in attempts to gather and evaluate information about the use of source material under exemption and the § 40.22 general license and to estimate the extent and the conditions of their use would be recovered from fees for other NRC-regulated activities unrelated to source material activities. Thus, this rule helps ensure that fees are appropriately allocated. These fees are expected to change periodically based upon the actual amount of effort the NRC spends in actively regulating licensees in these categories. In addition, small businesses are granted some relief from these fees and are allowed to pay significantly lower fees.

F. Miscellaneous

F.1 Scope of ''Other Glass or Ceramic'' in § 40.13(c)(2)(iii)

Comment: One commenter requested that the NRC clarify the scope of the term ''other glass or ceramic'' as it appears in § 40.13(c)(2)(iii). The commenter stated that the scope should extend to industrial use ceramics that are not used in residential or commercial building construction. The commenter stated that the phrase ''used in construction'' means used in the construction of residential or commercial buildings and not ''used in construction'' of industrial crucibles, jet engines, chemical manufacturing facilities, or military radar. The commenter discussed the fact that since other forms of ceramics are allowed under other exemptions in § 40.13(c)(2)(i) and (ii), that the exemption in § 40.13(c)(2)(iii) should be considered to include any other ceramics except those in § 40.13(c)(2)(i) and (ii) and those ceramics used in residential and commercial building construction.

Response: The fact that there are other exemptions that cover specific types of ceramics is in fact evidence that the exemption for glassware in § 40.13(c)(2)(iii) is not meant to cover all ceramics. The exclusionary language at the end of that exemption had previously been associated with the exemptions in § 40.13(c)(2)(i) and (ii) in addition to § 40.13(c)(2)(iii). However, these exemptions are specific enough as to no longer need such clarification. Also, the glaze on some ceramics, such as ceramic tiles, may itself be considered glass. Thus, maintaining the exclusionary language concerning ceramic tile and other tile used in construction is appropriate. The NRC agrees that the phrase ''used in construction'' means used in the construction of residential or commercial buildings and not ''used in construction'' of industrial crucibles, jet engines, chemical manufacturing facilities, or military radar. Nevertheless, the exemption in § 40.13(c)(2)(iii) does not cover ceramic material.

F.2 Applicability of Specific Product Exemption vs. Broader 0.05 Percent Exemption

Comment: One commenter indicated that it manufactures a wide variety of ''windows'' that are nominally 18 inches by 12 inches, in addition to small lenses that are less than 1 inch in diameter. Some of these products contain less than 0.05 percent by weight of uranium and thorium. The commenter requested clarification on whether the product exemption in § 40.13(c)(7) or the broader exemption in § 40.13(a) takes precedence. If the former, the manufacturer would be required to distribute the product under the proposed distribution license in § 40.52. The commenter recommended that this potential point of confusion be addressed in guidance.

Response: Although there is not a stated definition for what constitutes a lens in the NRC's regulations, the Merriam-Webster Dictionary [6] defines a lens as ''a piece of transparent material (as glass) that has two opposite regular surfaces either both curved or one curved and the other plane and that is used either singly or combined in an optical instrument for forming an image by focusing rays of light.'' Similarly a mirror is intended to reflect waves of light or other radiation. Because a ''window'' is usually intended to only allow transmittal of light (not reflect or focus it), the NRC does not consider a window to be a lens and thus the exemption in § 40.13(c)(7) would not normally apply to a window. When determining the appropriate exemption, it would be inappropriate to use the exemption limit in § 40.13(a) for a product in which the source material is intentionally applied or included. As a result, for coated lenses, the only applicable exemption would be in § 40.13(c)(7) and thus the initial distribution of all coated lenses would require a license under § 40.52.

F.3 Threshold for Licensable Source Material

Comment: One commenter requested guidance about when uranium or thorium is actually considered source material. In particular, the commenter asked if source material is defined as being controlled by a licensee, or if it includes any material that may contain greater than 0.05 percent by weight of uranium or thorium, including outcrops, mine workings, and cores required to ascertain if material is minable. The commenter also wondered how one handles ores that are being analytically sampled when one doesn't know the concentration of uranium and thorium until the analysis is completed. The commenter was also concerned that some inspectors have indicated that as soon as you add acids to the ore, for analytical sample preservation as required by approved analytical methodologies for uranium testing, that the material should be classified as source material, even if you don't know whether the concentration in the sample exceeds the 0.05 percent limit.

Response: The NRC acknowledges that because of the ubiquitous nature of uranium and thorium, knowing if a material is an ore or is source material is problematic. As long as the source material remains in its place in nature, the source material is not subject to regulation under the AEA. Furthermore, until the ore is actually processed, because of the exemption in § 40.13(b), a person is not required to obtain a license from the NRC for possession or use of the material nor meet the requirements of 10 CFR part 40. However, once processing occurs, the processor would need a license (either general or specific) to possess and process the source material if the material's content exceeds 0.05 percent by weight of the material. If the processed material is then transferred to someone else for use under a product exemption in § 40.13(c) or the general license in § 40.22, that person would need a distributor license.

