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FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1458]

RIN 7100–AD96

Prohibition Against Federal Assistance to Swaps Entities (Regulation KK)

AGENCIES: Board of Governors of the Federal Reserve System (''Board'')

ACTION: Interim final rule with request for comment.

SUMMARY: The Board invites comment on an interim final rule that treats an uninsured U.S. branch or agency of a foreign bank as an insured depository institution for purposes of section 716 of the Dodd-Frank Act and establishes a process by which a state member bank or uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities to the requirements of section 716.

DATES: This rule is effective on June 10, 2013. Comments must be received on or before August 4, 2013.

ADDRESSES: You may submit comments, identified by Docket No. R–1458 and RIN No. 7100–AD96, by any of the following methods:

Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

Email: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

Facsimile: (202) 452–3819 or (202) 452–3102.

Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452–2272, Christopher Paridon, Counsel, (202) 452–3264, Victoria Szybillo, Counsel (202) 475–6325, or Christine Graham, Senior Attorney, (202) 452–3005, Legal Division; or Jordan Bleicher, Supervisory Financial Analyst, (202) 973–6123, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION: Section 716 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') generally prohibits the provision of ''Federal assistance'' to any ''swaps entity'' with regard to any swap, security-based swap, or other activity of the swaps entity.[1] ''Federal assistance'' is defined by section 716 to include ''advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act'' and Federal Deposit Insurance Corporation (''FDIC'') insurance or guarantees.[2] For purposes of section 716, the term ''swaps entity'' generally includes any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant that is registered under the Commodity Exchange Act or the Securities Exchange Act of 1934, as applicable.[3]

Section 716 provides a specific exclusion from the definition of ''swaps entity'' for any insured depository institution that is a major swap participant or major security-based swap participant.[4] Section 716 also provides that its prohibition does not apply to an insured depository institution that limits its swaps activities to certain specified activities.[5]

Section 716 provides insured depository institutions with a transition period to facilitate compliance with the requirements of the section. By its terms, the prohibitions of section 716 apply to insured depository institutions only with respect to swaps and security-based swaps entered into after the expiration of the transition period. The provisions of section 716 become effective on July 16, 2013.[6]

The interim final rule addresses the application of section 716 to swaps entities that are uninsured U.S. branches or agencies of a foreign bank and establishes a process by which a state member bank and an uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities to the requirements of section 716. In particular, the interim final rule treats uninsured U.S. branches and agencies of foreign banks as insured depository institutions for purposes of section 716.

I. Description of Interim Final Rule

A. Treatment of Uninsured U.S. Branches and Agencies of Foreign Banks

Section 716(d) of the Dodd-Frank Act provides that the prohibition on Federal assistance does not apply to the provision of Federal assistance to insured depository institutions that limit their swap and security-based swap activities to activities identified in that section.[7] Those identified activities are: (i) Hedging and other similar risk-mitigating activities directly related to the activities of the insured depository

[1] *See* Section 716(a) of the Dodd-Frank Act; 15 U.S.C. 8305(a).

[2] *Id.*

[3] *See* section 716(b)(2) of the Dodd-Frank Act; 15 U.S.C. 8305(b)(2).

[4] *Id.* This exclusion is available to major swap participants and major security-based swap participants that are not otherwise swap dealers or security-based swap dealers.

[5] *See* section 716(d) of the Dodd-Frank Act; 15 U.S.C. 8305(d).

[6] *See* Guidance on the Effective Date of Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 77 FR 27465 (May 10, 2012).

[7] *See* section 716(d) of the Dodd-Frank Act; 15 U.S.C. 8305(d).

institution, and (ii) acting as a swaps entity for swaps or security-based swaps involving rates or reference assets permissible for investment by a national bank pursuant to 12 U.S.C. 24 (Seventh), other than acting as a swaps entity for non-cleared credit default swaps.[8] In addition, section 716(b)(2) of the Dodd-Frank Act exempts insured depository institutions that are major swap participants from the prohibition in section 716(a).

Moreover, section 716 provides insured depository institutions with a transition period to conform their activities to those permissible under section 716.[9] The appropriate Federal banking agency for an insured depository institution, in consultation with the Securities and Exchange Commission (''SEC'') and Commodities Futures Trading Commission (''CFTC''), as appropriate, has the authority to establish the length of the transition period, which can be up to 24 months, and to extend the transition period for a period of up to one additional year. For purposes of establishing a transition period, the Board is the appropriate Federal banking agency for state member banks and uninsured state branches and agencies of foreign banks.[10] Finally, section 716 applies to swaps and security-based swaps entered into by an insured depository institution only after expiration of the transition period.[11]

The structure, language, and purpose of section 716 create an ambiguity regarding the definition of ''insured depository institution'' for purposes of the various provisions of section 716, including, in particular, regarding the scope of the exceptions and transition period granted to insured depository institutions. The term ''insured depository institution'' is not defined for purposes of these provisions. Section 2 of the Dodd-Frank Act provides that ''except as the context otherwise requires . . .,'' [12] the definition of ''insured depository institution'' has the same meaning as in the Federal Deposit Insurance Act. ''Insured depository institution'' is defined by section 3(c)(2) of the Federal Deposit Insurance Act to mean a bank or savings association the deposits of which are insured by the FDIC, and, for some purposes under section 3(c)(3), an uninsured U.S. branch or agency.[13]

In the context of section 716, uninsured U.S. branches and agencies of foreign banks would appear to be properly considered to be insured depository institutions. By statute, both uninsured and insured U.S. branches and agencies of foreign banks may receive Federal Reserve advances on the same terms and conditions that apply to domestic insured state member banks.[14] Thus, uninsured U.S. branches and agencies of foreign banks are treated as insured member banks for purposes of the only Federal assistance that causes uninsured U.S. branches and agencies of foreign banks to be affected by section 716. Moreover, the authority vested in the Federal banking agencies to enforce compliance with laws such as Title VII of the Dodd-Frank Act against uninsured U.S. branches and agencies of foreign banks is based on the treatment of those branches and agencies as insured depository institutions.[15] Section 716 appears therefore, to be predicated on treatment of uninsured U.S. branches and agencies as insured depository institutions.

Treating uninsured U.S. branches and agencies of foreign banks as insured depository institutions is also consistent with the purpose and legislative history of section 716. Section 716 and Title VII of the Dodd-Frank Act generally are intended to reduce systemic risks from derivatives activities. Treating uninsured U.S. branches and agencies as insured depository institutions furthers these objectives by providing sufficient opportunity for uninsured U.S. branches and agencies to conform or cease their swaps activities in an orderly manner and to continue the same risk-mitigating hedging and other activities permitted for insured depository institutions under section 716. This approach is also consistent with the legislative history, which suggests Congress intended to treat uninsured branches and agencies as insured depository institutions.[16]

The interim final rule provides that, for purposes of section 716 of the Dodd-Frank Act and the interim final rule, the term ''insured depository institution'' includes any insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and any uninsured U.S. branch or agency of a foreign bank.[17] The terms branch, agency, and foreign bank are defined in section 1 of the International Banking Act of 1978.[18]

B. Transition Period for Insured Depository Institutions and Uninsured U.S. Branches and Agencies of Foreign Banks

Section 716 provides insured depository institutions with a transition period to conform their activities.[19] Under section 716(f), the appropriate Federal banking agency for an insured depository institution, in consultation with the SEC and CFTC, as appropriate, is required to establish the length of the transition period for conformance with the requirements of section 716. That transition period may be up to 24 months and may be extended for a period of up to one additional year.

In establishing the length of the transition period for an insured depository institution, the Board is required by statute to take into account and make written findings regarding the potential impact of divestiture or cessation of swap or security-based swaps activities on the insured depository institution's: (i) Mortgage lending; (ii) small business lending; (iii) job creation; (iv) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the FDIC; and (v) any other factor that the Board believes appropriate to consider.

The interim final rule provides that a state member bank and an uninsured state branch and agency of foreign bank may seek a transition period of up to 24 months from July 16, 2013 (for an entity

[8] *See id.* at 8305(d)(1)–(3).

[9] *See* section 716(f) of the Dodd-Frank Act; 15 U.S.C. 8305(f).

[10] *See* 12 U.S.C. 1813(q)(3). The Office of the Comptroller of Currency (OCC) is the appropriate Federal banking agency for any Federal branch or agency of a foreign bank. *See* 12 U.S.C. 1813(q)(1).

[11] *See* section 716(e) of the Dodd-Frank Act; 15 U.S.C. 8305(e).

[12] *See* section 2 (chapeau) and (18)(A) of the Dodd-Frank Act; 12 U.S.C. 5301 (chapeau) and (18)(A).

[13] *See* 12 U.S.C. 1813(c)(2), (c)(3).

[14] Section 13(14) of the Federal Reserve Act; 12 U.S.C. 347d.

[15] 12 U.S.C. 1813(c)(3). While commercial lending companies owned or controlled by foreign banks are also treated as insured depository institutions for purposes of section 1813(c)(3) of the Federal Deposit Insurance Act, these companies do not have access to Federal Reserve advances under the Federal Reserve Act, and thus, are not treated as insured depository institutions for purposes of this interim final rule.

[16] Senator Lincoln, the sponsor of section 716, and Senator Dodd, the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs, engaged in a colloquy on the Senate floor during Senate consideration of the Dodd-Frank Act Conference Report in which they confirmed that uninsured U.S. branches and agencies should be treated in the same manner as insured depository institutions. *See* 156 Cong. Rec. S5904 (daily ed. July 15, 2010) (statement of Sen. Lincoln).

[17] The interim final rule would define uninsured U.S. branches and agencies of foreign banks as insured depository institutions solely for the purposes of section 716 and the interim final rule. Nothing in this interim final rule affects the availability of deposit insurance under the Federal Deposit Insurance Act with respect to deposits received by an uninsured U.S. branch or agency of a foreign bank.

[18] 12 U.S.C. 3101. Insured branches of foreign banks are also included in the definition of ''insured depository institution'' under section 3(c)(2) of the Federal Deposit Insurance Act.

[19] *See* 15 U.S.C. 8305(f).

that is a swaps entity as of July 16, 2013), or from the date on which the entity becomes a swaps entity (if that date occurs after July 16, 2013), by submitting a written request to the Board. The request must include: (i) The length of the transition period requested; (ii) a description of the quantitative and qualitative impacts of immediate divestiture or cessation of swap or security-based swaps activities on the institution, including regarding the potential impact of divestiture or cessation of swap or security-based swaps activities on the institution's mortgage lending, small business lending, job creation, capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the FDIC; and (iii) a description of the insured institution's plan for conforming its activities to the requirements of section 716.

Under the interim final rule, the Board may also request additional information that it believes is necessary in order to act on a request for a transition period. The Board will seek to act on a request for a transition period expeditiously after the receipt of a complete request. The interim final rule would allow the Board to impose conditions on any transition period granted if the Board determines such conditions are necessary and appropriate. Consistent with section 716(f), the interim final rule also permits the Board, in consultation with the SEC and CFTC, as appropriate, to extend the transition period for up to one additional year. To request an extension of the transition period, an insured depository institution must submit a written request no later than 60 days before the end of the transition period.

II. Request for Comments

The Board is interested in receiving comments on all aspects of the interim final rule. In particular:

Question 1. Is it appropriate and consistent with section 716 to define insured depository institution to include an uninsured U.S. branch or agency?

Question 2. How could the transition period process be modified to better achieve the purposes of section 716? Are there any additional factors that the Board should consider in reviewing a request for a transition period?

Question 3. Are there specific additional conditions or limitations that the Board should, by rule, impose in connection with granting a transition period? If so, what conditions or limitations would be appropriate? Alternatively, should the Board consider what conditions or limitations might be appropriate to apply during a transition period (including any extension thereof) on a tailored or case-by-case basis?

III. Effective Date; Solicitation of Comments

This interim final rule is effective immediately. Pursuant to the Administrative Procedure Act (APA), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [20] Similarly, a final rule may be published with an immediate effective date if an agency finds good cause and publishes such with the final rule.[21]

Consistent with section 553(b)(B) of the APA, the Board finds that issuing this rule as an interim final rule is necessary to avoid significant disruptions in the swaps activities of the uninsured U.S. branches and agencies of foreign banks, and that obtaining notice and comment prior to issuing the interim final rule would be impracticable and contrary to the public interest. Furthermore, the Board finds that there is good cause to publish the interim final rule with an immediate effective date.

The Board views the scope of section 716's prohibition as closely related to the application of the Title VII framework to the cross-border activities of foreign banks. The CFTC and SEC both have issued proposals regarding the cross-border application of Title VII.[22] The CFTC issued an exemptive order granting temporary relief from certain cross-border applications of the swaps provisions of Title VII.[23]

Although the Title VII regulatory structure is still being developed, section 716 goes into effect on July 16, 2013. Accordingly, the Board is seeking to provide clarity to uninsured U.S. branches and agencies of foreign banks regarding the availability of the transition period and the exceptions available for insured depository institutions. Absent clarity regarding the availability of the transition period, uninsured U.S. branches and agencies of foreign banks arguably would have to terminate their swaps activities by July 16, 2013 in order to continue to be eligible for access to the discount window. Terminating swaps activities by this date may result in foreign banks and their counterparties winding down their swaps activities in an inefficient and disorderly fashion that could present significant operational and other risks.

There is also good cause to provide clarity on the availability of the exceptions set forth in section 716 through this interim final rule because notice and public procedure would be impracticable and contrary to the public interest. Without such clarity, uninsured branches and agencies would be required to begin terminating all their swap activities during the transition period, even those that qualified for the exceptions. The novation of existing swaps may require the branch or agency to enter quickly into new master swap agreements with each customer, which could present operational risks to the branch or agency and its customers. In the Board's view, the potential harm to these entities and their counterparties that may result from not providing clarity on the availability of the exceptions warrants a departure from the notice and comment rulemaking procedure.

Last, the Board finds that there is good cause to establish the process for applying for transition period relief through this interim final rule because notice and comment would be unnecessary and contrary to the public interest. The interim final rule establishes a procedure of obtaining a statutory transition period and reduces burden on applying institutions by narrowing and clarifying the information that must be provided to obtain this statutory benefit. State member banks are eligible for the transition period under section 716(f) absent implementing regulations, and the Board has already received applications from state member banks requesting transition period relief. In addition, this portion of the interim final rule is appropriately characterized as a rule of procedure, and therefore would not normally be subject to notice and comment requirements. The Board has determined to publish the transition period procedures in this interim final rule in order to provide notice to all state member banks regarding these procedures.

Although notice and comment are not required prior to the effective date of this interim final rule, the Board invites comment on all aspects of this rulemaking and will revise this interim final rule if necessary or appropriate in light of the comments received.

[20] 5 U.S.C. 553(b)(B).

[21] 5 U.S.C. 553(d)(3).

[22] 76 FR 858, 860 (January 7, 2013), 78 FR 30,967 (May 23, 2013).

[23] 76 FR 858. The SEC did not issue a similar exemptive order because it has not established the compliance date for the security-based swap dealer registration provisions of Title VII.

IV. Regulatory Analysis

A. Regulatory Flexibility Act Analysis

In accordance with section 4 of the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* the Board is publishing an initial regulatory flexibility analysis for the interim final rule. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities.[24] The RFA requires an agency either to provide a regulatory flexibility analysis or to certify that the interim final rule will not have a significant economic impact on a substantial number of small entities. Based on this analysis and for the reasons stated below, the Board believes that this interim final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requesting public comment on the effect of the interim final rule on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

The Board is adopting this interim final rule to treat an uninsured U.S. branch or agency of a foreign bank as an insured depository institution for purposes of section 716 of the Dodd-Frank Act and establish a process by which a state member bank and uninsured branch or agency of a foreign bank may request a transition period to conform its swaps activities to the requirements of section 716.

Under regulations issued by the Small Business Administration (''SBA''), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less to $175 million or less.[25] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies or nonbank financial companies with assets sizes of $175 million or less are small entities for purposes of the RFA.

As discussed in the Supplementary Information, the interim final rule would apply to an uninsured U.S. branch or agency of a foreign bank and a state member bank that is registered with the CFTC or SEC as a swap dealer or security-based swap dealer, respectively. Regulations issued by the CFTC and SEC provide that a person shall not be deemed a swap dealer if its swap dealing activity over the preceding 12 months results in swap positions with an aggregate gross notional amount of no more than $3 billion, and an aggregate gross notional amount of no more than $25 million with regard to swaps with a ''special entity'' (which includes municipalities, other political subdivisions and employee benefit plans).[26] Given the relative size of the *de minimis* exemption, it is unlikely that a financial firm that is at or below the $175 million asset threshold would be engaged in swaps transactions that would meet or exceed the threshold to qualify as a swap dealer or security-based swap dealer.[27]

As noted above, because the interim final rule is not likely to apply to any company with assets of $175 million or less, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the interim final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the interim final rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the interim final rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 716 of the Dodd-Frank Act.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite comment on how to make this interim final rule easier to understand. For example:

- Has the Board organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could the Board do to make the regulation easier to understand?

C. Paperwork Reduction Act

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (''PRA''), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The OMB control number for this information collection will be assigned. The Board reviewed the interim final rule under the authority delegated to the Board by OMB.

The interim final rule contains requirements subject to the PRA. The reporting requirements are found in sections 237.22(a)1 and 237.22(e). This information collection requirement would implement section 716 of the Dodd-Frank Act.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Regulation KK.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Respondents: Uninsured state branches or agencies of foreign banks, state member banks.

Abstract: The interim final rule would treat an uninsured U.S. branch or agency of a foreign bank as an insured depository institution and establish a process by which a state member bank and uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities.

Section 237.22(a)(1) would enable an insured depository institution for which the Board is the appropriate Federal banking agency to request a transition period of up to 24 months from the later of July 16, 2013, or the date on which it becomes a swaps entity, during which to conform its swaps activities to the requirements of this section by submitting a request in writing to the

[24] Under standards the U.S. Small Business Administration has established, an entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[25] 13 CFR 121.201.

[26] 77 FR 30596 (May 23, 2012).

[27] *See id.* at 30701 and 30743.