Based on comments, the NRC has concluded that transfers of source material to analytical laboratories (and potentially back to the client) for determining concentrations would be extremely burdensome to track and need not be covered by licensing requirements for initial distribution. As a result, the NRC has modified the proposed § 40.22(e) to include a provision specifically to address analytical laboratories and, as such, a specific license for the initial distribution of source material is not required in order to transfer source material to an analytical laboratory operating under a § 40.22 general license for the purpose of determining the source material concentration of the material. Similarly, the laboratory would not be required to obtain a distribution license to return the sample to the person that originally provided the sample for analysis. The NRC expects that most laboratories routinely analyzing radioactive materials are operating under a specific license. However, to the extent that the general license of § 40.22 is used for this purpose, it is not necessary to capture such transfers under a distribution license. Furthermore, the NRC modified § 40.22(a) to allow laboratories receiving uranium and thorium for the purpose of determining its concentration to essentially maintain the same quantity limits as have been allowed by § 40.22 in the past.

The NRC also acknowledges that there may be issues when handling unprocessed ores when the source material content is not known. To

[6] See Web site *http://www.merriam-webster.com/dictionary/lens.*

alleviate potential violations where a laboratory may unexpectedly identify source material in an ore that would normally require licensing, a clarifying amendment was made to the definition of ''unrefined and unprocessed ore'' in § 40.4 to indicate that activities related to the sample analysis of an unprocessed ore are not considered as processing and an analytical laboratory may treat the sample as unprocessed ore under the exemption in § 40.13(b). This change is consistent with Section 65 of the AEA, which states that ''reports shall not be required with respect to (a) any source material prior to its removal from its place of deposit in nature, or (b) . . . or the reporting of which will discourage independent prospecting for new deposits.''

Comment: One commenter stated that the NRC should clarify that compliance assessments for uranium and/or thorium in a material can be reported to three significant figures, if justified by analytical accuracy and precision. The commenter explained that the regulatory language of § 40.13(a) of ''one twentieth of one percent'' describes a fraction of a fraction and provides a numeral example in parenthesis of 0.05 percent. The commenter further stated that following accepted rounding convention, an analytical value of 0.049 percent rounds to 0.05 percent and thus is considered licensable source material if analysis to only two significant figures is allowed by § 40.13(a). The commenter requested that given that improvement in analytical sensitivity over the years, it is appropriate to clarify that the number of significant figures to which source material content is reported should be limited only by the validated accuracy and precision of the analytical method used.

Response: Although the numeric value in § 40.13(a) is only stated out to one significant figure, the NRC does not require rounding if a more precise analysis is made. Thus if the analysis indicated that the material was 0.049 percent by weight, the NRC would not consider the material containing the uranium or thorium to require a license.

F.4 Revision of the Exemption in § 40.13(b) for Unrefined Ores

Comment: One commenter stated the exemption for unrefined and unprocessed ore found in § 40.13(b) is a critical part of 10 CFR part 40 and rightfully remains unchanged because it—(1) Exempts mining of source material from the regulation; (2) rightfully exempts natural materials from the regulations; and (3) starts the regulatory regime only upon processing of naturally occurring materials thus limiting the regulation to anthropogenic materials.

Response: The NRC has no plans to revise § 40.13(b) in any way that would reduce the benefits identified by the commenter at this time. However, based upon comments received, the NRC has included a clarifying amendment to the definition of ''unrefined and unprocessed ore'' in § 40.4 in the final rule to indicate that activities related to the sample analysis of an unprocessed ore and a few other specified activities as discussed in more detail in section II.A.8 of this document, are not considered to be processing and that the material would continue to be considered an unprocessed or unrefined ore and thus remain exempt under § 40.13(b).

G. Future Rulemaking Considerations

The notice of the proposed rulemaking included a request for comments on certain issues that could be considered for future rulemakings. The following comments were provided in response to the NRC's questions. The NRC would like to thank respondents for taking the time to provide these comments, and will consider them when evaluating the need and scope of future rulemaking in this area. The NRC is not providing a response to these comments at this time.

G.1 Addition of 11e.(2) Byproduct Material to the § 40.22 General License

The notice of proposed rulemaking included a request for comment on whether the general license in § 40.22 should be expanded to cover 11e.(2) byproduct material (mill tailings or waste).

Comment: Three commenters responded positively to expanding the § 40.22 general license to include provisions for 11e.(2) byproduct material. One of the commenters indicated that current regulations are hampering the ability of analytical laboratories to perform necessary testing on waste material generated by an in situ recovery facility because the laboratory requires a specific license. Another of these commenters indicated that such a change would be a boon for laboratories serving the uranium recovery industry. The commenter argued that uranium mill tailings (which are a major component of 11e.(2) byproduct material) are lower in activity than unrefined and unprocessed ores, which are considered to be exempt under § 40.13(b). The commenter provided suggested limits for inclusion in any proposed general license expansion to be 150 lb of 11e.(2) byproduct material at one time and receipt of no more than 1,000 lb per year. The third commenter indicated that higher limits were appropriate if the dose limits were not likely to be exceeded but also identified the need that additional provisions for disposition may be needed.

G.2 Sealed Source and Device Registry

The notice of proposed rulemaking included a request for comment on whether explicit provisions should be added to 10 CFR parts 40 and 70 to cover the inclusion of source material and special nuclear material in items in the sealed source and device registry, similar to § 32.210.

Comment: One commenter supported making this revision for devices and specific products.

G.3 Usefulness of Provisions in §§ 40.25 and 40.34

The notice of proposed rulemaking included a request for comment on whether the provisions in §§ 40.25 and 40.34 should be revised to make the general license more useful to the regulatory program, whether the usefulness clause is too subjective and acting as deterrent, and if the exposure limits in § 40.34(a)(2) should be reduced to 1 mSv (100 mrem) per year.

Comment: One commenter indicated that most persons have chosen to possess materials under their specific license instead of under these provisions. The commenter indicated that there are some accelerator/cyclotron facilities that still use material under this general license. The commenter continued that the usefulness of the product should always be a primary consideration in the evaluation process and should be maintained in the rule language. Finally, the commenter indicated that exposure limits should be consistent with those for other generally licensed products.

IV. Discussion of Final Amendments by Section

Section 30.6 Communications

10 CFR 30.6(b)(1)(iv)—Adds a reference to new § 40.52 as a licensing category not delegated to the NRC Regions.

Section 40.4 Definitions

10 CFR 40.4—Revises the definition of ''*Unrefined and unprocessed ore*'' to clarify that certain activities are not considered processing in this regard.

Section 40.5 Communications

10 CFR 40.5(b)(1)(iv)—Adds a reference to new § 40.52 as a licensing

category not delegated to the NRC Regions.

Section 40.8 Information Collection Requirements: OMB Approval

10 CFR 40.8(b)—Adds sections to the list of information collection requirements.

Section 40.13 Unimportant Quantities of Source Material

10 CFR 40.13(c)—Clarifies that persons exempt from licensing requirements are also exempt from 10 CFR parts 19, 20, and 21.

10 CFR 40.13(c)(2)(i)—Restricts the exemption for use of source material in certain ceramic tableware to that previously manufactured.

10 CFR 40.13(c)(2)(iii)—Revises the exemption for use of source material in glassware to reduce the limit of 10 percent by weight source material to 2 percent by weight source material for glassware manufactured in the future.

10 CFR 40.13(c)(5)—Removes paragraph (c)(5)(i), as it is redundant with the new paragraph (c)(10), and renumbers the subsequent paragraphs within (c)(5).

10 CFR 40.13(c)(7)—Revises the exemption for use of source material in optical lenses to: (1) Reduce the limit of 30 percent by weight thorium to 10 percent by weight thorium for optical lenses manufactured in the future; (2) accommodate lenses with coatings; (3) add uranium to the material that may be combined with or on the lenses; and (4) add mirrors.

10 CFR 40.13(c)(10)—Adds paragraph (c)(10) to prohibit initial distribution for use under the exemptions in § 40.13(c) without a specific license issued under § 40.52.

10 CFR 40.13(d)—Removes an obsolete exemption for use of source material in fire detection units.

Section 40.22 Small Quantities of Source Material

10 CFR 40.22(a)(1)—Applies a limit of 1.5 kg (3.3 lb) at any one time to certain forms of uranium and thorium that may be inhaled or ingested during normal working conditions and restricts receipt of these forms to less than 7 kg (15.4 lb) per year. Also, allows a person, currently possessing quantities greater than these limits, one year from the effective date of the rule to reduce possession limits or apply for a specific license for possession and use; however, a person not applying for a specific license has until the end of the calendar year following the effective date of the rule to reduce throughput to the new limits.

10 CFR 40.22 (a)(2)—Allows additional possession of forms of uranium and thorium that are not expected to be normally inhaled or ingested.

10 CFR 40.22(a)(3)—Allows persons removing uranium from drinking water to continue to possess up to 7 kg (15.4 lb) of uranium at any one time and to remove up to 70 kg (154 lb) of uranium from drinking water per calendar year.

10 CFR 40.22(a)(4)—Allows laboratories handling samples for the purpose of determining uranium or thorium content to continue to possess up to 7 kg (15.4 lb) of source material at any one time and up to 70 kg (154 lb) of source material per calendar year.

10 CFR 40.22(b)(1)—Continues to prohibit persons from administering source material, or the resulting radiation, either externally or internally, to human beings except as authorized by the NRC in a specific license.

10 CFR 40.22(b)(2)—Clarifies that any person who receives, possesses, uses, or transfers source material under § 40.22 may not abandon source material and that the source material must be transferred under § 40.51 or permanently disposed of in accordance with § 20.2001. An exception is that a general licensee is allowed to dispose of up to a total of 0.5 kg (1.1 lb) per calendar year of source material through transfer to any person for permanent disposal and that the recipient is not required to obtain a license from the NRC as long as it was permanently disposed in accordance with local laws.