Board. Any request submitted must, at a minimum, include the following information: (i) The length of the transition period requested; (ii) a description of the quantitative and qualitative impacts of divestiture or cessation of swap or security-based swaps activities on the insured depository institution, including information that addresses the factors in paragraph (d) of that section; and (iii) a detailed explanation of the insured depository institution's plan for conforming its activities to the requirements of section 716 of the Dodd-Frank Act (15 U.S.C. 8305) and this part.

Section 237.22(e) would allow the Board to extend a transition period for a period of up to one additional year. To request an extension of the transition period, an insured depository institution must submit a request containing the information set forth in paragraph (a) of this section. The insured depository institution must submit the request no later than 60 days before the end of the transition period.

Estimated Paperwork Burden

Number of Respondents: 29.

Estimated Average Hours per Response: 7 hours.

Total Estimated Annual Burden: 203 hours.

Comments are invited on:

(a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

(b) The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

The Board has a continuing interest in the public's opinions of collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

List of Subjects in 12 CFR Part 237

Administrative practice and procedure, Banks and banking, Capital, Derivatives, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board amends 12 CFR Chapter II by adding new part 237 to read as follows:

PART 237—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES (REGULATION KK)

Subpart A—[RESERVED]

Subpart B— Prohibition Against Federal Assistance to Swaps Entities

Sec.
237.20 Definitions.
237.21 Definition of insured depository institution for purposes of section 716.
237.22 Transition period for insured depository institutions.

Authority: 15 U.S.C. 8305, 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 3101 *et seq.*

Subpart A—[RESERVED]

Subpart B— Prohibition Against Federal Assistance to Swaps Entities

§ 237.20 Definitions.

Unless otherwise specified, for purposes of this subpart:

Board means the Board of Governors of the Federal Reserve System.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Foreign bank has the same meaning as in § 211.21(n) of the Board's Regulation K (12 CFR 211.21(n)).

Major security-based swap participant has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)) and as implemented in rules and orders issued by the Securities and Exchange Commission.

Major swap participant has the same meaning as in section 1a(33) of the Commodity Exchange Act (7 U.S.C. 1a(33)) and as implemented in rules and orders issued by the Commodity Futures Trading Commission.

Security-based swap has the same meaning as in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)) and as implemented in rules and orders issued by the Securities and Exchange Commission.

Security-based swap dealer has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)) and as implemented in rules and orders issued by the Commodity Futures Trading Commission.

Swap dealer has the same meaning as in section 1a(49) of the Commodity Exchange Act (7 U.S.C. 1a(49)) and as implemented in rules and orders issued by the Commodity Futures Trading Commission.

Swaps entity means a person that is registered as a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant under the Commodity Exchange Act or Securities Exchange Act of 1934, other than an insured depository institution that is registered as a major swap participant or major security-based swap participant.

§ 237.21 Definition of insured depository institution for purposes of section 716.

For purposes of section 716 of the Dodd-Frank Act (15 U.S.C. 8305) and this subpart, the term ''insured depository institution'' includes any insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and any uninsured U.S. branch or agency of a foreign bank. The terms branch, agency, and foreign bank are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101).

§ 237.22 Transition period for insured depository institutions.

(a) *Approval of transition period.* (1) To the extent an insured depository institution for which the Board is the appropriate Federal banking agency qualifies as a ''swaps entity'' and would be subject to the Federal assistance prohibition in section 716(a) of the Dodd-Frank Act, the insured depository institution may request a transition period of up to 24 months from the later of July 16, 2013, or the date on which it becomes a swaps entity, during which to conform its swaps activities to the requirements of this section by submitting a request in writing to the Board. Any request submitted pursuant to this paragraph (a) of this section shall, at a minimum, include the following information:

(i) The length of the transition period requested;

(ii) A description of the quantitative and qualitative impacts of divestiture or cessation of swap or security-based swaps activities on the insured depository institution, including information that addresses the factors in paragraph (d) of this section; and

(iii) A detailed explanation of the insured depository institution's plan for conforming its activities to the requirements of section 716 of the Dodd-Frank Act (15 U.S.C. 8305) and this part.

(2) The Board may, at any time, request additional information that it believes is necessary for its decision.

(b) *Transition period for insured depository institutions.* Following review of a written request submitted under paragraph (a) of this section, the Board shall permit an insured depository institution for which it is the appropriate Federal banking agency up to 24 months after the later of July 16, 2013, or the date on which the insured depository institution becomes a swaps entity, to comply with the requirements of section 716 of the Dodd-Frank Act (15 U.S.C. 8305) and this subpart based on its consideration of the factors in paragraph (c) of this section.

(c) *Factors governing Board determinations.* In establishing an appropriate transition period pursuant to any request under this section, the Board will take into account and make written findings regarding:

(1) The potential impact of divestiture or cessation of swap or security-based swaps activities on the insured depository institution's:

(i) Mortgage lending;

(ii) Small business lending;

(iii) Job creation; and

(iv) Capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation; and

(2) Any other factor that the Board believes appropriate.

(d) *Timing of Board review.* The Board will seek to act on a request under paragraph (a) of this section expeditiously after the receipt of a complete request.

(e) *Extension of transition period.* The Board may extend a transition period provided under this section for a period of up to one additional year. To request an extension of the transition period, an insured depository institution must submit a written request containing the information set forth in paragraph (a) of this section no later than 60 days before the end of the transition period.

(f) *Authority to impose restrictions during any transition period.* The Board may impose such conditions on any transition period granted under this section as the Board determines are necessary or appropriate.

(g) *Consultation.* The Board shall consult with the Commodity Futures Trading Commission or the Securities and Exchange Commission, as appropriate, prior to the approval of a request by an insured depository institution for a transition period under this section.

By order of the Board of Governors of the Federal Reserve System, June 5, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–13670 Filed 6–7–13; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 615, 621, and 652

RIN 3052–AC75

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Accounting and Reporting Requirements; Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; GAAP References and Other Conforming Amendments; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration adopted technical amendments to various regulations to conform certain references to accounting standards in these rules to the Financial Accounting Standards Board *Accounting Standards Codification.* In accordance with the law, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

DATES: *Effective Date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 615, 621, and 652 published on April 9, 2013 (78 FR 21035) is effective June 3, 2013.

FOR FURTHER INFORMATION CONTACT: Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056; or Jeff Pienta, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4431, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration adopted technical amendments to various regulations to conform certain references to accounting standards in these rules to the Financial Accounting Standards Board *Accounting Standards Codification.* In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 3, 2013.

(12 U.S.C. 2252(a)(9) and (10))

Dated: June 4, 2013.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2013–13636 Filed 6–7–13; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1331; Directorate Identifier 2012–NE–44–AD; Amendment 39–17473; AD 2013–11–13]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbojet Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Rolls-Royce plc (RR) Viper Mk. 601–22 turbojet engines. This AD requires reducing the life of certain critical parts. This AD was prompted by a review carried out by RR of the lives of these parts. We are issuing this AD to prevent failure of life-limited parts, damage to the engine, and damage to the airplane.

DATES: This AD becomes effective July 15, 2013.

ADDRESSES: For service information identified in this AD, contact Defence Aerospace Communications at Rolls-Royce plc, P.O. Box 3, Gypsy Patch Lane, Filton, Bristol, BS347QE, United Kingdom; phone: 011–44–117–9791234; or email: *http://www.rolls-royce.com/contact/defence_team.jsp.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office 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 Operations office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 22, 2013 (78 FR 12255). That NPRM proposed to correct an unsafe condition for the specified products. The mandatory continuing airworthiness information states:

> A review, carried out by Rolls-Royce, of the lives of critical parts of the Viper Mk. 601–22 engine, has resulted in reduced cyclic life limits for certain critical parts.
>
> Operation of critical parts beyond these reduced cyclic life limits may result in part failure, possibly resulting in the release of high-energy debris, which may cause damage to the aeroplane and/or injury to the occupants.
>
> For the reasons described above, this AD requires implementation of the reduced cyclic life limits for the affected critical parts, i.e., replacement of each part before the applicable reduced life limit is exceeded, and replacement of those critical parts that have already exceeded the reduced cyclic life limits.

We are issuing this AD to prevent failure of life-limited parts, damage to the engine, and damage to the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Change the Identity of the Type Certificate (TC) Holder

Roll-Royce plc requested that we identify the TC holder as Rolls-Royce plc rather than Rolls-Royce (1971) Limited, Bristol Engine Division.

We agree. We changed the AD to identify the TC holder as Rolls-Royce plc.

Request To Change the Contact Information for the TC Holder

Rolls-Royce plc requested that we change the contact information used to request service information for Viper Mk. 601–22 turbojet engines.

We agree. We changed the contact information for requesting service information related to this AD to: Defence Aerospace Communications at Rolls-Royce plc, P.O. Box 3, Gypsy Patch Lane, Filton, Bristol, BS347QE, United Kingdom; phone: 011–44–117–9791234; or email: *http://www.rolls-royce.com/contact/defence_team.jsp.*

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect about 32 engines installed on airplanes of U.S. registry. We also estimate that it will take 0 hours per product to comply with this AD. The average labor rate is $85 per hour. We are not requiring parts replacement, so parts cost is $0. Based on these figures, we estimate the cost of the AD on U.S. operators to be $0.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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:

2013–11–13 Rolls-Royce plc (formerly Rolls-Royce (1971) Limited, Bristol Engine Division): Amendment 39–17473; Docket No. FAA–2012–1331; Directorate Identifier 2012–NE–44–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 15, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR) Viper Mk. 601–22 turbojet engines.

(d) Reason

This AD was prompted by a review carried out by RR of the lives of certain critical parts. We are issuing this AD to prevent failure of life-limited parts, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(1) After the effective date of this AD, remove the following parts before they reach their specified new, lower, life limits: compressor shaft, part number (P/N) V900766: 20,720 flight cycles since new

(CSN); compressor rear stubshaft (center bearing hub), P/Ns V900007 and V900994: 9,600 flight CSN; combustion chamber outer casing, P/Ns V950013 and V950331: 32,000 flight CSN.

(2) After the effective date of this AD, do not install any part identified in paragraph (e)(1) of this AD into any engine, nor return any engine to service with the parts identified in paragraph (e)(1) of this AD installed, if the part exceeds the new, lower, life limit specified in paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

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

(2) Refer to European Aviation Safety Agency Airworthiness Directive 2012–0243 (Correction: November 13, 2012), dated November 12, 2012, and RR Alert Service Bulletin 72–A206, dated November 2012, for related information.

(3) For service information identified in this AD, contact Defence Aerospace Communications at Rolls-Royce plc, P.O. Box 3, Gypsy Patch Lane, Filton, Bristol, BS347QE, United Kingdom; phone: 011–44–117–9791234; or email: *http://www.rolls-royce.com/contact/defence_team.jsp.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on May 28, 2013.

Colleen M. D'Alessandro,

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

[FR Doc. 2013–13012 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1345; Airspace Docket No. 12–ANM–31]

Modification of Class D and Class E Airspace and Establishment of Class E Airspace; Pasco, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface airspace at Tri-Cities Airport, Pasco, WA, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Tri-Cities Airport, Pasco, WA. The geographic coordinates of Tri-Cities Airport and Vista Field Airport, Kennewick, WA, formerly called Vista Airport, are adjusted for existing Class D and E airspace. This action also makes a minor change to the legal description of the Class E airspace designated as an extension to Class D surface area. 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 March 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E surface airspace and modify Class D and E airspace at Pasco, WA (78 FR 18259). 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 Aeronautical Products Office found that the Pasco Compass Locator at ILS Outer Marker (LOM) has been decommissioned and needs to be removed from Class E airspace designated as an extension to Class D surface area. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the NPRM.

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 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 surface airspace within a 4.3-mile radius, with exclusion, at Tri-Cities Airport, Pasco, WA, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. Also, Vista Airport, Kennewick, WA, is renamed Vista Field Airport, and the geographic coordinates of the airports are updated to coincide with the FAA's aeronautical database for existing Class D airspace, 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 Pasco, WA. 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 establishes additional controlled airspace at Tri-Cities Airport, Pasco, WA.

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 WA D Pasco, WA [Modified]

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′09″ W.)
Kennewick, Vista Field Airport, WA
(Lat. 46°13′07″ N., long. 119°12′36″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.3-mile radius of Tri-Cities Airport, excluding that airspace within a 2-mile radius of Vista Field 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 WA E2 Pasco, WA [New]

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′09″ W.)
Kennewick, Vista Field Airport, WA
(Lat. 46°13′07″ N., long. 119°12′36″ W.)

Within a 4.3-mile radius of Tri-Cities Airport, excluding that airspace within a 2-mile radius of Vista Field 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 designated as an extension to a Class D surface area.

* * * * *

ANM WA E4 Pasco, WA [Modified]

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′09″ W.)
Pasco VOR/DME
(Lat. 46°15′47″ N., long. 119°06′57″ W.)

That airspace extending upward from the surface within 3.5 miles each side of the Tri-Cities Airport 045° bearing extending from the 4.3-mile radius of the airport to 15 miles northeast of the airport, and within 2.7 miles each side of the Pasco VOR/DME 131° radial extending from the 4.3-mile radius of the airport to 7 miles southeast of the VOR/DME. 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 WA E5 Pasco, WA [Modified]

Pasco, Tri-Cities Airport, WA
(Lat. 46°15′53″ N., long. 119°07′09″ W.)
Pasco VOR/DME
(Lat. 46°15′47″ N., long. 119°06′57″ W.)
Richland Airport, WA
(Lat. 46°18′20″ N., long. 119°18′15″ W.)

That airspace extending upward from 700 feet above the surface within 9.2 miles northwest and 5.3 miles southeast of the Pasco VOR/DME 046° and 226° radials extending from 20.1 miles northeast to 10.5 miles southwest of the VOR/DME, and within 8.3 miles northeast and 6.1 miles southwest of the Pasco VOR/DME 131° radial extending from the VOR/DME to 26.3 miles southeast of the VOR/DME, and within 4.3 miles north and 6.6 miles south of the Pasco VOR/DME 288° radial extending from 7 miles west of the VOR/DME to 23.1 miles west of the VOR/DME, and within 8.3 miles west and 4 miles east of the 026° bearing of Richland Airport extending 20.9 miles northeast of Richland Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°49′00″ N., long. 118°00′00″ W.; to lat. 45°49′00″ N., long. 119°45′00″ W.; to lat. 47°00′00″ N., long. 119°45′00″ W., to lat. 47°00′00″ N., long. 118°00′00″ W.; thence to the point of origin.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13356 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0026; Airspace Docket No. 13–ANM–3]

Amendment of Class E Airspace; Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Bend, OR, to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at Bend Municipal Airport. This improves the safety and management of IFR operations at the airport. This action also makes some editorial changes for clarity. This action also adjusts the geographic coordinates of 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 March 1, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Bend, OR (78 FR 13843). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication it was discovered by the FAA that the legal description needed to be rewritten for clarity. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the NPRM.

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 feet above the surface at Bend Municipal Airport, Bend, OR, to accommodate IFR aircraft executing Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at the airport. Also, the geographic coordinates of the airport 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 Bend Municipal Airport, Bend, OR.

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.

* * * * *

ANM OR E5 Bend, OR [Modified]

Bend Municipal Airport, OR

(Lat. 44°05′40″ N., long. 121°12′01″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Bend Municipal Airport, and within 2.2 miles each side of the 338° bearing of the airport extending from the 4.3-mile radius to 6.5 miles northwest of the airport, and within 1 mile each side of the 360° bearing of the airport extending from the 4.3-mile radius to 6 miles north of the airport, and within 1.5 miles each side of the 183° bearing of the airport extending from the 4.3-mile radius to 9.3 miles south of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line extending from lat. 44°09′51″ N., long. 121°21′05″ W.; to lat. 44°14′29″ N., long. 121°06′59″ W.; to lat. 44°27′24″ N., long. 121°15′42″ W.; to lat. 44°23′11″ N., long. 121°30′16″ W., thence to the point of beginning.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13355 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0193; Airspace Docket No. 13–ANM–9]

Establishment of Class E Airspace; Blue Mesa, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Blue Mesa VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME), Blue Mesa, CO, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver and Albuquerque Air Route Traffic Control Centers (ARTCCs). This improves the safety and management of IFR operations within the National Airspace System.

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 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Blue Mesa, CO (78 FR 18268). 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 Blue Mesa VOR/DME navigation aid, Blue Mesa, CO, to accommodate IFR aircraft under

control of Denver and Albuquerque ARTCC by vectoring aircraft from en route airspace to terminal areas. 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 establishes controlled airspace at the Blue Mesa VOR/DME navigation aid, Blue Mesa, 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 6006 En Route Domestic Airspace Areas.

* * * * *

ANM CO E6 Blue Mesa, CO [New]

Blue Mesa VOR/DME, CO
(Lat. 38°27′08″ N., long. 107°02′23″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 35°39′30″ N., long. 107°25′27″ W.; to lat. 36°14′38″ N., long. 107°40′25″ W.; to lat. 37°34′25″ N., long. 108°25′31″ W.; to lat. 37°58′51″ N., long. 108°22′29″ W.; to lat. 38°45′39″ N., long. 107°41′00″ W.; to lat. 39°07′40″ N., long. 107°13′47″ W.; to lat. 39°11′48″ N., long. 106°29′16″ W.; to lat. 39°02′30″ N., long. 105°32′13″ W.; to lat. 36°59′57″ N., long. 104°18′04″ W.; to lat. 36°17′00″ N., long. 104°14′00″ W.; to lat. 36°12′53″ N., long. 104°56′21″ W.; to lat. 36°13′34″ N., long. 105°54′42″ W., thence to the point of beginning.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13357 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0185; Airspace Docket No. 13–ANM–8]

Establishment of Class E Airspace; Gillette, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Gillette VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME), Gillette, WY, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver, Salt Lake City and Minneapolis Air Route Traffic Control Centers (ARTCCs). This improves the safety and management of IFR operations within the National Airspace System.