10 CFR 40.22(b)(3)—Clarifies which provisions in 10 CFR part 40 apply under the general license.

10 CFR 40.22(b)(4)—Adds a provision to explicitly require that licensees must respond to written requests by the NRC.

10 CFR 40.22(b)(5)—Clarifies that export of source material is subject to 10 CFR part 110.

10 CFR 40.22(c)—Requires that any person who receives, possesses, uses, or transfers source material in accordance with paragraph (a) of § 40.22 must conduct activities so as to minimize contamination of the facility and the environment.

10 CFR 40.22(d)—Revises and moves the requirements currently under paragraph (b) of this section to paragraph (d) of this section.

10 CFR 40.22(e)—Restricts initial distribution for use under the general license to a specific license issued under § 40.54 or equivalent provisions of an Agreement State.

Section 40.32 General Requirements for Issuance of a Specific License

10 CFR 40.32(f)—Adds §§ 40.52 and 40.54 to the list of sections that have special requirements that need to be satisfied for the issuance of certain specific licenses.

Section 40.52 Certain Items Containing Source Material; Requirements for License To Apply or Initially Transfer

10 CFR 40.52—Establishes requirements for a license authorizing distribution for use under the exemptions from licensing in § 40.13(c) and equivalent provisions of Agreement States.

Section 40.53 Conditions of Licenses Issued for Initial Transfer of Certain Items Containing Source Material: Quality Control, Labeling, and Records and Reports

10 CFR 40.53—Establishes requirements for licenses issued under § 40.52, including reporting and recordkeeping requirements for distributions of products for use under § 40.13(c) and equivalent provisions of Agreement States.

Section 40.54 Requirements for License To Initially Transfer Source Material for Use Under the 'Small Quantities of Source Material' General License

10 CFR 40.54—Establishes requirements for a license authorizing initial transfer or distribution for use under § 40.22(a) and equivalent provisions of Agreement States.

Section 40.55 Conditions of Licenses To Initially Transfer Source Material for Use Under the 'Small Quantities of Source Material' General License: Quality Control, Labeling, Safety Instructions, Records and Reports.

10 CFR 40.55—Establishes requirements for licenses issued under § 40.54, including reporting and recordkeeping requirements for the distribution of source material for use under the general license in § 40.22 and equivalent provisions of Agreement States.

Section 40.82 Criminal Penalties

10 CFR 40.82(b)—Adds sections to the list of provisions that are not subject to criminal sanctions.

Section 70.5 Communications

10 CFR 70.5(b)(1)(iv)—Adds a reference to the new § 40.52 as a licensing category not delegated to the NRC Regions.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses

10 CFR 170.31—Adds three new categories for distributors of source material to the schedule of fees.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by NRC

10 CFR 171.16—Adds three fee categories for distributors of source material to the annual fees.

V. Criminal Penalties

For the purpose of Section 223 of the AEA, the Commission is amending § 40.22 and adding §§ 40.53 and 40.55 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the final rule in accordance with the procedure established within Part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' (see *http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

NRC program elements (including regulations) are placed into four compatibility categories (see the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program elements that are not required for compatibility but are identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the AEA, as amended, or provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that have been created or revised and their corresponding categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.'' A bracket around a category means that the section may have been adopted elsewhere, and it is not necessary to adopt it again.

The Agreement States have 3 years from the effective date of the final rule to adopt compatible regulations.

COMPATIBILITY TABLE FOR FINAL RULE

[Distribution of source material to exempt persons and to general licensees and revision of general license and exemptions]

Section	Change	Subject	Compatibility	
			Existing	New
		Part 30		
30.6	Amend	Communications	D	D
		Part 40		
40.4	Amend	Definitions	B	B
		Unrefined and unprocessed ore		
40.5	Amend	Communications	D	D
40.8	Amend	Information collection requirements: OMB approval	D	D
40.13(c)	Amend	Unimportant quantities of source material	B	B
40.13(c)(2)(i)	Amend	Unimportant quantities of source material	B	B
40.13(c)(2)(iii)	Amend	Unimportant quantities of source material	B	B
40.13(c)(5)(i)	Remove	Unimportant quantities of source material	B	B
40.13(c)(5)(ii)	Redesignate	Unimportant quantities of source material (becomes 40.13(c)(5)(i)).	B	B
40.13(c)(5)(iii)	Redesignate	Unimportant quantities of source material (becomes 40.13(c)(5)(ii)).	B	B
40.13(c)(5)(iv)	Redesignate	Unimportant quantities of source material (becomes 40.13(c)(5)(iii)).	B	B
40.13(c)(5)(v)	Redesignate	Unimportant quantities of source material (becomes 40.13(c)(5)(iv)).	NRC	NRC

COMPATIBILITY TABLE FOR FINAL RULE—Continued

[Distribution of source material to exempt persons and to general licensees and revision of general license and exemptions]

Section	Change	Subject	Compatibility	
			Existing	New
40.13(c)(7)	Amend	Unimportant quantities of source material	B	B
40.13(c)(10)	New	Unimportant quantities of source material		B
40.13(d)	Remove	Unimportant quantities of source material	B	*
40.22(a)	Amend	Small quantities of source material	B	B
40.22(a)(1)	New	Small quantities of source material		B
40.22(a)(2)	New	Small quantities of source material		B
40.22(a)(3)	New	Small quantities of source material		B
40.22(a)(4)	New	Small quantities of source material		B
40.22(b)	Amend	Small quantities of source material	B	B
40.22(b)(1)	New	Small quantities of source material		B
40.22(b)(2)	New	Small quantities of source material		B
40.22(b)(3)	New	Small quantities of source material		B
40.22(b)(4)	New	Small quantities of source material		D
40.22(b)(5)	New	Small quantities of source material		B
40.22(c)	New	Small quantities of source material		C
40.22(d)	Amend	Small quantities of source material (Previously 40.22(b))	B	B
40.22(e)	New	Small quantities of source material		B
40.32(f)	Amend	General requirements for issuance of a specific license	D	D
40.52	New	Certain items containing source material; requirements for license to apply or initially transfer.		NRC
40.53	New	Conditions of licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records and reports.		NRC
40.54	New	Requirements for license to initially transfer source material for use under the 'small quantities of source material' general license.		B
40.55(a)	New	Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.		B
40.55(b)	New	Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.		B
40.55(c)	New	Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.		B
40.55(d)	New	Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.		B
40.55(e)	New	Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.		C
40.82	Amend	Criminal penalties	D	D
Part 70				
70.5	Amend	Communications	D	D
Part 170				
170.31	Amend	Schedules of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.	D	D
Part 171				
171.16	Amend	Annual fees for materials licenses and other regulatory services.	D	D

* Denotes an existing provision that is currently designated Compatibility Category B, which will be removed from the regulations as a result of these amendments. Agreement States should remove this provision from their regulations.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

VIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is establishing requirements for distributors of source material to persons exempt from regulation and to general licensees. In addition, the final amendments modify the existing possession and use requirements for the general license for small quantities of source material to better align the requirements with current health and safety standards. The Commission is also revising, clarifying, or deleting certain exemptions from licensing to make the requirements for the use of source material under the exemptions more risk informed. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

IX. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this final rule because the Commission has concluded on the basis of an environmental assessment that this final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment.

The determination of this environmental assessment is that there will be no significant impact to the public from this action.

The majority of the provisions in the final rule come within the scope of categorical exclusion in § 51.22, and as such, an environmental review is not necessary. The NRC has also determined that implementation of the remaining provisions of the final rule would not result in any significant impact to the environment. Revisions to § 40.22 primarily provide additional limitations on, and clarify the requirements of, the § 40.22 general licensee, thus, potentially reducing the impact on environmental resources from the status quo. Similarly, certain exemptions are being revised or deleted to limit the future use of certain products containing source material. Although the NRC is expanding the exemption from licensing in § 40.13(c)(7) to allow coated lenses and mirrors, the NRC's evaluation indicated that these products contain significantly less source material than those currently authorized under the exemption. The Commission has determined that the implementation of this final rule would be procedural and administrative in nature.

This conclusion was published in the environmental assessment that was posted to the NRC rulemaking Web site, *http://www.regulations.gov* for 75 days after publication of the proposed rule. No comments were received on the content of the environmental assessment.

X. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements contained in 10 CFR parts 19, 20, 40, and NRC Form 313, that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, –0014, –0215, –0020, and –0120. The final rule changes to 10 CFR parts 30, 70, 170, and 171 do not contain new or amended information collection requirements.

The burden to the public for these information collections is estimated to average 4.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0215), Office of Management and Budget, Washington, DC 20503. You may also email comments to *Chad_S_Whiteman@omb.eop.gov* or comment by telephone at 202–395–4718.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation (ADAMS Accession No. ML13079A302). The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection on *http://www.regulations.gov* by searching on Docket ID NRC–2009–0084 and in the NRC's PDR, 11555 Rockville Pike, Rockville, MD 20852.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. A significant number of the licensees affected by this action may meet the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. However, none of the revisions to the regulatory program will result in a significant economic impact on the affected entities.

XIII. Backfit Analysis

The NRC's backfit provisions are found in the regulations at §§ 50.109, 52.39, 52.63, 52.83, 52.98, 52.145, 52.171, 70.76, 72.62, and 76.76. The requirements contained in this final rule do not involve any provisions that impose backfits on nuclear power plant licensees as defined in 10 CFR parts 50 or 52, or on licensees for gaseous diffusion plants, independent spent fuel storage installations or special nuclear material as defined in 10 CFR parts 70, 72 and 76, respectively, and as such a backfit analysis is not required. Therefore, a backfit analysis need not be prepared for this final rule to address these classes of entities. With respect to 10 CFR part 40 licensees, there are no provisions for backfit in 10 CFR part 40. Therefore, a backfit analysis has not been prepared for this final rule to address 10 CFR part 40 licensees.