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 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Gillette, WY (78 FR 18266). 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 Gillette VOR/DME navigation aid, Gillette, WY, to accommodate IFR aircraft under control of Denver, Salt Lake City and Minneapolis ARTCCs by vectoring aircraft from en route airspace to terminal areas. 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 establishes controlled airspace at the Gillette VOR/DME navigation aid, Gillette, WY.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 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 WY E6 Gillette, WY [New]

Gillette VOR/DME, WY
(Lat. 44°20′52″ N., long. 105°32′37″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 43°01′57″ N., long. 107°06′08″ W.; to lat. 42°52′37″ N., long. 107°47′58″ W.; to lat. 44°09′12″ N., long. 108°02′32″ W.; to lat. 44°38′58″ N., long. 106°53′16″ W.; to lat. 45°48′16″ N., long. 106°34′25″ W.; to lat. 45°36′35″ N., long. 104°05′26″ W.; to lat. 45°06′45″ N., long. 100°48′20″ W.; to lat. 44°02′34″ N., long. 100°44′12″ W.; to lat. 43°40′10″ N., long. 99°37′18″ W.; to lat. 43°14′52″ N., long. 100°08′15″ W.; to lat. 43°41′03″ N., long. 101°28′52″ W.; to lat. 44°40′23″ N., long. 101°32′34″ W.; to lat. 44°44′40″ N., long. 104°52′04″ W.; to lat. 43°29′00″ N., long. 104°14′29″ W.; to lat. 43°22′06″ N., long. 104°46′22″ W.; to lat. 44°35′02″ N., long. 105°59′24″ W., thence to the point of beginning.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13359 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0194; Airspace Docket No. 13–ANM–10]

Establishment of Class E Airspace; Tobe, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the Tobe VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME), Tobe, CO, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Denver and Albuquerque Air Route Traffic Control Centers (ARTCCs). This improves the safety and management of Instrument Flight Rules (IFR) operations within the National Airspace System.

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 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Tobe, CO (78 FR 18264). 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 Tobe VOR/DME navigation aid, Tobe, CO, to accommodate IFR aircraft under control of Denver and Albuquerque ARTCC by vectoring aircraft from en route airspace to terminal areas. 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 establishes controlled airspace at the Tobe VOR/DME navigation aid, Tobe, 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 6006 En Route Domestic Airspace Areas.

* * * * *

ANM COE6 Tobe, CO [New]

Tobe VOR/DME, CO
(Lat. 37°15′31″ N., long. 103°36′00″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 36°17′00″ N., long. 104°14′00″ W.; to lat. 36°59′57″ N., long. 104°18′04″ W.; to lat. 39°40′23″ N., long. 103°29′02″ W.; to lat. 39°00′35″ N., long. 101°59′12″ W.; to lat. 38°33′23″ N., long. 101°59′12″ W.; to lat. 37°29′58″ N., long. 102°33′04″ W.; to lat. 37°00′17″ N., long. 102°09′21″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13362 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1334; Airspace Docket No. 12–ASO–18]

Establishment of Class E Airspace; Sanibel, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Sanibel, FL, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving Sanibel Island Heliport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. Also, geographic coordinates are corrected under their proper heading.

DATES: Effective 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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:

History

On March 6, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Sanibel, FL (78 FR 14473). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the FAA found that the heliport coordinates were incorrectly listed as point in space coordinates; and point in space coordinates were inadvertently omitted. This action makes the correction. Except for editorial changes and the changes listed above, this rule is the same as published in the NPRM.

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 Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Sanibel, FL, providing the controlled airspace required to support the new Copter RNAV (GPS) special standard instrument approach procedures for Sanibel Island Heliport. Controlled airspace within a 6-mile radius of the point in space coordinates of the heliport is necessary for the safety and management of IFR operations at the heliport. Geographic coordinates for the heliport and point in space are corrected and separately listed.

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, is non-controversial and unlikely to result in adverse or negative comments. 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 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 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 Sanibel Island Heliport, Sanibel, FL.

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 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.

* * * * *

ASO FL E5 Sanibel, FL [New]

Sanibel Island Heliport, FL
(Lat. 26°27′46″ N., long. 82°9′18″ W.)
Point in Space Coordinates
(Lat. 26°27′52″ N., long. 82°8′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 26°27′52″ N., long. 82°9′35″ W.) serving Sanibel Island Heliport.

Issued in College Park, Georgia, on May 28, 2013.

Jackson D. Allen,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–13107 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1237; Airspace Docket No. 12–AWP–9]

Modification of Class E Airspace; Clifton/Morenci, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Greenlee County Airport, Clifton/Morenci, AZ, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Greenlee County 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 March 26, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify controlled airspace at Clifton/Morenci, AZ (78 FR 18269). 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 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 feet above the surface at Greenlee County Airport, Clifton/Morenci, AZ. Additional controlled airspace extending upward from 1,200 feet above the surface at Greenlee County Airport is necessary to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. 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 Greenlee County Airport, Clifton/Morenci, 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Clifton/Morenci, AZ [Modified]

Greenlee County Airport, AZ
(Lat. 32°57′25″ N., long. 109°12′40′ W.)

That airspace extending from 700 feet above the surface within a 6.5-mile radius of Greenlee County Airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 33°09′00″ N., long. 109°51′00″ W.; to lat. 33°07′00″ N., long. 108°47′00″ W.; to lat. 32°27′00″ N., long. 108°15′00″ W.; to lat. 32°17′00″ N., long. 108°38′00″ W.; to lat. 32°18′00″ N., long. 109°31′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13360 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30902; Amdt. No. 3537]

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 June 10, 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 June 10, 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 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 24, 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:

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

Effective 27 JUNE 2013

Gustavus, AK, Gustavus, GUSTAVUS ONE, Graphic DP
Gustavus, AK, Gustavus, Takeoff Minimums and Obstacle DP, Amdt 3
Homer, AK, Homer, LOC/DME BC RWY 22, Amdt 5
Homer, AK, Homer, RNAV (GPS) Y RWY 4, Amdt 1
Homer, AK, Homer, RNAV (GPS) Y RWY 22, Amdt 1
Homer, AK, Homer, RNAV (GPS) Z RWY 4, Amdt 1
Homer, AK, Homer, RNAV (GPS) Z RWY 22, Amdt 1
Homer, AK, Homer, Takeoff Minimums and Obstacle DP, Amdt 2
Cullman, AL, Cullman Regional Airport—Folsom Field, RNAV (GPS) RWY 2, Orig-C
Cullman, AL, Cullman Regional Airport—Folsom Field, RNAV (GPS) RWY 20, Orig-B
Cullman, AL, Cullman Regional Airport—Folsom Field, Takeoff Minimums and Obstacle DP, Amdt 2A
Carlsbad, CA, McClellan-Palomar, RNAV (GPS) X RWY 24, Orig
Carlsbad, CA, McClellan-Palomar, RNAV (GPS) Y RWY 24, Amdt 3
San Francisco, CA, San Francisco Intl, LOC/DME Y RWY 28L, Orig
San Francisco, CA, San Francisco Intl, LOC/DME Y RWY 28R, Orig
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28L, Amdt 3
San Francisco, CA, San Francisco Intl, RNAV (GPS) PRM RWY 28L (SIMULTANEOUS CLOSE PARALLEL), Orig
San Francisco, CA, San Francisco Intl, RNAV (GPS) PRM X RWY 28R (SIMULTANEOUS CLOSE PARALLEL), Orig
San Francisco, CA, San Francisco Intl, RNAV (GPS) X RWY 28R, Orig
San Francisco, CA, San Francisco Intl, RNAV (GPS) Z RWY 28R, Amdt 3
San Francisco, CA, San Francisco Intl, RNAV (RNP) Y RWY 28R, Amdt 1
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) Y RWY 28R, Amdt 3A
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (GPS) Y RWY 8L, Amdt 3
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 8L, Amdt 1
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, RNAV (RNP) Z RWY 28, Amdt 2
Chicago, IL, Chicago Midway Intl, ILS OR LOC/DME RWY 31C, Amdt 2
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 4R, Amdt 3B
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 31C, Amdt 3
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 4R, Orig
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 13C, Amdt 2
Chicago, IL, Chicago Midway Intl, RNAV (RNP) Y RWY 31C, Orig
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 32, Orig-C
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 14, Amdt 2
Mansfield, MA, Mansfield Muni, RNAV (GPS) RWY 32, Orig-A
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 3R, ILS PRM RWY 3R (CAT II), ILS PRM RWY 3R (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Orig-C
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 4R, ILS PRM RWY 4R (CAT II), ILS PRM RWY 4R (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Orig-B
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 21L (SIMULTANEOUS CLOSE PARALLEL), Orig-D
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 22L (SIMULTANEOUS CLOSE PARALLEL), Orig-B
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Y RWY 4L (SIMULTANEOUS CLOSE PARALLEL), Orig-D
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM Y RWY 22R (SIMULTANEOUS CLOSE PARALLEL), Orig-D
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 4R, Amdt 1B
Worthington, MN, Worthington Muni, VOR RWY 18, Amdt 10
Sikeston, MO, Sikeston Memorial Muni, RNAV (GPS) RWY 2, Amdt 1
Sikeston, MO, Sikeston Memorial Muni, RNAV (GPS) RWY 20, Amdt 2
Prentiss, MS, Prentiss-Jefferson Davis County, RNAV (GPS) RWY 12, Amdt 1
Prentiss, MS, Prentiss-Jefferson Davis County, RNAV (GPS) RWY 30, Amdt 2
Nashua, NH, Boire Fld, ILS OR LOC RWY 14, Amdt 1
Nashua, NH, Boire Fld, NDB RWY 14, Orig
Nashua, NH, Boire Fld, RNAV (GPS) RWY 14, Amdt 1
Nashua, NH, Boire Fld, RNAV (GPS) RWY 32, Amdt 1
Nashua, NH, Boire Fld, Takeoff Minimums and Obstacle DP, Amdt 4
Nashua, NH, Boire Fld, VOR–A, Amdt 12
Buffalo, NY, Buffalo Niagara Intl, ILS OR LOC RWY 5, Amdt 16
Buffalo, NY, Buffalo Niagara Intl, ILS OR LOC RWY 23, Amdt 31

Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) RWY 14, Amdt 2
New York, NY, John F Kennedy Intl, RNAV (RNP) Z RWY 22L, Amdt 1
Allentown, PA, Lehigh Valley Intl, ILS OR LOC RWY 6, Amdt 23
Allentown, PA, Lehigh Valley Intl, ILS OR LOC RWY 13, Amdt 7
Allentown, PA, Lehigh Valley Intl, ILS OR LOC/DME RWY 24, Amdt 1
Allentown, PA, Lehigh Valley Intl, RNAV (GPS) RWY 6, Amdt 1
Allentown, PA, Lehigh Valley Intl, RNAV (GPS) RWY 13, Amdt 1
Allentown, PA, Lehigh Valley Intl, RNAV (GPS) RWY 24, Amdt 1
Allentown, PA, Lehigh Valley Intl, RNAV (GPS) RWY 31, Amdt 2
Allentown, PA, Lehigh Valley Intl, RNAV (GPS) Z RWY 6, Orig, CANCELED
Allentown, PA, Lehigh Valley Intl, RNAV (GPS) Z RWY 13, Orig, CANCELED
Allentown, PA, Lehigh Valley Intl, VOR–A, Amdt 10
Grove City, PA, Grove City, RNAV (GPS) RWY 10, Amdt 1
Grove City, PA, Grove City, RNAV (GPS) RWY 28, Amdt 1
Grove City, PA, Grove City, Takeoff Minimums and Obstacle DP, Amdt 4
Grove City, PA, Grove City, VOR/DME–A, Amdt 7
Charleston, SC, Charleston AFB/Intl, RNAV (RNP) Z RWY 33, Orig-A
Cleveland, TN, Cleveland Rgnl Jetport, RNAV (GPS) RWY 3, Orig
Cleveland, TN, Cleveland Rgnl Jetport, RNAV (GPS) RWY 21, Orig
Cleveland, TN, Cleveland Rgnl Jetport, Takeoff Minimums and Obstacle DP, Orig
Murfreesboro, TN, Murfreesboro Muni, RNAV (GPS) RWY 36, Amdt 2
Brownsville, TX, Brownsville/South Padre Island Intl, ILS OR LOC RWY 13R, Amdt 1A
Brownsville, TX, Brownsville/South Padre Island Intl, LOC BC RWY 31L, Amdt 11D
Brownsville, TX, Brownsville/South Padre Island Intl, RNAV (GPS) RWY 13R, Amdt 2
Dallas-Fort Worth, TX, Dallas/Fort Worth Intl, ILS OR LOC RWY 13R, ILS RWY 13R (SA CAT I), ILS RWY 13R (SA CAT II), Amdt 9
Dallas, TX, Dallas Love Field, ILS OR LOC Y RWY 13L, Amdt 32
Dallas, TX, Dallas Love Field, RNAV (GPS) Y RWY 13L, Amdt 1
Dallas, TX, Dallas Love Field, RNAV (GPS) Z RWY 13L, Amdt 2
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 17L, Amdt 2A
Littlefield, TX, Littlefield Muni, NDB RWY 1, Amdt 1
Littlefield, TX, Littlefield Muni, RNAV (GPS) RWY 1, Orig
Littlefield, TX, Littlefield Muni, Takeoff Minimums and Obstacle DP, Orig
Waco, TX, Waco Rgnl, RNAV (GPS) RWY 1, Amdt 1
Salt Lake City, UT, Salt Lake City Intl, RNAV (GPS) RWY 35, Amdt 2
Wisconsin Rapids, WI, Alexander Field South Wood County, GPS RWY 20, Orig-B, CANCELED
Wisconsin Rapids, WI, Alexander Field South Wood County, RNAV (GPS) RWY 2, Orig
Wisconsin Rapids, WI, Alexander Field South Wood County, RNAV (GPS) RWY 20, Orig
Charleston, WV, Yeager, RNAV (GPS) Y RWY 5, Amdt 1
Charleston, WV, Yeager, RNAV (GPS) Y RWY 23, Amdt 1
Charleston, WV, Yeager, RNAV (RNP) Z RWY 23, Orig

RESCINDED: On May 01, 2013 (78 FR 25384), the FAA published an Amendment in Docket No. 30896, Amdt No. 3531 to Part 97 of the Federal Aviation Regulations under section 97.33. The following entries for Livingston, TN, effective 27 June 2013, are hereby rescinded in their entirety:

Livingston, TN, Livingston Muni, RNAV (GPS) RWY 3, Amdt 1
Livingston, TN, Livingston Muni, RNAV (GPS) RWY 21, Amdt 1

RESCINDED: On May 14, 2013 (78 FR 28135), the FAA published an Amendment in Docket No. 30898, Amdt No. 3533 to Part 97 of the Federal Aviation Regulations under section 97.29 and 97.33. The following entries for Miami, FL, effective 27 June 2013, are hereby rescinded in their entirety:

Miami, FL, Miami Intl, ILS OR LOC RWY 9, Amdt 10
Miami, FL, Miami Intl, RNAV (GPS) RWY 9, Amdt 1

[FR Doc. 2013–13366 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30903; Amdt. No. 3538]

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 June 10, 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 June 10, 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 24, 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.