XIV. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a

major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 30, 40, 70, 170, and 171.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

Authority: Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 2. In § 30.6, paragraph (b)(1)(iv) is revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) * * *

(1) * * *

(iv) Distribution of products containing radioactive material under §§ 32.11 through 32.30 and 40.52 of this chapter to persons exempt from licensing requirements.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 3. The authority citation for part 40 continues to read as follows:

Authority: Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 4. In § 40.4, the definition of *Unrefined and unprocessed ore* is revised to read as follows:

§ 40.4 Definitions.

* * * * *

Unrefined and unprocessed ore means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

* * * * *

■ 5. In § 40.5, paragraph (b)(1)(iv) is revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) * * *

(1) * * *

(iv) Distribution of products containing radioactive material under §§ 32.11 through 32.30 and 40.52 of this chapter to persons exempt from licensing requirements.

* * * * *

■ 6. In § 40.8, paragraph (b) is revised to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.9, 40.22, 40.23, 40.25, 40.26, 40.27, 40.31, 40.34, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.51, 40.52, 40.53, 40.54, 40.55, 40.60, 40.61, 40.64, 40.65, 40.66, 40.67, and appendix A to this part.

* * * * *

■ 7. In § 40.13:

■ a. Paragraphs (c) introductory text, (c)(2)(i), and (c)(2)(iii) are revised;

■ b. Paragraph (c)(5)(i) is removed;

■ c. Paragraphs (c)(5)(ii) through (v) are redesignated as paragraphs (c)(5)(i) through (iv);

■ d. Paragraph (c)(7) is revised;

■ e. Paragraph (c)(10) is added;

■ f. Paragraph (d) is removed; and

■ g. Footnote 2 is revised.

The revisions and addition read as follows:

§ 40.13 Unimportant quantities of source material.

* * * * *

(c) Any person is exempt from the requirements for a license set forth in section 62 of the Act and from the regulations in this part and parts 19, 20, and 21 of this chapter to the extent that such person receives, possesses, uses, or transfers:

* * * * *

(2) * * *

(i) Glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent by weight source material;

* * * * *

(iii) Glassware containing not more than 2 percent by weight source material or, for glassware manufactured before August 27, 2013, 10 percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

* * * * *

(7) Thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than 10 percent by weight thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight

of thorium; and that the exemption contained in this paragraph does not authorize either:

(i) The shaping, grinding or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

(ii) The receipt, possession, use, or transfer of uranium or thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

* * * * *

(10) No person may initially transfer for sale or distribution a product containing source material to persons exempt under this paragraph (c), or equivalent regulations of an Agreement State, unless authorized by a license issued under § 40.52 to initially transfer such products for sale or distribution.

(i) Persons initially distributing source material in products covered by the exemptions in this paragraph (c) before August 27, 2013, without specific authorization may continue such distribution for 1 year beyond this date. Initial distribution may also be continued until the Commission takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than 1 year beyond this date.

(ii) Persons authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under § 40.52 for distribution only and are exempt from the requirements of parts 19 and 20 of this chapter, and § 40.32(b) and (c).

* * * * *

[2] The requirements specified in paragraphs (c)(5)(i) and (ii) of this section need not be met by counterweights manufactured prior to Dec. 31, 1969, provided that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and were impressed with the legend required by § 40.13(c)(5)(ii) in effect on June 30, 1969.

■ 8. Section 40.22 is revised to read as follows:

§ 40.22 Small quantities of source material.

(a) A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and Federal, State, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities:

(1) No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. Persons possessing source material in excess of these limits as of August 27, 2013, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the Commission takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2014, or until the Commission takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and

(2) No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this paragraph unless it is accounted for under the limits of paragraph (a)(1) of this section; or

(3) No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this paragraph; or

(4) No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

(b) Any person who receives, possesses, uses, or transfers source material in accordance with the general license in paragraph (a) of this section:

(1) Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the NRC in a specific license.

(2) Shall not abandon such source material. Source material may be disposed of as follows:

(i) A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under this general license to persons receiving the material for permanent disposal. The recipient of source material transferred under the provisions of this paragraph is exempt from the requirements to obtain a license under this part to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this chapter; or

(ii) In accordance with § 20.2001 of this chapter.

(3) Is subject to the provisions in §§ 40.1 through 40.10, 40.41(a) through (e), 40.46, 40.51, 40.56, 40.60 through 40.63, 40.71, and 40.81.

(4) Shall respond to written requests from the NRC to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the person cannot provide the requested information within the allotted time, the person shall, within that same time period, request a longer period to supply the information by providing the Director of the Office of Federal and State Materials and Environmental Management Programs, using an appropriate method listed in § 40.5(a), a written justification for the request;

(5) Shall not export such source material except in accordance with part 110 of this chapter.

(c) Any person who receives, possesses, uses, or transfers source material in accordance with paragraph (a) of this section shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Director of the Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 40.5(a) about such contamination and may consult with the NRC as to the appropriateness of sampling and

restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in § 20.1402 of this chapter.

(d) Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in paragraph (a) of this section is exempt from the provisions of parts 19, 20, and 21 of this chapter to the extent that such receipt, possession, use, and transfer are within the terms of this general license, except that such person shall comply with the provisions of §§ 20.1402 and 20.2001 of this chapter to the extent necessary to meet the provisions of paragraphs (b)(2) and (c) of this section. However, this exemption does not apply to any person who also holds a specific license issued under this chapter.

(e) No person may initially transfer or distribute source material to persons generally licensed under paragraph (a)(1) or (2) of this section, or equivalent regulations of an Agreement State, unless authorized by a specific license issued in accordance with § 40.54 or equivalent provisions of an Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by paragraph (a) of this section before August 27, 2013, without specific authorization may continue for 1 year beyond this date. Distribution may also be continued until the Commission takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

■ 9. In § 40.32, paragraph (f) is revised to read as follows:

§ 40.32 General requirements for issuance of a specific license.

* * * * *

(f) The applicant satisfies any applicable special requirements contained in §§ 40.34, 40.52, and 40.54.

* * * * *

■ 10. Sections 40.52, 40.53, 40.54, and 40.55 are added under the undesignated heading Transfer of Source Material to read as follows:

§ 40.52 Certain items containing source material; requirements for license to apply or initially transfer.

An application for a specific license to apply source material to, incorporate source material into, manufacture, process, or produce the products specified in § 40.13(c) or to initially transfer for sale or distribution any products containing source material for use under § 40.13(c) or equivalent provisions of an Agreement State will be approved if:

(a) The applicant satisfies the general requirements specified in § 40.32. However, the requirements of § 40.32(b) and (c) do not apply to an application for a license to transfer products manufactured, processed, or produced in accordance with a license issued by an Agreement State or to the import of finished products or parts.

(b) The applicant submits sufficient information regarding the product pertinent to the evaluation of the potential radiation exposures, including:

(1) Chemical and physical form and maximum quantity of source material in each product;

(2) Details of construction and design of each product, if applicable. For coated lenses, this must include a description of manufacturing methods that will ensure that the coatings are unlikely to be removed under the conditions expected to be encountered during handling and use;

(3) For products with applicable quantity or concentration limits, quality control procedures to be followed in the fabrication of production lots of the product and the quality control standards the product will be required to meet;

(4) The proposed method of labeling or marking each unit, and/or its container with the identification of the manufacturer or initial transferor of the product and the source material in the product; and

(5) The means of providing radiation safety precautions and instructions relating to handling, use, and storage of products to be used under § 40.13(c)(1)(i) and (c)(1)(iii).

(c) Each product will contain no more than the quantity or the concentration of source material specified for that product in § 40.13(c).

§ 40.53 Conditions for licenses issued for initial transfer of certain items containing source material: Quality control, labeling, and records and reports.

(a) Each person licensed under § 40.52 shall ensure that the quantities or concentrations of source material do not exceed any applicable limit in § 40.13(c).

(b) Each person licensed under § 40.52 shall ensure that each product is labeled as provided in the specific exemption under § 40.13(c) and as required by their license. Those distributing products to be used under § 40.13(c)(1)(i) and (iii) or equivalent regulations of an Agreement State shall provide radiation safety precautions and instructions relating to handling, use, and storage of these products as specified in the license.

(c)(1) Each person licensed under § 40.52 shall file a report with the Director, Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 40.5(a), including in the address: ATTN: Document Control Desk/Exempt Distribution.

(2) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee and indicate that the products are transferred for use under § 40.13(c), giving the specific paragraph designation, or equivalent regulations of an Agreement State.

(3) The report must include the following information on products transferred to other persons for use under § 40.13(c) or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each product and the model number(s), if applicable;

(ii) For each type of source material in each type of product and each model number, if applicable, the total quantity of the source material; and

(iii) The number of units of each type of product transferred during the reporting period by model number, if applicable.

(4) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. Licensees who permanently discontinue activities authorized by the license issued under § 40.52 shall file a report for the current calendar year within 30 days after ceasing distribution.

(5) If no transfers of source material have been made to persons exempt under § 40.13(c) or the equivalent regulations of an Agreement State, during the reporting period, the report must so indicate.

(6) The licensee shall maintain all information concerning transfers that support the reports required by this section for 1 year after each transfer is included in a report to the Commission.

§ 40.54 Requirements for license to initially transfer source material for use under the 'small quantities of source material' general license.

An application for a specific license to initially transfer source material for use under § 40.22, or equivalent regulations of an Agreement State, will be approved if:

(a) The applicant satisfies the general requirements specified in § 40.32; and

(b) The applicant submits adequate information on, and the Commission approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

§ 40.55 Conditions of licenses to initially transfer source material for use under the 'small quantities of source material' general license: Quality control, labeling, safety instructions, and records and reports.

(a) Each person licensed under § 40.54 shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, ''radioactive material.''

(b) Each person licensed under § 40.54 shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

(c) Each person licensed under § 40.54 shall provide the information specified in this paragraph to each person to whom source material is transferred for use under § 40.22 or equivalent provisions in Agreement State regulations. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(1) A copy of §§ 40.22 and 40.51, or relevant equivalent regulations of the Agreement State.