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

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

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	NE	Alliance	Alliance Muni	2/3777	5/22/13	NDB RWY 12, Orig.
6/27/13	AK	McGrath	McGrath	2/7217	5/13/13	Takeoff Minimums and (Obstacle) DP, Amdt 2.
6/27/13	OR	Portland	Portland-Hillsboro	3/0302	5/10/13	RNAV (GPS) RWY 31, Orig-A.
6/27/13	AZ	Phoenix	Phoenix-Mesa Gateway	3/0620	5/8/13	RNAV (GPS) RWY 12C, Amdt 1.
6/27/13	CA	Big Bear City	Big Bear City	3/0625	5/10/13	RNAV (GPS) RWY 26, Orig-A.
6/27/13	NC	Wadesboro	Anson County—Jeff Cloud Field.	3/1517	5/16/13	ILS OR LOC RWY 34, Orig.
6/27/13	MD	Baltimore	Baltimore/Washington Intl Thurgood Marshall.	3/1524	5/10/13	ILS OR LOC RWY 10, ILS RWY 10 (SA CAT I), ILS RWY 10 (CAT II), ILS RWY 10 (CAT III), Amdt 21.
6/27/13	NJ	Teterboro	Teterboro	3/1577	5/16/13	VOR RWY 24, Orig-B.
6/27/13	AZ	Phoenix	Phoenix-Mesa Gateway	3/1690	5/8/13	ILS OR LOC RWY 30C, Amdt 3.
6/27/13	AZ	Phoenix	Phoenix-Mesa Gateway	3/1691	5/8/13	VOR OR TACAN RWY 30C, Amdt 2.
6/27/13	TN	Smyrna	Smyrna	3/1964	5/16/13	ILS OR LOC RWY 32, Amdt 5C.
6/27/13	TN	Smyrna	Smyrna	3/1965	5/16/13	RNAV (GPS) RWY 14, Orig-A.
6/27/13	TN	Smyrna	Smyrna	3/1966	5/16/13	VOR/DME RWY 14, Amdt 7A.
6/27/13	TN	Smyrna	Smyrna	3/1967	5/16/13	RNAV (GPS) RWY 32, Orig-A.
6/27/13	TN	Smyrna	Smyrna	3/1968	5/16/13	NDB RWY 32, Amdt 9A.
6/27/13	TN	Smyrna	Smyrna	3/1969	5/16/13	VOR/DME RWY 32, Amdt 13A.
6/27/13	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	3/2345	5/8/13	VOR RWY 30, Amdt 11.
6/27/13	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	3/2346	5/8/13	VOR RWY 12, Amdt 12.
6/27/13	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	3/2347	5/8/13	VOR RWY 22, Amdt 4E.
6/27/13	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	3/2348	5/8/13	RNAV (GPS) RWY 22, Orig-B.
6/27/13	NE	Mc Cook	Mc Cook Ben Nelson Rgnl	3/2349	5/8/13	RNAV (GPS) RWY 30, Orig-A.
6/27/13	CA	Sacramento	Sacramento Intl	3/2574	5/16/13	RNAV (RNP) Z RWY 34R, Orig.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
6/27/13	CA	Sacramento	Sacramento Intl	3/2575	5/16/13	RNAV (GPS) Y RWY 16L, Amdt 1.
6/27/13	CA	Sacramento	Sacramento Intl	3/2577	5/16/13	ILS OR LOC RWY 16L, Amdt 2.
6/27/13	CA	Sacramento	Sacramento Intl	3/2587	5/16/13	RNAV (RNP) Z RWY 16L, Orig.
6/27/13	NC	Concord	Concord Rgnl	3/2606	5/16/13	RNAV (GPS) RWY 2, Orig.
6/27/13	WA	Yakima	Yakima Air Terminal/ Mcallister Field.	3/2641	5/10/13	VOR/DME OR TACAN RWY 27, Amdt 8.
6/27/13	IN	Muncie	Delaware County Rgnl	3/2642	5/16/13	VOR RWY 14, Amdt 17.
6/27/13	IN	Muncie	Delaware County Rgnl	3/2645	5/16/13	ILS OR LOC RWY 32, Amdt 9B.
6/27/13	IN	Muncie	Delaware County Rgnl	3/2646	5/16/13	RNAV (GPS) RWY 32, Orig.
6/27/13	WA	Hoquiam	Bowerman	3/2796	5/16/13	RNAV (GPS) RWY 6, Amdt 1.
6/27/13	WA	Hoquiam	Bowerman	3/2798	5/16/13	RNAV (GPS) RWY 24, Amdt 2A.
6/27/13	WA	Hoquiam	Bowerman	3/2799	5/16/13	ILS OR LOC/DME RWY 24, Amdt 4.
6/27/13	CA	Marysville	Yuba County	3/2897	5/10/13	Takeoff Minimums and (Obstacle) DP, Amdt 1.
6/27/13	CA	Marysville	Yuba County	3/2975	5/8/13	ILS OR LOC RWY 14, Amdt 5A.
6/27/13	KS	Manhattan	Manhattan Rgnl	3/3414	5/16/13	ILS OR LOC/DME RWY 3, Amdt 7.
6/27/13	MI	Saginaw	Saginaw County H.W. Browne.	3/3503	5/8/13	RNAV (GPS) RWY 27, Amdt 1B.
6/27/13	MI	Saginaw	Saginaw County H.W. Browne.	3/3505	5/8/13	RNAV (GPS) RWY 9, Orig-A.
6/27/13	MI	Saginaw	Saginaw County H.W. Browne.	3/3506	5/8/13	ILS OR LOC/DME RWY 27, Orig-B.
6/27/13	SC	Greer	Greenville Spartanburg Intl	3/3777	5/16/13	ILS OR LOC RWY 22, Amdt 5.
6/27/13	FL	Zephyrhills	Zephyrhills Muni	3/3786	5/16/13	NDB RWY 22, Amdt 1.
6/27/13	FL	Zephyrhills	Zephyrhills Muni	3/3792	5/16/13	NDB RWY 18, Amdt 1.
6/27/13	FL	Zephyrhills	Zephyrhills Muni	3/3793	5/16/13	NDB RWY 4, Amdt 1.
6/27/13	FL	Zephyrhills	Zephyrhills Muni	3/3795	5/16/13	NDB RWY 36, Amdt 1.
6/27/13	FL	Zephyrhills	Zephyrhills Muni	3/3796	5/16/13	RNAV (GPS) RWY 18, Orig.
6/27/13	FL	Zephyrhills	Zephyrhills Muni	3/3797	5/16/13	RNAV (GPS) RWY 36, Orig.
6/27/13	FL	Zephyrhills	Zephyrhills Muni	3/3798	5/16/13	RNAV (GPS) RWY 22, Orig.
6/27/13	WI	Appleton	Outagamie County Rgnl	3/3890	5/16/13	ILS OR LOC RWY 30, Amdt 3.
6/27/13	MA	Worcester	Worcester Rgnl	3/3943	5/15/13	ILS OR LOC RWY 11, Amdt 23.
6/27/13	VA	Martinsville	Blue Ridge	3/3995	5/15/13	LOC RWY 30, Amdt 1A.
6/27/13	OK	Lawton	Lawton-Fort Sill Rgnl	3/4074	5/16/13	ILS OR LOC RWY 35, Amdt 7E.
6/27/13	CO	Denver	Denver Intl	3/4138	5/8/13	RNAV (RNP) Z RWY 25, Orig.
6/27/13	GA	Pine Mountain	Harris County	3/4472	5/15/13	RNAV (GPS) RWY 9, Orig.
6/27/13	GA	Pine Mountain	Harris County	3/4473	5/15/13	VOR A, Amdt 5.
6/27/13	GA	Pine Mountain	Harris County	3/4474	5/15/13	NDB RWY 9, Amdt 9.
6/27/13	MS	Columbus	Columbus-Lowndes County	3/4478	5/15/13	RNAV (GPS) RWY 36, Orig.
6/27/13	MS	Columbus	Columbus-Lowndes County	3/4479	5/15/13	RNAV (GPS) RWY 18, Orig-A.
6/27/13	MS	Columbus	Columbus-Lowndes County	3/4480	5/15/13	VOR A, Amdt 13.
6/27/13	RI	Block Island	Block Island State	3/4484	5/15/13	RNAV (GPS) RWY 10, Orig-B.
6/27/13	RI	Block Island	Block Island State	3/4485	5/15/13	VOR/DME RWY 10, Amdt 5B.
6/27/13	NC	Siler City	Siler City Muni	3/4488	5/15/13	VOR OR GPS A, Amdt 2.
6/27/13	TN	Jamestown	Jamestown Muni	3/4489	5/15/13	VOR/DME OR GPS A AMDT 1A.
6/27/13	NC	Shelby	Shelby-Cleveland County Rgnl.	3/4490	5/14/13	NDB RWY 23, Amdt 1A.
6/27/13	PA	Allentown	Allentown Queen City Muni	3/4491	5/14/13	RNAV (GPS) RWY 7, AMDT 1.
6/27/13	MS	Jackson	Jackson-Evers Intl	3/4610	5/15/13	RADAR–1, Amdt 11B.
6/27/13	RI	Block Island	Block Island State	3/4612	5/15/13	RNAV (GPS) RWY 28, Amdt 1.
6/27/13	NY	New York	La Guardia	3/4773	5/15/13	ILS OR LOC RWY 13, Amdt 1.
6/27/13	AK	Savoonga	Savoonga	3/4787	5/13/13	VOR/DME RWY 23, Amdt 1.
6/27/13	AK	Savoonga	Savoonga	3/4788	5/13/13	VOR RWY 23, Amdt 1.
6/27/13	AK	Savoonga	Savoonga	3/4916	5/13/13	RNAV (GPS) RWY 23, Amdt 1.
6/27/13	NV	Ely	Ely Arpt/Yelland Fld/	3/4917	5/16/13	VOR A, Amdt 7.
6/27/13	VA	Richmond/Ashland	Hanover County Muni	3/5374	5/14/13	RNAV (GPS) RWY 16, Orig-A.
6/27/13	VA	Richmond/Ashland	Hanover County Muni	3/5375	5/14/13	LOC RWY 16, Amdt 3A.
6/27/13	VA	Richmond/Ashland	Hanover County Muni	3/5376	5/14/13	VOR RWY 16, Amdt 2A.
6/27/13	NC	New Bern	Coastal Carolina Regional	3/5416	5/14/13	VOR RWY 4, Amdt 4A.
6/27/13	GA	Washington	Washington-Wilkes County	3/5475	5/14/13	RNAV (GPS) RWY 31, Amdt 1.
6/27/13	KY	Lexington	Blue Grass	3/5492	5/14/13	RNAV (GPS) RWY 9, Orig.
6/27/13	WA	Pullman/Moscow, ID.	Pullman/Moscow Rgnl	3/6144	5/16/13	RNAV (GPS) Y RWY 6, Amdt 2A.
6/27/13	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	3/6177	5/10/13	ILS OR LOC RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II), ILS RWY 35R (CAT III), Amdt 4.
6/27/13	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	3/6178	5/10/13	ILS OR LOC RWY 17R, ILS RWY 17R (SA CAT I), ILS RWY 17R (SA CAT II), Amdt 23.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
6/27/13	IL	DeCATur	DeCATur	3/6182	5/16/13	LOC BC RWY 24, Amdt 10C.
6/27/13	TX	Commerce	Commerce Muni	3/6249	5/15/13	VOR/DME A, Amdt 3.
6/27/13	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	3/6536	5/16/13	ILS OR LOC RWY 17C, ILS RWY 17C (SA CAT I), ILS RWY 17C (CAT II), ILS RWY 17C (CAT III), Amdt 10.
6/27/13	MN	Minneapolis	Minneapolis-St Paul Intl/Wold Chamberlain.	3/6544	5/16/13	ILS OR LOC RWY 12R, ILS RWY 12R (SA CAT I), ILS RWY 12R (CAT II), ILS RWY 12R (CAT III), Amdt 10.
6/27/13	SC	Kingstree	Williamsburg Rgnl	3/6608	5/16/13	RNAV (GPS) RWY 32, Orig.
6/27/13	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	3/6609	5/14/13	RNAV (GPS) RWY 36L, Amdt 3.
6/27/13	SC	Kingstree	Williamsburg Rgnl	3/6615	5/16/13	NDB RWY 14, Amdt 4A.
6/27/13	CA	Marysville	Yuba County	3/6687	5/8/13	VOR RWY 32, Amdt 10D.
6/27/13	CA	Marysville	Yuba County	3/6688	5/8/13	RNAV (GPS) RWY 32, Orig.
6/27/13	CA	Marysville	Yuba County	3/6689	5/8/13	RNAV (GPS) RWY 14, Orig.
6/27/13	CA	Vacaville	Nut Tree	3/6814	5/16/13	RNAV (GPS) Y RWY 20, Orig.
6/27/13	CO	Rifle	Garfield County Rgnl	3/6815	5/8/13	RNAV (GPS) X RWY 26, Amdt 1.
6/27/13	CA	Camarillo	Camarillo	3/7007	5/10/13	RNAV (GPS) Z RWY 26, Orig.
6/27/13	CA	Concord	Buchanan Field	3/7009	5/10/13	RNAV (GPS) Z RWY 19R, Orig.
6/27/13	MT	Butte	Bert Mooney	3/7010	5/10/13	RNAV (GPS) Z RWY 15, Amdt 1A.
6/27/13	UT	Ogden	Ogden-Hinckley	3/7015	5/10/13	RNAV (GPS) Z RWY 3, Orig-A.
6/27/13	CA	Half Moon Bay	Half Moon Bay	3/7018	5/10/13	RNAV (GPS) Z RWY 30, Orig-A.
6/27/13	CA	Half Moon Bay	Half Moon Bay	3/7020	5/10/13	RNAV (GPS) Z RWY 12, Orig-A.
6/27/13	CA	Inyokern	Inyokern	3/7067	5/8/13	RNAV (GPS) Y RWY 2, Orig-A.
6/27/13	CA	Inyokern	Inyokern	3/7068	5/8/13	RNAV (GPS) Z RWY 2, Orig.
6/27/13	ID	Mc Call	Mc Call Muni	3/7268	5/16/13	RNAV (GPS) Z RWY 34, Orig.
6/27/13	AR	Springdale	Springdale Muni	3/7453	5/14/13	ILS OR LOC RWY 18, Amdt 8B.
6/27/13	AR	Springdale	Springdale Muni	3/7456	5/14/13	VOR/DME RWY 36, Amdt 9B.
6/27/13	AR	Springdale	Springdale Muni	3/7457	5/14/13	VOR RWY 18, Amdt 15B.
6/27/13	ID	Lewiston	Lewiston-Nez Perce County	3/7488	5/16/13	RNAV (GPS) Y RWY 12, Amdt 2.
6/27/13	NC	Edenton	Northeastern Rgnl	3/7545	5/14/13	RNAV (GPS) RWY 19, Amdt 2.
6/27/13	NC	Edenton	Northeastern Rgnl	3/7549	5/14/13	ILS OR LOC RWY 19, Orig.
6/27/13	RQ	Ponce	Mercedita	3/7660	5/10/13	RNAV (GPS) RWY 12, Orig-A.
6/27/13	GA	Atlanta	Hartsfield—Jackson Atlanta Intl.	3/7662	5/10/13	RNAV (GPS) Y RWY 27R, Amdt 3.
6/27/13	GA	Atlanta	Hartsfield—Jackson Atlanta Intl.	3/7664	5/10/13	ILS OR LOC RWY 8L, ILS RWY 8L (SA CAT I), ILS RWY 8L (CAT II), ILS RWY 8L (CAT III), Amdt 4.
6/27/13	GA	Atlanta	Hartsfield—Jackson Atlanta Intl.	3/7665	5/10/13	ILS OR LOC RWY 9R, ILS RWY 9R (SA CAT I), ILS RWY 9R (CAT II), ILS RWY 9R (CAT III), Amdt 18.
6/27/13	IN	Angola	Tri-State Steuben County	3/7679	5/13/13	NDB RWY 5, Amdt 7.
6/27/13	IN	Angola	Tri-State Steuben County	3/7680	5/13/13	RNAV (GPS) RWY 5, Orig-A.
6/27/13	FL	Vero Beach	Vero Beach Muni	3/7748	5/14/13	VOR RWY 11R, Amdt 14.
6/27/13	GA	Jefferson	Jackson County	3/7750	5/10/13	VOR/DME RWY 35, Amdt 2.
6/27/13	GA	Jefferson	Jackson County	3/7751	5/10/13	RNAV (GPS) RWY 35, Amdt 2.
6/27/13	GA	Jefferson	Jackson County	3/7752	5/10/13	RNAV (GPS) RWY 17, Amdt 2.
6/27/13	MD	Frederick	Frederick Muni	3/7770	5/10/13	RNAV (GPS) Z RWY 23, Orig-C.
6/27/13	NJ	Atlantic City	Atlantic City Intl	3/7820	5/14/13	RNAV (RNP) Z RWY 13, Orig-A.
6/27/13	NJ	Atlantic City	Atlantic City Intl	3/7822	5/14/13	RNAV (RNP) Z RWY 31, Orig-A.
6/27/13	AK	Soldotna	Soldotna	3/7899	5/16/13	VOR/DME A, Amdt 7B.
6/27/13	MO	Osage Beach	Grand Glaize- Osage Beach	3/8153	5/14/13	VOR RWY 32, Amdt 6.
6/27/13	MO	Camdenton	Camdenton Memorial	3/8171	5/13/13	VOR A, Amdt 5.
6/27/13	AK	Dillingham	Dillingham	3/8215	5/16/13	VOR RWY 1, Amdt 9.
6/27/13	AK	Dillingham	Dillingham	3/8217	5/16/13	LOC/DME RWY 19, Amdt 6A.
6/27/13	AK	Dillingham	Dillingham	3/8218	5/16/13	VOR/DME RWY 19, Amdt 7.
6/27/13	AK	Dillingham	Dillingham	3/8219	5/16/13	RNAV (GPS) RWY 19, Amdt 2.
6/27/13	AK	Fairbanks	Fairbanks Intl	3/8221	5/21/13	RNAV (GPS) Y RWY 2L, Orig-B.
6/27/13	AK	Dillingham	Dillingham	3/8232	5/16/13	RNAV (GPS) RWY 1, Amdt 2.
6/27/13	WA	Seattle	Seattle-Tacoma Intl	3/8256	5/13/13	ILS RWY 34L, (SA CAT I & II), Amdt 1.
6/27/13	IL	Belleville	Scott AFB/MidAmerica	3/8492	5/14/13	ILS OR LOC/DME RWY 32L, Amdt 1.
6/27/13	AZ	Phoenix	Phoenix Sky Harbor Intl	3/8524	5/16/13	ILS OR LOC RWY 25L, Amdt 1F.
6/27/13	CA	Palm Springs	Palm Springs Intl	3/8527	5/16/13	Takeoff Minimums and (Obstacle) DP, Amdt 5.
6/27/13	AK	Cold Bay	Cold Bay	3/8534	5/16/13	RNAV (GPS) RWY 33, Amdt 2.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
6/27/13	AK	Cold Bay	Cold Bay	3/8535	5/16/13	LOC/DME BC RWY 33, Amdt 10.
6/27/13	WI	Milwaukee	Lawrence J Timmerman	3/8568	5/14/13	Takeoff Minimums and (Obstacle) DP, Amdt 1.
6/27/13	KS	Ulysses	Ulysses	3/8569	5/14/13	Takeoff Minimums and (Obstacle) DP, Amdt 2A.
6/27/13	NE	Sidney	Sidney Muni/Lloyd W. Carr Field.	3/8570	5/14/13	VOR/DME OR TACAN RWY 13, Amdt 5.
6/27/13	NE	Sidney	Sidney Muni/Lloyd W. Carr Field.	3/8571	5/14/13	VOR/DME OR TACAN RWY 31, Amdt 5.
6/27/13	OH	Toledo	Toledo Express	3/9108	5/15/13	VOR/DME RWY 34, Amdt 7A.
6/27/13	OH	Toledo	Toledo Express	3/9109	5/15/13	RADAR–1, Amdt 19A.
6/27/13	CA	Redding	Redding Muni	3/9263	5/16/13	ILS OR LOC/DME RWY 34, Amdt 11A.
6/27/13	CA	Redding	Redding Muni	3/9264	5/16/13	VOR RWY 34, Amdt 10D.
6/27/13	MI	Lansing	Capital Region Intl	3/9410	5/8/13	ILS OR LOC RWY 28L, Amdt 26B.

[FR Doc. 2013–13364 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 579

[Docket No. FDA–2012–F–0178]

Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Electron Beam and X-Ray Sources for Irradiation of Poultry Feed and Poultry Feed Ingredients; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Correcting amendments.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document amending the regulations for irradiation of animal feed and pet food that appeared in the **Federal Register** of May 10, 2013 (78 FR 27303). That document used incorrect style for the strength units describing radiation sources. This correction is being made to improve the accuracy of the animal drug regulations.

DATES: This rule is effective June 10, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019,*ghaibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is correcting a document amending the regulations for irradiation of animal feed and pet food that appeared in the **Federal Register** of May 10, 2013 (78 FR 27303). That document used incorrect style for the strength units describing radiation sources. This correction is being made to improve the accuracy of the animal drug regulations.

List of Subjects in 21 CFR Part 579

Animal feeds, Animal foods, Radiation protection.

Therefore, 21 CFR part 579 is corrected by making the following correcting amendments.

PART 579—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF ANIMAL FEED AND PET FOOD

■ 1. The authority citation for 21 CFR part 579 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 2. In § 579.40, revise paragraphs (a)(2), (a)(3), and (a)(4) to read as follows:

§ 579.40 Ionizing radiation for the treatment of poultry feed and poultry feed ingredients.

* * * * *

(a) * * *

(2) Electrons generated from machine sources at energy levels not to exceed 10 million electron volts (MeV);

(3) X-rays generated from machine sources at energies not to exceed 5 MeV, except as permitted by § 179.26(a)(4) of this chapter; or

(4) X-rays generated from machine sources using tantalum or gold as the target material and using energies not to exceed 7.5 MeV.

* * * * *

Dated: June 4, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–13648 Filed 6–7–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2007–0065; T.D. TTB–114; Re: Notice No. 74]

RIN 1513–AB36

Modification of Mandatory Label Information for Wine

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending its regulations regarding the mandatory labeling requirements for wine. The regulatory change permits alcohol content to appear on other labels affixed to the container rather than requiring it to appear on the brand label. This regulatory change provides greater flexibility in wine labeling, and will conform the TTB wine labeling regulations to the agreement reached by members of the World Wine Trade Group regarding the presentation of certain information on wine labels.

DATES: *Effective Date:* August 9, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Welch, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, 1310 G St. NW., Box 12, Washington, DC 20005; telephone (202) 453–1039, extension 046; or email *WineRegs@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits,

and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity, quality, and alcohol content of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Current TTB Mandatory Labeling Requirements for Wine

Part 4 of the TTB regulations (27 CFR part 4) sets forth the requirements under the FAA Act for the labeling and advertising of wine. Section 4.10 (27 CFR 4.10) defines a brand label as the label carrying, in the usual distinctive design, the brand name of the wine. Section 4.32 (27 CFR 4.32) prescribes mandatory label information. Section 4.32(a) requires a statement of the following on the brand label:

- The brand name, in accordance with § 4.33;
- The class, type, or other designation, in accordance with § 4.34;
- The alcohol content, in accordance with § 4.36; and
- On blends consisting of American and foreign wines, if any reference is made to the presence of foreign wine, the exact percentage by volume.

In addition, § 4.32(b) lists other mandatory label information that may appear on any label affixed to the container.

World Wine Trade Group Agreement on Requirements for Wine Labeling

The World Wine Trade Group (WWTG) is composed of both government officials and industry representatives from, currently, Argentina, Australia, Canada, Chile, Georgia, New Zealand, South Africa, and the United States. The WWTG was formed to discuss and address issues relating to international wine trade, including reducing and preventing non-tariff barriers to that wine trade.

The Office of the United States Trade Representative heads the inter-agency team from the United States that represents the U.S. Government during WWTG discussions. This team also includes representatives from TTB, the Food and Drug Administration, and the Departments of Commerce, State, and Agriculture.

The WWTG concluded negotiations on a wine labeling agreement intended to facilitate further wine trade among members. The WWTG Agreement on Requirements for Wine Labelling, hereinafter referred to as the ''Agreement,'' was initialed on September 20, 2006, and was signed in Canberra, Australia, on January 23, 2007, by the United States and other governments. This is an executive agreement and not a treaty. A full copy of the Agreement can be viewed at *http://www.ita.doc.gov/td/ocg/WWTGlabel.pdf.* These negotiations proceeded from the view that common labeling requirements would provide industry members with the opportunity to use the same label when shipping wine to each of the WWTG member countries.

In the course of the negotiations, the participants recognized that most members consider four particular items of information to be mandatory. The four items, referred to as ''Common Mandatory Information'' (hereinafter CMI) in the WWTG Agreement, are: (1) Country of origin, (2) alcohol content (percentage by volume), (3) net contents, and (4) product name. The negotiated Agreement also incorporates a ''Single Field of Vision'' concept for the placement of the CMI. A ''Single Field of Vision'' is any part of the surface of the container, excluding its base and cap, that can be seen without having to turn the container. Under this approach, as long as all four of the CMI elements are visible at the same time, they will meet the placement requirements (if any) of each member country. In other words, each country must permit the CMI for an imported wine to appear on any label anywhere on the wine container (except the base or cap), provided all four CMI items are in a Single Field of Vision.

Conforming TTB Regulations to the WWTG Agreement

The United States cannot deposit an instrument of acceptance for the Agreement if the TTB regulations on wine labeling are inconsistent with the CMI terms of the Agreement. TTB reviewed its wine labeling regulations to determine if any change was necessary in order for the United States to meet its obligation to permit these four pieces of information to appear in a single field of vision on labels of imported wines, as outlined in the Agreement. TTB noted that:

- Although the TTB regulations do not require the inclusion of the *country of origin* on wine labels, such a requirement is contained in statutory and regulatory provisions administered by U.S. Customs and Border Protection (see 19 U.S.C. 1304 and 19 CFR 134.11). Consistent with these requirements, the country of origin may appear on any label affixed to a container of imported wine.
- The *product name* under the Agreement is the word ''wine'' and the TTB regulations contain no specific requirements for, or restrictions on, the use of the word ''wine'' alone on wine labels.
- TTB regulations generally allow the *net contents* statement to appear on any label affixed to the wine container. (See 27 CFR 4.32(b)(2)).
- TTB regulations require that *alcohol content* information appear on the brand label of a wine container. (See 27 CFR 4.32(a)(3)).

Thus, the only inconsistency between the TTB wine labeling regulations and the CMI terms of the Agreement is in the regulatory requirement for alcohol content information to appear on the brand label. Accordingly, TTB issued a notice of proposed rulemaking in 2007 to propose removing this requirement.

Notice of Proposed Rulemaking and Comments Received

Regulatory Changes Proposed in Notice No. 74

On September 11, 2007, TTB published a notice of proposed rulemaking titled ''Modification of Mandatory Label Information for Wine, Distilled Spirits, and Malt Beverages'' in the **Federal Register** (72 FR 51732) as Notice No. 74. In that notice, TTB proposed to permit alcohol content information for wine, distilled spirits, and malt beverages to appear on other labels affixed to the container rather than on the brand label as is currently required. Specifically, TTB proposed to amend 27 CFR 4.32 (mandatory label information for wine), 5.32 (mandatory label information for distilled spirits), and 7.22 (mandatory label information for malt beverages) to move the alcohol content requirements from paragraph (a) of each of those sections, which prescribes in each case mandatory label information required to appear on a brand label, to paragraph (b) of each of those sections, which prescribes mandatory label requirements for information that need not appear on the brand label.

The change in § 4.32 will allow industry members to apply the WWTG ''Single Field of Vision'' concept concerning the placement of CMI on labels. TTB's proposal to make the additional changes in §§ 5.32, and 7.22

was intended to foster consistency in the labeling requirements among all TTB-regulated alcohol beverage products.

The changes proposed in Notice No. 74 were limited to removing the placement requirement for alcohol content. All other formatting requirements, such as type size and legibility, remain the same.

Comments Received

In Notice No. 74, TTB requested comments from all interested persons on the proposed regulatory changes by November 13, 2007. TTB received five comments in response to that notice. (Copies of Notice No. 74, the comments received, and this final rule are available online at the ''Regulations.gov'' Web site (*http://www.regulations.gov*) within Docket No. TTB–2007–0065.)

Three comments expressed support for the proposal. Jackson Family Wines stated its support for the WWTG labeling initiative, as well as for giving industry members more flexibility in labeling while not reducing the information that is available to the consumer. The Francis Ford Coppola Winery and the Niebaum-Coppola Estate Winery also expressed their ''full support'' of the proposal. Finally, the Distilled Spirits Council of the United States (DISCUS) expressed its support for the increased flexibility that the proposal would provide, in addition to the proposal's reduction of regulatory conflicts among global trading partners. DISCUS also supported TTB's proposal to make the change for distilled spirits and malt beverages in addition to wine. DISCUS also referred to other proposals outside the scope of Notice No. 74, which are not addressed in this document.

The two remaining comments were mistakenly submitted in response to Notice No. 74, but they actually related to Notice No. 73 (72 FR 41860), which proposed new requirements relating to alcohol content statements and a ''Serving Facts'' panel on alcohol beverage labels. Because those comments do not pertain to Notice No. 74, they are also not addressed in this document.

In addition to the five comments submitted in response to Notice No. 74, some comments submitted in response to Notice No. 73 included points that were responsive to Notice No. 74. Many commenters expressed strong opposition to TTB's proposal to allow alcohol content information to appear on any label rather than to require this information to appear on a ''Serving Facts'' information panel. The Center for Science in the Public Interest (CSPI) specifically stated that the TTB proposal would obscure information that is of vital importance to consumers of alcohol beverages. According to CSPI, ''[c]onsumers should not have to hunt for alcohol-content information that might appear in different locations on different brands and different sizes of thousands of products in the market place.'' CSPI further stated:

> TTB provides no rationale for not requiring alcohol-content information on the ''Serving Facts'' label, nor does it provide any research, testing, or human factors analyses to determine the effects on consumers of burying critical alcohol-content information anywhere on product containers. Rather, TTB cites the need to conform to an international trade agreement among wine-producing countries.

Many other commenters, most notably consumers, consumer organizations, and public health and education officials, agreed that consumers should not have to hunt for alcohol content information. Other commenters stated that they believe that the alcohol content should continue to be displayed on the brand label as well as in any ''Serving Facts'' information panel. For example, the Marin Institute (which has since changed its name to Alcohol Justice) supported a requirement to list the alcohol content for all alcohol beverages on the brand label, as is currently required for distilled spirits, wines with an alcohol content above 14 percent alcohol by volume, and certain flavored malt beverages.

TTB Finding

TTB is finalizing the proposal to amend § 4.32 so that the United States' wine labeling regulations will be consistent with the Agreement. The Agreement entered into force on July 1, 2010. This final rule will allow the United States to deposit its instrument of acceptance.

TTB notes that the change does not require alcohol beverage industry members to make any changes to their current labels because alcohol content information may still be placed on the brand label. The TTB regulations (27 CFR 4.40 and 4.50) generally require that regulated industry members obtain a certificate of label approval (COLA) from TTB prior to the bottling or removal of domestic wines, or prior to the release of imported wines, in containers, from customs custody for consumption. TTB's position is that a new COLA is not required if the only change made to a wine label appearing on a previously issued COLA is the moving of the alcohol content information to a label other than the brand label.

TTB revisited the changes proposed to §§ 5.32 and 7.22 (similar changes for distilled spirits and malt beverages) and has decided not to finalize these changes at this time. The proposed changes to §§ 5.32 and 7.22 remain under consideration. TTB may amend those sections in the future. Accordingly, TTB is adopting the proposed regulatory amendments to § 4.32, to conform the regulations to the Agreement, but not the proposed regulatory amendments to §§ 5.32 or 7.22.

TTB is also making a clarifying change to § 4.36 with regard to the use of the type designation ''table wine'' or ''light wine'' in lieu of a numerical alcohol content statement. Section 4.34(a) provides that the class of the wine must be stated in conformity with the standards of identity if the wine is defined in subpart C of part 4, except that ''table wine'' or ''light wine'' and ''dessert wine'' need not be designated as such. (A ''table wine'' or ''light wine'' is grape wine having an alcohol content of at least 7 percent and no more than 14 percent by volume. A ''dessert wine'' is grape wine having an alcohol content of more than 14 percent but no more than 24 percent by volume.)

As previously noted, § 4.32 provides that alcohol content must be stated on the label in accordance with § 4.36. However, § 4.36 allows wine with an alcohol content of at least 7 percent and no more than 14 percent by volume to bear the type designation ''table wine'' or ''light wine'' in lieu of a numerical alcohol content statement. On the other hand, consistent with § 4.34(a), the type designation ''table wine'' or ''light wine'' need not appear on the label if the wine is labeled with an alcohol content statement, expressed as a percentage of alcohol by volume.

Accordingly, while the type designation ''table wine'' or ''light wine'' may be used in lieu of a numerical alcohol content statement pursuant to § 4.36, these designations are not treated as alcohol content statements by the Agreement, which only addresses ''actual alcohol content'' stated as a percentage of alcohol by volume. The amendment to § 4.36 simply clarifies that, pursuant to existing regulations on the placement of class and type designations, the designation ''table wine'' or ''light wine'' must appear on the brand label where it is used as a type designation in lieu of a numerical alcohol content statement.

Regulatory Analysis and Notices

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule will increase the flexibility afforded to bottlers and importers of wine with regard to placement of mandatory alcohol content statements on labels and will not require any changes to existing labels. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The collection of information in this rule has been previously approved by the Office of Management and Budget (OMB) under the title ''Labeling and Advertising Requirements Under the Federal Alcohol Administration Act,'' and assigned control number 1513–0087. This regulation will not result in a substantive or material change in the previously approved collection action, since the nature of the mandatory information that must appear on labels affixed to the container remains unchanged. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Drafting Information

Karen E. Welch of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document. Other personnel participated in its development.

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Amendment to the Regulations

For the reasons discussed in the preamble, TTB is amending 27 CFR, chapter I, part 4 as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. In § 4.32:

■ a. Paragraph (a)(3) is removed and reserved; and

■ b. A new paragraph (b)(3) is added to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 4.36.

* * * * *

■ 3. In § 4.36, paragraph (a) is revised to read as follows:

§ 4.36 Alcoholic content.

(a) Alcoholic content shall be stated in the case of wines containing more than 14 percent of alcohol by volume. In the case of wine containing 14 percent or less of alcohol by volume, the alcohol content may be stated, but need not be stated if the type designation ''table'' wine (or ''light'' wine) appears on the brand label as prescribed in § 4.32(a)(2). Any statement of alcoholic content shall be made as prescribed in paragraph (b) of this section.

* * * * *

Signed: January 10, 2013.

John J. Manfreda,

Administrator.

Approved: May 23, 2013.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2013–13601 Filed 6–7–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0434]

RIN 1625–AA08

Special Local Regulation; Heritage Coast Offshore Grand Prix, Tawas Bay; East Tawas, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on Tawas Bay, Michigan. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the Heritage Coast Offshore Grand Prix boat race. This special local regulation will establish restrictions upon, and control movement of, vessels in a portion of Tawas Bay. During the enforcement period, no person or vessel may enter the regulated area without permission of the Captain of the Port.

DATES: This rule is effective from 10 a.m. until 4 p.m. on June 16, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0434]. 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.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing 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. Regulatory 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 doing so would be impracticable and contrary to the public interest. The final details for this power boat race were not known to the Coast Guard until there was

insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators, participants, and vessels from the hazards associated with this event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period run would be impracticable and contrary to the public interest.

B. Basis and Purpose

Between 10 a.m. and 4 p.m. on June 16, 2013, OPA Racing LLC is holding an offshore powerboat race that will require the immediate area to be clear of all vessel traffic. The Captain of the Port Detroit has determined powerboat races in close proximity to watercraft and infrastructure pose extra and unusual hazards to public safety and property. The likely combination of large numbers of recreation vessels, powerboats traveling at high speeds, and large numbers of spectators in close proximity to the water pose extra and unusual hazards to public safety and property and could easily result in serious injuries or fatalities. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation, pursuant to the authority in 33 U.S.C. 1233, around the race course will help ensure the safety of life during this event.

C. Discussion of Rule

In light of the aforesaid hazards, the Captain of the Port Detroit has determined that a special local regulation is necessary to ensure the safety of spectators, vessels, and participants. This special local regulation will be enforced from 10 a.m. until 4 p.m. on June 16, 2013. This regulated area will encompass all waters of Tawas Bay, beginning at the Tawas Point Horn on land at 44°14′54.9″ N, 083°27′31.5″ W; extending west to a point on land just north of the Tawas Bay Marina at position 44°15′29.6″ N, 083°31′36.4″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The Coast Guard's use of this special local regulation will be of relatively small size and short duration, and it is designed to minimize its impact on navigation. Furthermore, vessels may, when circumstances allow, obtain permission from the Captain of the Port to transit through the area affected by this special local regulation. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

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 might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Tawas Bay near East Tawas, MI between 10 a.m. until 4 p.m. on June 16, 2013.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This regulated area will only be in effect and enforced for six hours on one day. The race event will be temporarily stopped for any deep draft vessels transiting through the shipping lanes. Additional vessel traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

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 this 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** section above.

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade, and, therefore it is categorically excluded from further review under paragraph (34)(h) of Figure 2–1 of the Commandant Instruction. During the annual permitting process for this event an environmental analysis was conducted, and thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this rulemaking action.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T09–0434 to read as follows:

§ 100.T09–0434 Special Local Regulation; Heritage Coast Offshore Grand Prix, East Tawas, MI.

(a) *Regulated Area.* The regulated area will encompass all waters of Tawas Bay, beginning at the Tawas Point Horn on land at 44°14′54.9″ N, 083°27′31.5″ W; extending west to a point on land just north of the Tawas Bay Marina at position 44°15′29.6″ N, 083°31′36.4″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on June 16, 2013, from 10 a.m. until 4 p.m.

(c) *Regulations.*

(1) No vessel may enter, transit through, or anchor within the regulated area unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) The ''on-scene representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port, Sector Detroit to act on his behalf.

(3) Vessel operators desiring to enter or operate within the regulated area shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313—568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port Detroit, or his on-scene representative.

Dated: May 28, 2013.

J.E. Ogden,

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

[FR Doc. 2013–13649 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0171]

RIN 1625–AA08

Special Local Regulations; Pro Hydro-X Tour, Lake Dora; Tavares, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Lake Dora in Tavares, Florida, during the Pro Hydro-X Tour, a series of high-speed personal watercraft races. The event is scheduled for Saturday and Sunday, June 1–2 and June 8–9, 2013. This special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races. The special local regulation establishes two areas during each weekend of its enforcement: A race area, where all persons and vessels, except those participating in the races, are prohibited from entering; and A buffer zone around

the race area, where all persons and vessels, except those enforcing the buffer zone or authorized participants and vessels transiting to the race area, are prohibited from entering, unless authorized by the Captain of the Port Jacksonville or a designated representative.

DATES: This rule will be enforced with actual notice from 9 a.m. on June 1, 2013, until June 10, 2013. This rule is effective in the Code of Federal Regulations from June 10, 2013 until 5:30 p.m. on June 9, 2013. This rule will be enforced from 9 a.m. until 5:30 p.m. daily on June 1–2 and on June 8–9, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0171]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, U.S. Coast Guard; telephone (904) 564–7563, email *Robert.S.Butts@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. Regulatory History and Information

On April 17, 2013, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations; Pro Hydro-X Tour, Lake Dora; Tavares, FL in the **Federal Register** (78 FR 22808). The Coast Guard received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard did not receive the necessary information with regard to this event in time to provide both an NPRM and a delayed effective date. As such, any delay in the effective date for the rule would be impracticable and contrary to the public interest because the first race will begin on June 1, 2013. As a result, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Pro Hydro-X Tour.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard did not receive any comments to the proposed rule, and no changes were made to the regulatory text.