(2) Appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

(d) Each person licensed under § 40.54 shall report transfers as follows:

(1) File a report with the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The report shall include the following information:

(i) The name, address, and license number of the person who transferred the source material;

(ii) For each general licensee under § 40.22 or equivalent Agreement State provisions to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(2) File a report with each responsible Agreement State agency that identifies all persons, operating under provisions equivalent to § 40.22, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the Agreement State being reported to:

(i) The name, address, and license number of the person who transferred the source material; and

(ii) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred.

(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State.

(3) Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under § 40.22 or equivalent Agreement State provisions during the current period, a report shall be submitted to the Commission indicating so. If no transfers have been made to general licensees in a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon request of the agency.

(e) Each person licensed under § 40.54 shall maintain all information that supports the reports required by this section concerning each transfer to a general licensee for a period of 1 year after the event is included in a report to the Commission or to an Agreement State agency.

■ 11. In § 40.82, paragraph (b) is revised to read as follows:

§ 40.82 Criminal penalties.

* * * * *

(b) The regulations in part 40 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 40.1, 40.2, 40.2a, 40.4, 40.5, 40.6, 40.8, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.31, 40.32, 40.34, 40.43, 40.44, 40.45, 40.52, 40.54, 40.71, 40.81, and 40.82.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 12. The authority citation for part 70 continues to read as follows:

Authority: Atomic Energy Act secs. 51, 53, 161, 182, 183, 193, 223, 234 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2243, 2273, 2282, 2297f); secs. 201, 202, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)). Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237). Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

■ 13. In § 70.5, paragraph (b)(1)(iv) is revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) * * *

(1) * * *

(iv) Distribution of products containing radioactive material under §§ 32.11 through 32.30 and 40.52 of this chapter to persons exempt from licensing requirements.

* * * * *

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 14. The authority citation for part 170 continues to read as follows:

Authority: Independent Offices Appropriations Act sec. 501 (31 U.S.C. 9701); Atomic Energy Act sec. 161(w) (42 U.S.C. 2201(w)); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Chief Financial Officers Act sec. 205 (31 U.S.C. 901, 902); Government Paperwork Elimination Act sec. 1704, (44 U.S.C. 3504 note); Energy Policy Act secs. 623, Energy Policy Act of 2005 sec. 651(e) Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w), 2014, 2021, 2021b, 2111).

■ 15. In § 170.31, the table. ''Schedule of Materials Fees'' is amended by redesignating materials license category 2.C. as category 2.F. and adding new categories 2.C., 2.D., and 2.E. to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Categories of materials licenses and type of fees [1]	Fee [2 3]
* * * * * * *	
2. Source material:	
* * * * * * *	
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter.	
Application [Program Code(s): 11240]	$7,000
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter.	
Application [Program Code(s): 11230 and 11231]	2,000
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution.	
Application [Program Code(s): 11710]	5,400
F. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	5,400
* * * * * * *	

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, preapplication consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the *Code of Federal Regulations* (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports for which costs exceed $50,000. Costs that exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS, AND GOVERNMENT AGENCIES LICENSED BY NRC

■ 16. The authority citation for part 171 continues to read as follows:

Authority: Consolidated Omnibus Budget Reconciliation Act sec. 7601 Pub. L. 99–272, as amended by sec. 5601, Pub. L. 100–203 as amended by sec. 3201, Pub. L. 101–239, as amended by sec. 6101, Pub. L. 101–508, as amended by sec. 2903a, Pub. L. 102–486 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103 (42 U.S.C. 2214); Atomic Energy Act sec. 161(w), 223, 234 (42 U.S.C. 2201(w), 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005 sec. 651(e), Pub. L. 109–58 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 17. In § 171.16, the table in paragraph (d) is amended by redesignating materials license category 2.C. as category 2.F. and adding new categories 2.C., 2.D., and 2.E. to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(d) * * *

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
* * * * * * *	
2. Source Material:	
* * * * * * *	
C. Licenses to distribute items containing source material to persons exempt from the licensing requirements of part 40 of this chapter [Program Code(s): 11240]	$10,000
D. Licenses to distribute source material to persons generally licensed under part 40 of this chapter [Program Code(s): 11230 and 11231]	5,000
E. Licenses for possession and use of source material for processing or manufacturing of products or materials containing source material for commercial distribution. [Program Code(s): 11710]	12,400
F. All other source material licenses. [Program Code(s): 11200, 11220, 11221, 11300, 11800, 11810]	12,400
* * * * * * *	

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2011, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.,* human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of 10 CFR parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

* * * * *

Dated at Rockville, Maryland, this 21st day of May, 2013.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2013–12570 Filed 5–28–13; 8:45 am]

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H.R. 360/P.L. 113–11
To award posthumously a Congressional Gold Medal to Addie Mae Collins, Denise McNair, Carole Robertson, and Cynthia Wesley to commemorate the lives they lost 50 years ago in the bombing of the Sixteenth Street Baptist Church, where these 4 little Black girls' ultimate sacrifice served as a catalyst for the Civil Rights Movement. (May 24, 2013; 127 Stat. 446)

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