On Saturday and Sunday, June 1–2 and June 8–9, 2013, H2X Racing Promotions will host the Pro Hydro-X Tour, a series of high-speed personal watercraft races. The Pro Hydro-X Tour will be held on Lake Dora in Tavares, Florida. Approximately 75 vessels are anticipated to participate in the races. No spectator vessels are expected to attend the Pro Hydro-X Tour. The rule will establish a special local regulation that encompasses certain waters of Lake Dora in Tavares, Florida. The special local regulation will be enforced from 9 a.m. until 5:30 p.m. on June 1–2 and June 8–9, 2013. This special local regulation is necessary to ensure the safety of life on navigable waters of the United States during the races. The special local regulation will consist of the following two areas during each weekend that it is enforced: (1) a race area, where all persons and vessels, except those persons and vessels participating in the high-speed personal watercraft races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, or authorized participants transiting to and from the race area, are prohibited from entering, transiting, anchoring, or remaining unless authorized by the Captain of the Port Jacksonville or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only 34 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area or buffer zone without being an authorized participant or enforcing the buffer zone, or receiving authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) nonparticipant persons and vessels may still enter, transit through, anchor in, or remain within the race area or buffer zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the

potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of Lake Dora encompassed within the special local regulation from 9 a.m. until 5:30 p.m. on June 1–2, 2013 and June 8–9, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS.

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T07–0171 to read as follows:

§ 100.35T07–0171 Special Local Regulations; Pro Hydro-X Tour, Lake Dora, Tavares, FL.

(a) *Regulated Areas.* The following regulated areas are established as a

special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of Lake Dora encompassed within an imaginary line connecting the following points: starting at Point 1 in position 28°47′57″ N, 81°43′39″ W; thence south to Point 2 in position 28°47′55″ N, 81°43′39″ W; thence east to Point 3 in position 28°47′55″ N, 81°43′22″ W; thence north to Point 4 in position 28°47′58″ N, 81°43′22″ W; thence west back to origin. All persons and vessels, except those persons and vessels participating in the high-speed personal watercraft races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) *Buffer Zone.* All waters of Lake Dora, excluding the race area, encompassed within an imaginary line connecting the following points: starting at Point 1 in position 28°47′59″ N, 81°43′41″ W; thence south to Point 2 in position 28°47′53″ N, 81°43′41″ W; thence east to Point 3 in position 28°47′53″ N, 81°43′19″ W; thence north to Point 4 in position 28°47′59″ N, 81°43′19″ W; thence west back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone, or authorized participants transiting to or from the race area, are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone.

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

(c) *Regulations.* (1) All persons and vessels are prohibited from:

(i) Entering, transiting through, anchoring in, or remaining within the race area unless participating in the race.

(ii) Entering, transiting through, anchoring in, or remaining within the buffer zone, unless enforcing the buffer zone or an authorized race participant transiting to or from the race area.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

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

(d) *Enforcement Period.* This rule will be enforced from 9 a.m. until 5:30 p.m. on June 1–2, 2013, and June 8–9, 2013.

Dated: May 22, 2013.

T.G. Allan, Jr.,

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

[FR Doc. 2013–13663 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2008–0384]

Special Local Regulations; Safety Zones; Recurring Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce seventeen annual fireworks display safety zones and one regatta event special local regulation in the Sector Long Island Sound area of responsibility on various dates and times listed in the tables below. This action is necessary to provide for the safety of life on navigable waterways during these fireworks displays and regatta event. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP) Sector Long Island Sound or designated representative.

DATES: The regulations in 33 CFR 100.100 and 33 CFR 165.151 will be enforced between June 9, 2013 and September 1, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Scott Baumgartner, Waterways Management Division, U.S. Coast Guard Sector Long Island Sound; telephone 203–468–4559, email *Scott.A.Baumgartner@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation listed 33 CFR 100.100 and safety zones listed in 33 CFR 165.151 on the specified dates and times as indicated in the tables below. If the event is delayed by inclement weather, the regulation will be enforced on the rain date indicated in the tables. These regulations were published in the **Federal Register** on February 10, 2012 (77 FR 6954).

TABLE TO § 100.100

1.1 Harvard-Yale Regatta, Thames River, New London, CT.	• Event type: Boat Race. • Date: Sunday, June 9, 2013 from 8:15 a.m. until 5:15 p.m. • Rain Date: Monday, June 10, 2013 from 8:15 a.m. until 12:15 p.m. • Location: All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N 072°05′14.46″ W to Bartlett Cove 41°25′35.90″ N 072°5′42.89″ W (NAD 83).

TABLE 1 TO § 165.151

6.1 Barnum Festival Fireworks	• Date: June 28, 2013. • Rain date: June 29, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of Bridgeport Harbor, Bridgeport, CT in approximate position 41°9′04″ N, 073°12′49″ W (NAD 83).

TABLE 1 TO § 165.151—Continued

6.2 Town of Branford Fireworks	• Date: June 22, 2013. • Rain date: June 23, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of Branford Harbor, Branford, CT in approximate position, 41°15′30″ N, 072°49′22″ W (NAD 83).
7.1 Point O'Woods Fire Company Summer Fireworks.	• Date: July 4, 2013. • Rain date: July 5, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of the Great South Bay, Point O'Woods, NY in approximate position 40°39′18.57″ N, 073°08′05.73″ W (NAD 83).
7.4 Norwalk Fireworks	• Date: July 3, 2013. • Rain date: July 5, 2013. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Calf Pasture Beach, Norwalk, CT in approximate position, 41°04′50″ N, 073°23′22″ W (NAD 83).
7.5 Lawrence Beach Club Fireworks	• Date: July 3, 2013. • Rain date: July 5, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of the Atlantic Ocean off Lawrence Beach Club, Atlantic Beach, NY in approximate position 40°34′42.65″ N, 073°42′56.02″ W (NAD 83).
7.6 Sag Harbor Fireworks	• Date: July 6, 2013. • Rain date: July 7, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of Sag Harbor Bay off Havens Beach, Sag Harbor, NY in approximate position 41°00′26″ N, 072°17′09″ W (NAD 83).
7.7 South Hampton Fresh Air Home Fireworks	• Date: July 5, 2013. • Rain date: July 7, 2013. • Time: 8:45 p.m. to 10:00 p.m. • Location: Waters of Shinnecock bay, Southampton, NY in approximate positions, 40°51′48″ N, 072°26′30″ W (NAD 83).
7.8 Westport Police Athletic league Fireworks	• Date: July 3, 2013. • Rain date: July 5, 2013. • Time: 8:30 p.m. to 10:00 p.m. • Location: Waters off Compo Beach, Westport, CT in approximate position, 41°06′15″ N, 073°20′57″ W (NAD 83).
7.11 City of Norwich July Fireworks	• Date: July 5, 2013. • Rain date: July 6, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of the Thames River, Norwich, CT in approximate position, 41°31′16.84″ N, 072°04′43.33″ W (NAD 83).
7.22 Mason's Island Yacht Club Fireworks	• Date: July 6, 2013. • Rain date: July 7, 2013. • Time: 8:30 p.m. to 10:00 p.m. • Location: Waters of Fisher's Island Sound, Noank, CT in approximate position 41°19′30.61″ N, 071°57′48.22″ W (NAD 83).
7.24 Riverfest Fireworks	• Date: July 6, 2013. • Rain date: July 7, 2013. • Time: 8 p.m. to 11:00 p.m. • Location: Waters of the Connecticut River, Hartford, CT in approximate positions, 41°45′39.93″ N, 072°39′49.14″ W (NAD 83).
7.28 City of Long Beach Fireworks	• Date: July 12, 2013. • Rain date: July 13, 2013. • Time: 9 p.m. to 10:00 p.m. • Location: Waters off Riverside Blvd, City of Long Beach, NY in approximate position 40°34′38.77″ N, 073°39′41.32″ W (NAD 83).
7.30 Mashantucket Pequot Fireworks	• Date: July 13, 2013. • Rain date: July 14, 2013. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters of the Thames River New London, CT in approximate positions Barge 1, 41°21′03.03″ N, 072°5′24.5″ W Barge 2, 41°20′51.75″ N, 072°5′18.90″ W (NAD 83).
7.31 Shelter Island Fireworks	• Date: July 6, 2013. • Rain date: July 7, 2013. • Time: 8:30 p.m. to 10:00 p.m. • Location: Waters of Gardiner Bay, Shelter Island, NY in approximate position 41°04′39.11″ N, 072°22′01.07″ W (NAD 83).
7.35 Groton Long Point Yacht Club Fireworks	• Date: July 20, 2013. • Rain date: July 21, 2013. • Time: 9 p.m. to 10:30 p.m. • Location: Waters of Long Island Sound, Groton, CT in approximate position 41°18′05″ N, 072°02′08″ W (NAD 83).
8.6 Town of Babylon Fireworks	• Date: August 24, 2013. • Rain date: August 25, 2013. • Time: 8:30 p.m. to 10:00 p.m.

TABLE 1 TO § 165.151—Continued

9.1 East Hampton Fire Department Fireworks	• Location: Waters off of Cedar Beach Town Park, Babylon, NY in approximate position 40°37′53″ N, 073°20′12″ W (NAD 83). • Date: August 31, 2013. • Rain date: September 1, 2013. • Time: 8:45 p.m. to 10:00 p.m. • Location: Waters off Main Beach, East Hampton, NY in approximate position 40°56′40.28″ N, 072°11′21.26″ W (NAD 83).

Under the provisions of 33 CFR 100.100 & 33 CFR 165.151, The fireworks displays, and regatta event listed above are established as safety zones or special local regulation. During these enforcement periods, persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones or special local regulation unless they receive permission from the COTP or designated representative.

This notice is issued under authority of 33 CFR 100, 33 CFR 165 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners or marine information broadcasts. If the COTP determines that a regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: May 24, 2013.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2013–13667 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0311]

RIN 1625–AA00

Safety Zone; Bay Swim VI, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Presque Isle Bay, Erie, PA. This safety zone is intended to restrict vessels from a portion of Presque Isle bay during the Bay Swim VI swimming event. This temporary safety zone is necessary to protect participants, spectators, and vessels from the hazards associated with a large scale swimming event.

DATES: This rule will be effective between 8:30 a.m. until 11:30 a.m. on June 22, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0311]. 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 LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email SectorBuffaloMarineSafety@uscg.mil. If you have questions on viewing 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
TFR Temporary Final Rule

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 doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect participants, spectators, and vessels from the hazards associated with a large scale swimming event, which are discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

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

Between 9:00 a.m. and 11:00 a.m. on June 22, 2013, a large scale swimming event will be held on Presque Isle Bay near the Erie Yacht Club lighthouse dock, Erie, PA. The Captain of the Port Buffalo has determined that this large scale swimming event across a navigable waterway will pose significant risks to participants and the boating public.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of participants, spectators, and vessels during the Bay Swim VI swimming event. This zone will be effective and enforced from 8:30 a.m. until 11:30 a.m. on June 22, 2013. This zone will encompass all waters of Presque Isle Bay, Erie, PA starting from

Vista 3 in Presque Isle State Park at position 42°07′29.30″ N, 80°08′48.82″ W and extend in a straight line 1,000 feet wide to the Erie Yacht Club at position 42°07′21.74″ N, 80°07′58.30″ W (DATUM: NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. 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 might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Presque Isle Bay near Erie, PA between 8:30 a.m. to 11:30 a.m. on June 22, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only approximately 3 hours. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

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** section 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. Unfunded Mandates Reform Act

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it 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 record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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. Chapters 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.T09–0311 to read as follows:

§ 165.T09–0311 Safety Zone; Bay Swim VI, Presque Isle Bay, Erie, PA.

(a) *Location.* The safety zone will encompass all waters of Presque Isle Bay, Erie, PA starting from Vista 3 in Presque Isle State Park at position 42°07′29.30″ N, 80°08′48.82″ W and extend in a straight line 1,000 feet wide to the Erie Yacht Club at position 42°07′21.74″ N, 80°07′58.30″ W. (NAD 83)

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on June 22, 2013 from 8:30 a.m. until 11:00 a.m.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 23, 2013.

S.M. Wischmann,

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

[FR Doc. 2013–13651 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0256]

RIN 1625–AA00

Safety Zone; Ad Club's 100th Anniversary Gala Fireworks Display, Boston Inner Harbor, Boston, MA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within Sector Boston's Captain of the Port (COTP) Zone for a fireworks display on the navigable waters of Boston Harbor in the vicinity of the Fan Pier, Boston, MA. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with the fireworks display. Entering into, transiting through, mooring or anchoring within this safety zone is prohibited unless authorized by the COTP or the designated on-scene representative.

DATES: This rule is effective from 8:30 p.m. until 10:30 p.m. on June 26, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0256. 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 the 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 temporary final rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email *Mark.E.Cutter@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
COTP Captain of the Port

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 it is impracticable. The Coast Guard did not receive information regarding the date and scope of the event with sufficient time to solicit public comments before the start of the event. The sponsor was not aware of the requirements for submitting an application for a marine event, resulting in a late notification to the Coast Guard.

The sponsor is unable to reschedule this event due to the Ad Club's 100th Anniversary Gala celebration being held at The Institute Of Contemporary Art in conjunction with the fireworks display. Due to the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), for the same reasons as above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impracticable and contrary to the public interest. Any delay in the effective date of this rule would expose spectators, vessels and other property to the hazards associated with pyrotechnics used in the fireworks display.

B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C., 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

A fireworks display is scheduled to occur as part of the Ad Club's 100th Anniversary Gala celebration at The Institute of Contemporary Art. The COTP Boston has determined that fireworks displays in close proximity to watercraft and waterfront structures pose a significant risk to public safety and property. Establishing a safety zone around the location of this fireworks event will help ensure the safety of spectators, vessels and other property and help minimize the associated risks.

C. Discussion of Final Rule

This safety zone will encompass a 600-foot radius around the firework barge. The fireworks display will occur from approximately 9 p.m. until 10 p.m. on June 26, 2013. To ensure public safety, the safety zone will be enforced immediately before, during, and after the fireworks launch. If the event is cancelled, then the safety zone will not be enforced.

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 or executive orders.

1. Regulatory Planning and Review

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

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be in effect for approximately two hours during the evening. The Coast Guard expects minimal adverse impact to mariners from the activation of the zone; this zone is located on the outer edge of the Boston Main Ship Channel and vessels have sufficient room to transit around the safety zone; and vessels may enter or pass through the affected waterway with the permission of the Captain of the Port (COTP) or the COTP's designated on-scene representative; and notification of the safety zone will be made to mariners through the local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

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 Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only two hours on a single day during the late evening; vessels may transit in all portions of the affected waterway except for those areas covered by the safety zone and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's designated on-scene representative. Notification of the safety zone will be made to mariners through the Local Notice to Mariners, Broadcast Notice to Mariners well in advance of the event.

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 you believe that this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the 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 and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T01–0256 to read as follows:

§ 165.T01–0256 Safety Zone; Ad Club's 100th Anniversary Gala Fireworks Display, Boston Inner Harbor, Boston, MA.

(a) *General.* A temporary safety zone is established for the fireworks display as follows:

(1) *Location.* All navigable waters from surface to bottom, within a 600-foot radius of position 42°21′25″ N, 071°02′26″ W. This position is located approximately 1000-feet off of the Fan Pier, Boston Inner Harbor, Boston, MA

(2) *Definitions.* For purposes of this section ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf. The designated representative may be on an Official Patrol Vessel; Official Patrol Vessel may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP or the designated on-scene representative may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) *Enforcement Period.* This rule is effective and will be enforced from 8:30 p.m. to 10:30 p.m. on June 26, 2013.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within the safety zone without the permission of the COTP or the designated on-scene representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston command Center) to obtain permission.

Dated: May 21, 2013.

J.C. O'Connor III,

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

[FR Doc. 2013–13650 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0174]

RIN 1625–AA00

Safety Zone, Atlantic Intracoastal Waterway; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the temporary safety zone established on the waters of the Atlantic Intracoastal Waterway at Wrightsville Beach, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the US 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina. The safety zone extension will temporarily restrict vessel movement within the designated area starting on July 27, 2013 through March 1, 2014.

DATES: This rule is effective from July 27, 2013 through March 1, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0174. 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 CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil*. If you have questions on viewing or submitting material to the docket, call 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. Regulatory History and Information

The Coast Guard published a notice of proposed rulemaking (NPRM) for this rule on April 19, 2013 (78 FR 23519). We received no comments on the proposed rule.

B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to American Bridge Company of Coraopolis, PA to perform bridge maintenance on the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina. The contract provides for cleaning, painting, steel repair, and grid floor replacement which commenced on September 1, 2012. The original completion date was May 1, 2013, however, the contractor was granted an extension on the completion date by North Carolina Department of Transportation to July 27, 2013. Due to concerns from the Town of Wrightsville Beach relating to impacts to vehicular traffic and subsequent impacts to their economy that may result from ongoing construction, topside bridge work has been delayed. The anticipated date to resume topside work is October 1, 2013 with a completion date of March 1, 2014. In the meantime, American Bridge Company will continue to perform bridge mechanical work, electrical work, and the cleaning and painting of the structural steel throughout the months preceding resumption of topside work. The contractor will utilize a 40 foot deck barge with a 40 foot beam as a work platform and for equipment staging. A safety zone is needed to a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction horizontal clearance.

C. Discussion of the Final Rule

The temporary safety zone will encompass the waters directly under the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina (34°13′07″ N, 077°48′46″ W). All vessels transiting the this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the U.S. 74/76 Bascule Bridge tender while the safety zone is in effect. The initial safety zone is currently in effect, and began on 8 a.m. September 1, 2012 was in effect through 8 p.m. May 1, 2013. The initial extension of the safety zone commenced at 8 p.m. on May 1, 2013 and will be in effect until 8 p.m. July 27, 2013. The extension will be in effect from 8 p.m. July 27, 2013 through 8 p.m. March 1, 2014.

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. This rule does not restrict traffic from transiting through the noted portion of the Atlantic Intracoastal Waterway; it only imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 p.m. July 27, 2013 through 8 p.m. March 1, 2014.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. 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 proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0174 to read as follows:

§ 165.T05–0174 Safety Zone; Atlantic Intracoastal Waterway, Wrightsville Beach, NC.

(a) *Regulated Area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the US 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina (34°13′07″ N/077°48′46″ W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0174. In addition the following regulations apply:

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port North Carolina.

(2) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the U.S. 74/76 Bascule Bridge crossing the Atlantic Intracoastal Waterway, mile 283.1, at Wrightsville Beach, North Carolina must contact the bridge tender on VHF-FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(3) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port North Carolina or his designated representative by telephone at (910) 343–3882 or on VHF-FM marine band radio channel 16.

(4) All Coast Guard assets enforcing this safety zone can be contacted on VHF-FM marine band radio channels 13 and 16.

(5) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.* (1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned,

warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8 p.m. July 27, 2013 through 8 p.m. March 1, 2014 unless cancelled earlier by the Captain of the Port.

Dated: May 23, 2013.

S.P. McGee,

Commander, U.S. Coast Guard, Acting, Captain of the Port Sector North Carolina.

[FR Doc. 2013–13662 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0346]

Safety Zone; Fourth of July Fireworks, City of Sausalito, San Francisco Bay, Sausalito, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Fourth of July Fireworks, City of Sausalito in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations will be enforced from 9 a.m. to 9:45 p.m. on July 4, 2013.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a 100 foot safety zone around the fireworks barge during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display. From 9 a.m. until 2 p.m. on July 4, 2013, the barge will be loading off of Pier 50 in approximate position 37°46′28″ N, 122°23′06″ W (NAD 83). From 7 p.m. to 8:30 p.m. on July 4, 2013 the loaded barge will transit from Pier 50 to the launch site near Sausalito, CA in approximate position 37°51′31″ N, 122°28′28″ W (NAD83). Upon the commencement of the 15 minute fireworks display, scheduled to begin at 9:15 p.m. on July 4, 2013, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet in approximate position 37°51′31″ N, 122°28′28″ W (NAD83). In accordance with 33 CFR 165.1191, Table 1, Item number 12, this safety zone will be in effect from 9 a.m. to 9:45 p.m. on July 4, 2013.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so. This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

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

Dated: May 18, 2013.

Gregory G. Stump,

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

[FR Doc. 2013–13668 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0312]

RIN 1625–AA00

Safety Zone; Rochester Yacht Club Fireworks, Genesee River, Rochester, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Genesee River, Rochester, NY. This safety zone is intended to restrict vessels from a portion of the Genesee River during the Rochester Yacht Club fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:30 p.m. until 11:00 p.m. on June 22, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0312]. 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 LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing 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
TFR Temporary Final Rule

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 doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

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

Between 10:00 p.m. and 10:30 p.m. on June 22, 2013, a fireworks display will be held on the Genesee River near the east pier of the river entrance, Rochester, NY. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Rochester Yacht Club fireworks display. This zone will be effective and enforced from 9:30 p.m. until 11:00 p.m. on June 22, 2013. This zone will encompass all waters of the Genesee River, Rochester, NY within a 560 foot radius of position 43°15′36.6″ N and 77°36′00.6″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. 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 might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Genesee River on the evening of June 22, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this safety zone would be activated, and thus subject to enforcement, for only 90 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

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** section 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. Unfunded Mandates Reform Act

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it 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 record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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. Chapters 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.T09–0312 to read as follows:

§ 165.T09–0312 Safety Zone; Rochester Yacht Club Fireworks, Genesee River, Rochester, NY.

(a) *Location.* This zone will encompass all waters of the Genesee River, Rochester, NY within a 560 foot radius of position 43°15′36.6″ N and 77°36′00.6″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on June 22, 2013 from 9:30 p.m. until 11:00 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 23, 2013.

S.M. Wischmann,

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

[FR Doc. 2013–13661 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0055; FRL–9820–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision for the Commonwealth of Pennsylvania submitted by Allegheny County Health Department (ACHD). This SIP revision consists of a demonstration that Allegheny County's portion of the Pennsylvania requirements of reasonably available control technology (RACT) for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) satisfy the RACT requirements set forth

by the Clean Air Act (CAA). This SIP revision demonstrates that all requirements for RACT are met through: Certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA under the 1-hour ozone national ambient air quality standards (NAAQS) are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour ozone NAAQS; a negative declaration demonstrating that no facilities exist in Allegheny County for certain control technology guideline (CTG) categories; and a new RACT determination for a specific source. This action is being taken under the CAA.

DATES: This final rule is effective on July 10, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0055. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201. Copies are also available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On February 26, 2013 (78 FR 13007), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Allegheny County's SIP revision addressing the RACT requirements under the 8-hour ozone NAAQS. The formal SIP revision was submitted by the Commonwealth of Pennsylvania on May 5, 2009.

EPA requires for the 8-hour ozone NAAQS that states meet the CAA RACT requirements, either through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour ozone NAAQS attainment purposes or through the establishment of new or more stringent requirements that represent RACT control levels. *See 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* (Phase 2 Rule), (70 FR 71612, 71655, November 29, 2005).

II. Summary of the SIP Revision

On May 5, 2009, the Pennsylvania Department of Environmental Protection (PADEP) submitted on behalf of ACHD a SIP revision addressing the RACT requirements for Allegheny County under the 8-hour ozone NAAQS set forth by the CAA. Allegheny County's SIP revision is consistent with the Phase 2 Rule and satisfies the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS through: (1) Certification that previously adopted RACT controls in Allegheny County's SIP, which were approved by EPA under the 1-hour ozone NAAQS, are based on the currently available technically and economically feasible controls and continue to represent RACT for the 8-hour ozone NAAQS; (2) a negative declaration demonstrating that no facilities exist in Allegheny County for the applicable CTG categories; and (3) a new RACT determination for a single source based upon reliance on the Maximum Achievable Control Technology (MACT) standard as allowed in the Phase 2 Rule. Additional details on the SIP revision as well as the rationale for EPA's proposed action are included in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Allegheny County's 8-hour ozone RACT demonstration submitted to EPA on May 5, 2009 as a revision to the Allegheny County's portion of the Commonwealth of Pennsylvania's SIP.

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 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, which approves Allegheny County's 8-hour ozone RACT demonstration, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 16, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for RACT under the 8-hour ozone NAAQS for Allegheny County at the end of the table. The added text reads as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
RACT under the 8-hour ozone NAAQS.	Allegheny County	5/5/09	6/10/13 [*Insert page number where the document begins*].	

* * * * *

[FR Doc. 2013–13598 Filed 6–7–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130212129–3474–02]

RIN 0648–XC715

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Adjusted Closure of the 2013 Gulf of Mexico Recreational Sector for Red Snapper

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces an adjusted closure of the recreational sector for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2013 fishing season through this temporary rule. On May 31, 2013, the U.S. District Court for the southern district of Texas, Brownsville Division, set aside a March 25, 2013, emergency rule that gave the NMFS Regional Administrator the authority to close the recreational sector for red snapper in the EEZ off individual Gulf states. Therefore, NMFS adjusts the closure of the recreational sector for red snapper by closing the entire Gulf EEZ on June 29, 2013, instead of closing the EEZ on different days off individual Gulf states. This Gulf-wide EEZ closure is based on the Court decision and is necessary to prevent the recreational sector from exceeding its quota for the fishing year and prevent overfishing of the Gulf red snapper resource.

DATES: The closure is effective 12:01 a.m., local time, June 29, 2013, until 12:01 a.m., local time, January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone 727–824–5305, email *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

On March 25, 2013, NMFS implemented an emergency rule to authorize the NMFS Regional Administrator to set the closure date of the red snapper recreational fishing season in the exclusive economic zone (EEZ) off individual states (78 FR 17882). This was intended to compensate for the additional harvest of red snapper by the recreational sector during less restrictive state-water seasons off certain states. On May 31, 2013, the U.S. District Court for the southern district of Texas, Brownsville Division, set aside this emergency rule. Therefore, the closure of the recreational sector for red snapper for the 2013 fishing year is adjusted so that the Federal recreational red snapper season is consistent across all Gulf states. Taking into account the catches expected later in 2013 during the extended state-water seasons off Texas, Louisiana, and Florida, and the increased quota published in a final rule

on May 29, 2013 (78 FR 32179), NMFS projects the recreational red snapper quota of 4.145 million lb (1.880 million kg), round weight (50 CFR 622.39(a)(2)(i)), to be harvested in 28 days. Therefore, NMFS closes the recreational sector for red snapper in the entire Gulf EEZ at 12:01 a.m., local time, June 29, 2013. The closure dates off individual Gulf states that published in the final rule on May 29, 2013 (78 FR 32179) are therefore no longer in effect.

During the Gulf-wide EEZ closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero. In addition, a person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued must also abide by these closure provisions in state waters. NMFS has determined this action is necessary to prevent the recreational sector for red snapper from exceeding its quota for the fishing year.

Classification

The Regional Administrator, Southeast Region, NMFS, (RA) has determined this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.39(a)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the rule implementing the recreational red snapper quota and the rule implementing the requirement to close the recreational sector when the quota is reached or projected to be reached have already been subject to notice and comment, and NMFS must now notify the public of the adjusted closure. Such procedures are contrary to the public interest because the recreational fishing season opened 1 day after the Court set aside the emergency rule authorizing state specific EEZ closures, and the quota is projected to be reached quickly. Providing prior notice and opportunity for public comment on this action would also be contrary to the public interest because many of those affected by the length of the recreational fishing season, particularly charter vessel and headboat operations, book trips for clients in advance and, therefore need as much time as possible to adjust business plans to account for the adjusted recreational fishing season.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: June 5, 2013.

Kara Meckley,

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

[FR Doc. 2013–13680 Filed 6–5–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120814336–3495–03]

RIN 0648–BC27

Magnuson-Stevens Act Provisions, Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 48; Final Rule; Correction

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

ACTION: Final rule; stay and correction.

SUMMARY: This action corrects the ''Dates'' section in the interim final rule for Northeast (NE) Multispecies Framework Adjustment 48, published on May 3, 2013. It also stays a provision that inadvertently was made effective on May 1, 2013.

DATES: Section 648.83(a)(1) is stayed effective from June 10, 2013 to July 1, 2013. The effective date of the addition of § 648.84(e) published May 3, 2013 (78 FR 26158) is corrected to June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, *Liz.Sullivan@noaa.gov*, phone: 978–282–8493, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

This action corrects the ''Dates'' section referenced in the final rule for Framework Adjustment 48, published on May 3, 2013 (78 FR 26118). The Framework Adjustment 48 final rule states: ''**DATES**: Effective May 1, 2013, except for the amendment to § 648.84, which is effective July 1, 2013.'' This is incorrect. The correct language should have read: ''**DATES**: Effective May 1, 2013, except for the amendment to § 648.83, which is effective July 1, 2013.''

Framework Adjustment 48 reduced the NE multispecies minimum fish sizes for several groundfish stocks. The regulations retaining to minimum fish sizes are found in § 648.83. Measure 13 of the final rule implementing Framework Adjustment 48 explains the need to address discrepancies between state and Federal minimum fish sizes, stating that different fish sizes could complicate compliance and enforcement of this measure. Because of this concern, NMFS intended to delay the effective date of the measure to reduce minimum sizes until July 1, 2013, to allow state agencies additional time to consider and make corresponding adjustments to their minimum sizes. However, the ''Dates'' section of the Framework Adjustment 48 final rule inadvertently stated that measures in § 648.84 were being delayed instead. Section 648.84 relates to gear-marking requirements and gear restrictions. The text of Framework Adjustment 48 did not specify an alternative effective date for revisions to § 648.84, and the intention was to have those revisions become effective with the remainder of the amendments to part 648 on May 1, 2013.

This action corrects this inadvertent error by staying § 648.83(a)(1) from June 10, 2013 to July 1, 2013, and making § 648.84(e) effective on June 10, 2013.

Classification

Pursuant to 5 U.S.C. 533(d), the Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the 30-day delay in effective date because it is contrary to the public interest to retain effective dates that merely reflect a typographical error. The correction to the effective date of the revisions to § 648.84 needs to be effective immediately in order to properly implement the rule as intended, and as described in the preamble to the published final rule (May 3, 2013, 78 FR 26118). A delay would be contrary to the public's interest because it would leave in place the improperly delayed July 1, 2013, effective date for gear-marking requirements and gear restrictions (§ 648.84), and an incorrect May 1, 2013, effective date for new reductions in the multispecies minimum fish sizes (§ 648.83). Therefore, pursuant to 5 U.S.C. 553(d), the AA finds good cause to waive the 30-day delay in effective date.

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

Dated: May 30, 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.

[FR Doc. 2013–13195 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 111
Monday, June 10, 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 Safety and Inspection Service

9 CFR Part 317

[Docket No. FSIS–2008–0017]

RIN 0583–AD45

Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to require the use of the descriptive designation ''mechanically tenderized'' on the labels of raw or partially cooked needle- or blade-tenderized beef products, including beef products injected with marinade or solution, unless such products are destined to be fully cooked at an official establishment. Beef products that have been needle- or-blade-tenderized are referred to as ''mechanically tenderized'' products. FSIS is proposing that the product name for such beef products include the descriptive designation ''mechanically tenderized'' and an accurate description of the beef component. By including this descriptive designation consumers will be informed that this product is non-intact. Non-intact products need to be fully cooked in order to be rendered free of pathogenic bacteria because bacteria may become translocated from the surface of the meat during mechanical tenderization. FSIS is also proposing that the print for all words in the descriptive designation as the product name appear in the same style, color, and size and on a single-color contrasting background. In addition, FSIS is proposing to require that labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions include validated cooking instructions that inform consumers that these products need to be cooked to a specified minimum internal temperature, and whether they need to be held at that minimum temperature for a specified time before consumption, *i.e.,* dwell time or rest time, to ensure that they are fully cooked.

Based on the scientific evidence that indicates that mechanically tenderized beef products need to be cooked more thoroughly than intact beef products, FSIS is proposing these amendments to the regulations.

FSIS is also announcing that it has posted on its Web site guidance for developing validated cooking instructions for mechanically tenderized product. The recommendations in the guidance document are based on the results from published research designed to identify minimum internal temperature and time combinations sufficient to render a product and studies designed to validate cooking instructions.

DATES: Comments must be received by August 9, 2013.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule and on the guidance for validated cooking instructions. 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, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163B, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163B, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0013. 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 SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–3700; Telephone: (202) 205–0495; Fax: (202) 720–2025.

SUPPLEMENTARY INFORMATION:

Executive Summary

Mechanically tenderized beef products are products that have been needle- or blade-tenderized, or have been injected with a marinade or a solution. The act of mechanically tenderizing a beef product potentially pushes pathogens from the exterior of the product into its interior. Because mechanically tenderized beef products are non-intact products, they need to be more fully cooked than intact beef products where potential pathogens are generally limited to the product's surface. The time-and-temperature combination needed to destroy pathogens on the surface of the intact product is less than that necessary to destroy pathogens that may reside in the interior of the non-intact product.

Requiring mechanically tenderized beef products to be labeled with a descriptive designation that identifies them as mechanically tenderized and accompanied with validated cooking instructions is intended to help inform consumers and instruct them that such products need to be fully cooked.

Under the Federal Meat Inspection Act (FMIA) the labels of meat products must be truthful and not misleading, and the labels must accurately disclose to consumers what they are buying when they purchase any meat product. The FMIA gives FSIS broad authority to promulgate rules and regulations necessary to carry out its provisions.

FSIS is proposing that the labeling of raw or partially cooked mechanically tenderized beef products bear a descriptive designation that clearly identifies that the product has been mechanically tenderized, unless such

product is destined to be fully cooked in an official establishment.[1]

To ensure that the descriptive designation is readily apparent on the label, FSIS is proposing that the print for all words in the descriptive designation, as well as the words in the description of the product, appear in the same font style, color, and size as the product name and on a single-color contrasting background.

FSIS is also proposing to require that labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants and similar institutions include cooking instructions that have been validated to ensure that a sufficient number of potential pathogens throughout the product are destroyed. FSIS will provide a Compliance Guide to help establishments develop validated cooking instructions.

TABLE 1—SUMMARY OF ESTIMATED COSTS AND BENEFITS

	Benefits [b]	Costs	Net Benefits
Estimated Quantified Benefits, Costs, and Net Benefits [a]			
If this proposed rule is finalized *after* the final rule for products with added solutions.	$1,511,000 ($121,000 to $11,641,000)	$140,000 [c]	$1,371,000 (−$19,000 to $11,501,000)
If this proposed rule is finalized *before* the final rule for products with added solutions.	$1,511,000 ($121,000 to $11,641,000)	$349,000 [d]	$1,162,000 (−$228,000 to $11,292,000)
Non-Quantified Benefits and Costs			
	• Truthful and accurate labeling • Increased public awareness of product identities. • Better market information to consumers. • Increased producer surplus to producers who sell intact beef or other meats consumers may substitute for mechanically-tenderized beef.	• Cost to validate cooking instructions. • Loss in producer surplus to producers who sell mechanically tenderized beef. • Loss in consumer surplus to consumers who start cooking their beef to a higher temperature, which they prefer less than cooking rare. • Loss in consumer surplus to consumers who might substitute other meats or other cuts of meat, which they prefer less. • Costs incurred by food service providers that change their standard operating procedures related to intact and mechanically-tenderized beef.	

[a] Annualized over 10 years at a 7 percent discount rate.
[b] Assumes that on the low end, 15% of consumers and 0% of food service providers will use validated cooking instructions and using the lower bound of the credibility interval from Scallan while on the high end, 56% of consumers and 100% of food service providers and using the upper bound of the credibility interval from Scallan will use validated cooking instructions, with an average estimate of 24% for consumers and 24% for food service providers.
[c] Estimated costs fall to $120,000 and net benefits rise by $20,000 when annualized with a 3 percent discount rate.
[d] Estimated costs fall to $298,000 and net benefits rise by $51,000 when annualized with a 3 percent discount rate.
Source: FSIS Policy Analysis Staff.

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695, at 21 U.S.C. 607) provides for the approval by the Secretary of Agriculture of the labels of meat and meat food products before these products can enter commerce. The FMIA also prohibits the distribution in commerce of meat or meat food products that are adulterated or misbranded.

The FMIA provides that a product is misbranded if its labeling is false or misleading in any particular, or if it is offered for sale under the name of another food (21 U.S.C. 601(n)(1),601(n)(2)). Thus, under the FMIA, the labels of meat or meat food products must be truthful and not misleading, and the labels must accurately disclose to consumers what they are buying when they purchase any meat product. The FMIA gives FSIS broad authority to promulgate rules and regulations necessary to carry out its provisions (21 U.S.C. 621).

To prevent meat or meat food products from being misbranded, the meat inspection regulations require that the labels of meat products contain specific information and that such information be displayed as prescribed in the regulations (9 CFR part 317). Under the regulations, the principal display panel on the label of a meat product must include, among other information, the name of the product. For products that purport to be or are represented by a regulatory standard of identity, the name of the product on the label must be the name of the food specified in the standard. For any other product, the name on the label must be ''the common or usual name of the food, if any there be.'' If there is no common or usual name, the name on the label must be a ''truthful, descriptive designation'' (9 CFR 317.2(c)(1)). In addition, the meat inspection regulations require that the descriptive designations for products that have no

[1] Any slaughtering, cutting, boning, meat canning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under [FSIS] regulations (9 CFR 301.2).

common or usual name completely identify the product, including the method of preparation, such as salting, smoking, drying, cooking, or chopping, unless the product name implies, or the manner of packaging shows, that the product was subject to such preparation (9 CFR 317.2(e)).

Petition Related to Mechanically Tenderized Products

In 2009, the Safe Food Coalition sent a petition to the Secretary of Agriculture to request, among other issues, regulatory action to require that the labels of mechanically tenderized beef products disclose the fact that the products have been mechanically tenderized. The petition stated that, (1) consumers and restaurants do not have sufficient information to ensure that these products are cooked safely because FSIS does not provide recommended cooking temperatures for mechanically tenderized products, (2) the recommended cooking temperatures for intact products are not appropriate for non-intact, mechanically tenderized products, and (3) a labeling requirement for mechanically tenderized products is critical for consumers and retail outlets, so that they have the information necessary to safely prepare these products.

In June 2010, the Conference for Food Protection (CFP) petitioned FSIS to issue a mandatory labeling provision for mechanically tenderized beef that would require labels to specify that a cut has been mechanically tenderized. The petition stated that mechanically tenderized beef, especially when frozen, could be mistakenly perceived by consumers to be a whole, intact muscle cut. The petition asserted that without clear labeling, food retailers and consumers do not have the information necessary to prepare these products safely. According to the petition, if labeling does not indicate that the product is mechanically tenderized, consumers are not aware of the potential risk created when these products are less than fully cooked. The petition stated that mandatory labeling of these products would reduce the number of foodborne illnesses in the United States.

Mechanically Tenderized Beef

Mechanically tenderized beef products are products that have been needle- or blade-tenderized, or have only been injected with a marinade or solution. FSIS has previously described mechanically tenderized beef products in this manner, notably in its **Federal Register** notice, HACCP Plan Reassessment for Mechanically Tenderized Beef Products (May 26, 2005; 70 FR 30331). FSIS is asking for comment on this definition of mechanically tenderized beef products and on whether it should be incorporated into the regulations.

Consumers consider product tenderness to be a key factor when purchasing meat products, and the tenderness of a roast or steak is a key selling point for the meat industry. The tenderness of a meat product depends on the cut of the meat, and there are various techniques that companies can use to improve the tenderness of the less tender cuts, including mechanical tenderization.

The mechanical tenderization process involves piercing the product with a set of needles or blades, which breaks up muscle fiber and tough connective tissue, resulting in increased tenderness.[2] Research has shown that needle or blade mechanical tenderization can improve the tenderness of less tender, and typically less expensive, beef cuts.[3 4 5 6] The process makes the less tender cuts of beef more marketable to consumers.

An increasing number of establishments use mechanical tenderization processes for beef.[7] The mechanically tenderized products are widely available to consumers in the marketplace.

Mechanically tenderized products are referred to as ''non-intact'' and have different physical attributes than intact, non-tenderized products. A beef product that has been subjected to the mechanical tenderization process is more tender than it would have been had it not been mechanically tenderized, but it is no longer an intact cut of meat. Significantly, products that have been needle- or blade-tenderized are typically indistinguishable in appearance from whole, intact products. Furthermore, under the current regulatory approach, intact and mechanically tenderized beef products are permitted to have the same product name, and products that have been mechanically tenderized need not disclose this fact in their labeling. Thus, the labeling of mechanically tenderized beef products is not required to reveal a significant material fact about the nature of the product. Without information about this fact on the product labeling, consumers and industry may be purchasing these products without knowing that they have been needle- or blade-tenderized.

Since 2000, the Centers for Disease Control and Prevention has received reports of six outbreaks attributable to needle- or blade-tenderized beef products prepared in restaurants and consumers' homes. The outbreaks included steaks that were mechanically tenderized with added solutions and one outbreak involving mechanically tenderized steaks in which no information was available concerning whether the product contained added solutions. Among these outbreaks, there were a total of 176 *Escherichia coli* (*E. coli*) O157:H7 cases that resulted in 32 hospitalizations and 4 cases of hemolytic uremic syndrome (HUS).[8]

[2] Maddock, Robert 2008. Mechanical Tenderization of Beef, National Cattleman's Beef Association.

[3] Jeremiah, L.E., L.L. Gibson, B. Cunningham 1999. The Influence of Mechanical Tenderization on the Palatability of Certain Bovine Muscle Food Research International 32: (585–591).

[4] Pietrasik, Z., Shand, P.J. 2004. Effect of Blade Tenderization and Tumbling Time on the Processing Characteristics and Tenderness of Injected Cooked Roast Beef. Meat Science 66: (871–879).

[5] King, D.A., Wheeler, T.L. Shackelford, S.D., Pfeiffer, K.D., Nickelson, R., Koolmaraie, M. 2009. Effect of Blade Tenderization, Aging Time, and Aging Temperature on tenderness of Beef Lumborum and Gluteus Medius. J. Animal Science 87:(2962–2960).

[6] Pietrasik, Z., Aslhus, J.L., Gibson, L.L., Shand, P.J. 2010. Influence of Blade Tenderization, Moisture Enhancement and Pancretin Enzyme Treatment on the Processing Characteristics and Tenderness of Beef Semitendinosus Muscle. Meat Science 84: (512–517).

[7] According to FSIS's Checklist and Reassessment of Control for *E. coli* O157:H7 in Beef Operations, 850 of 2323 establishments indicated that they had a mechanical tenderizing operation, *http://www.fsis.usda.gov/PDF/Ecoli_Reassessment_&_Checklist.pdf*. In addition, a 2003 National Cattleman's Beef Association survey found that 188 of 200 processors used mechanical tenderization, *http://docserver.ingentaconnect.com/deliver/connect/iafp/0362028x/v71n11/s4.pdf?expires=1300291287&id=61762965&titleid=5200021&accname=NAL-Group3&checksum=57C4A9F3F73D2022F0EEFFA2568826BF*.

[8] Compilation of USDA–FSIS Data, 2010.

TABLE 2—OUTBREAKS LINKED TO TENDERIZED/MARINATED STEAKS ORIGINATING IN THE UNITED STATES (COMPILATION OF FSIS GENERATED DATA)

Year	Product	Case patients/ Epi. link	Hospitalizations/Deaths	FSIS Recall number
2009	Blade tenderized steaks, vacuum tumbled with marinade.	25/17-steak	10/1[a]	067–2009 (USDA–FSIS, 2009).
April–May 2007	Needle injected and marinated steaks	8/8	6/0	019–2007 (USDA–FSIS, 2007).
May–Aug. 2007	Needle tenderized, seasoned tri-tip beef	124/124	8/0	No Recall.[b c]
July–Aug. 2004	Blade tenderized steaks exposed to marinade in vacuum tumbler.	4/4	1/0	033–2004 (USDA–FSIS, 2004).
May–June 2003 (Laine *et al.,* 2005).	Bacon wrapped steaks, mechanically tenderized, injected flavoring.	13/13	7/0	028–2003 (USDA–FSIS, 2003).
Aug. 2000	Needle tenderized	2/2	0/0	No Recall.[d e]
Total		176/168	32/1	

a. Patient who died did not eat steak.
b. Illnesses were all associated with product served through the restaurant/food-to-go operation that had some sanitary violations.
c. Notes indicate that a seasoning/marinade was used in the needling process.
d. Unknown whether solution was added.
e. FSIS was not involved in the original investigation.

Five of the six outbreaks listed in Table 2 had solutions added to the tenderized beef. These five outbreaks accounted for 174 of the 176 illnesses. The remaining two illnesses occurred in an outbreak in which steak was mechanically tenderized, but it was not known if solution was added.

Follow up investigations suggested that failure to fully cook a mechanically tenderized raw or partially cooked beef product was likely a significant contributing factor in all of these outbreaks. In many cases, patients associated with outbreaks reported preparing or ordering steaks as ''rare'' or ''medium-rare.'' [9] [10] Published research suggests that pathogens can be translocated from the surface of mechanically tenderized beef products to the interior during processing because of the piercing of the beef by the needle or blade.[11] The potential for translocation of pathogens to the interior of the product suggests that the interior of mechanically tenderized beef would need to be more fully cooked than a piece of intact beef with a similar amount of pathogens only on the surface.[12]

This research led FSIS to recommend on its Web site that mechanically tenderized beef products should be cooked to 145 °F with a three-minute dwell time because it will result in a 5.0-log reduction of *Salmonella* throughout the product.[13] [14] *Salmonella* is an indicator for lethality because it is more heat-resistant than other pathogens such as *E. coli* O157:H7. Therefore, if a 5.0-log reduction of *Salmonella* is achieved, at least a 5-log reduction of *E. coli* O157:H7 should be achieved as well [15].

Consumers often prefer to eat their steaks ''rare'' or ''medium rare.'' Generally, intact cuts of muscle such as steaks should be free of pathogenic bacteria such as *E. coli* O157:H7 and other Shiga-toxin producing *E. coli* (STEC) organisms if cooked to these desired levels of doneness because contamination with pathogenic bacteria, if present, would likely only occur on the surface of the product. The National Advisory Committee on Microbiological Criteria for Foods (1997) stated that ''due to the low probability of pathogenic organisms being present in or migrating from the external surface to the interior of beef muscle, cuts of intact muscle (steaks) should be safe if the external surfaces are exposed to temperatures sufficient to effect a cooked color change''.[16] To date, no outbreaks or sporadic illnesses from consuming intact product have been reported to CDC.[17]

Descriptive Designation

FSIS has carefully considered the available information on mechanically tenderized beef, including the petitions submitted by the Safe Food Coalition and by CFP, and has concluded that without specific labeling, raw or partially cooked mechanically tenderized beef products could be mistakenly perceived by consumers to be whole, intact muscle cuts. The fact that a cut of beef has been needle- or blade-tenderized is a characterizing feature of the product and, as such, a material fact that is likely to affect consumers' purchase decisions and that should affect their preparation of the product. The literature suggests that many consumers are aware of and a portion of these read the safe handling instructions labels, and reported changing their meat preparation methods because of the labels.[18] [19] [20] [21] [22] [23] Because of the

[9] Culpepper, W., Ihry, T., Medus, C., Ingram, A., Von Stein, D., Stroika, S., Hyytia-Trees, E., Seys, S., Sotir, M.J. 2010. Multi-state outbreak of *Escherichia coli* O157:H7 infections associated with consumption of mechanically-tenderized steaks in restaurants—United States, 2009. Presented at International Association for Food Protection; August 1–4, 2010; Anaheim, CA.

[10] Haubert, N., Cronquist, A., Parachini, S., Lawrence, J., Woo-Ming, A., Volkman, T., Moyer, S., Watkins, A. 2006. Outbreak of *Escherichia coli* O157:H7 Associated with Consuming Needle Tenderized Undercooked Steak from a Restaurant Chain—Denver Area, Colorado, 2004. Presented at International Conference of Emerging Infectious Diseases; March 19–22, 2006; Atlanta, GA.

[11] Luchansky, JB, Phebus RK, Thippareddi H, Call JE 2008. Translocation of surface-inoculated *Escherichia coli* 0157:H7 into beef subprimals following blade tenderization. J. Food Prot. 2008 Nov.; 71(11):2190–7.

[12] Sporing, Sarah B. 1999. *Escherichia coli* O157:H7 Risk Assessment for Production and Cooking of Blade Tenderized Beef Steak. Thesis. Kansas State University.

[13] *http://askfsis.custhelp.com/ci/fattach/get/4648/.*

[14] Goodfellow, S. J. and Brown. W. L. 1978. Fate of *Salmonella* Inoculated into Beef for Cooking J. of Food Protect. 41: (598–605).

[15] Line, J.E. Fain, A.R. Moran, A.B, Martin, L.M., Lechowch, R.V., Carosella, J.M., and Brown, W.L. 1991. Lethality of heat to *Escherichia coli* O157:H7: D-value and Z-value determinations in ground beef J Food Protect. 54:(762–766).

[16] National Advisory Committee on Microbiological Criteria for Foods (NACMCF). 1997. Recommendations for Appropriate Cooking Temperatures for Intact Beef Steaks & Cooked Beef Patties for the Control of Vegetative Enteric Pathogens. U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, DC.

[17] National Advisory Committee on Microbiological Criteria for Foods (NACMCF). 1997. Recommendations for Appropriate Cooking Temperatures for Intact Beef Steaks & Cooked Beef Patties for the Control of Vegetative Enteric Pathogens. U.S. Department of Agriculture, Food Safety and Inspection Service, Washington, DC.

[18] Yang *et al* (1999) show that 15% of consumers changed their behavior based on reading safe handling instruction labels. (Evaluation of Safe Food-Handling Instructions on Raw Meat and

likelihood that illness rates would be reduced if more specific labeling were required, FSIS proposes that the labeling of raw or partially cooked mechanically tenderized beef products bear a descriptive designation that clearly identifies the product has been mechanically tenderized unless such product is destined to be fully cooked in an official establishment. The proposed descriptive designation will provide household consumers, official establishments, restaurants, and retail stores with the information they need to identify whether a cut of beef is an intact, non-tenderized product, or whether it is a non-intact, mechanically tenderized product. Should this rule become final, FSIS will conduct a public education campaign to explain the significance of the term ''mechanically tenderized'' to consumers.

FSIS is proposing that if raw or partially cooked mechanically tenderized beef product is destined to be fully cooked at an official establishment, the descriptive designation would not be required on the product label. Therefore, if one establishment produces raw or partially cooked product and sends it to a second establishment for cooking, the first establishment would not be required to include the descriptive designation on the product label.

The descriptive designation that FSIS is proposing would only apply to raw or partially cooked beef products that have been needle tenderized or blade tenderized, including beef products injected with marinade or solution. Other tenderization methods such as pounding and cubing change the appearance of the product, putting consumers on notice that the product is not intact. Additionally, a majority of establishments already identify products that have been cubed on the label.

FSIS is proposing to require that the label of needle- or blade-tenderized beef products contain the designated description ''mechanically tenderized'' because this term accurately and truthfully describes the nature of the product. Additionally, this term clearly and completely identifies the preparation process that the product underwent. FSIS's goal is to choose a term that will not affect consumers' perception of the quality, or cost, of the product. Rather, FSIS sought to simply differentiate mechanically tenderized beef products from non-tenderized, intact beef products. The term ''mechanically tenderized'' is non-technical and likely will be understood by consumers, restaurants, retail stores, and official establishments, although FSIS is taking comment on this assumption.

To ensure that the descriptive designation is readily apparent on the label, FSIS is proposing that the print for all words in the descriptive designation, as well as the words in the description of the product, appear in the same font style, color, and size as the product name and on a single-color contrasting background.

At this time, FSIS is not proposing similar labeling requirements for mechanically tenderized poultry products or for other mechanically tenderized meat products, such as pork. While FSIS has the checklist data discussed above for beef products, FSIS does not have similar data for other products necessary to assess production practices for mechanically tenderized products. There have been no known outbreaks for mechanically tenderized poultry or non-beef products.

FSIS is not proposing to require the descriptive designation on needle- or blade-tenderized beef products that are fully cooked in an official establishment because such products do not pose the same pathogen hazard as the raw or partially cooked products. Further, consumers can recognize that a product has been cooked. FSIS requests comment on whether it should require fully cooked needle- or blade-tenderized beef products to have the descriptive designation on their labels.

Validated Cooking Instructions for Raw and Partially Cooked Mechanically Tenderized Products

FSIS is proposing to amend the regulations to require validated cooking instructions on the labels of mechanically tenderized beef products. Under current regulations, to prevent raw and partially cooked meat products from being misbranded, the labels of all meat products, including those that have been mechanically tenderized, are required to include safe handling instructions as prescribed in 9 CFR 317.2(l). These regulations require that the labels of raw and partially cooked meat that are not intended for further processing at an official establishment include the statement: ''This product was prepared from inspected and passed meat and/or poultry. Some food product may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions'' (9 CFR 317.2(l)(2)). One of the instructions required under the regulations is to ''cook thoroughly'' (9 CFR 317.2(l)(3)(iii)).

Although the safe handling instructions in the regulations include ''cook thoroughly'' in the labeling of raw and partially cooked meat and poultry products, the regulations do not require that these instructions specify the dwell time or internal temperature parameters required to ensure that the product is fully cooked. Because mechanically tenderized products have the same appearance as intact products, household consumers, hotels, restaurants, and similar institutions may incorrectly assume that mechanically tenderized products may be prepared similarly to intact products (*i.e.,* that it is ok to cook the product ''rare'' or ''medium-rare''), even if the product label shows that the product is mechanically tenderized. This increases the likelihood that household consumers, hotels, restaurants, and similar institutions will undercook a mechanically tenderized product.

Despite the safe handling instructions to ''cook thoroughly,'' recent outbreak data suggest that for needle- or blade-tenderized raw beef products, consumers, restaurants, and retail stores do not always fully cook these products using a temperature-and-time combination sufficient to destroy harmful bacteria, such as *Escherichia coli* O157:H7 (*E. coli* O157:H7), in the product. CDC and other governmental investigators have found that failure to fully cook a mechanically tenderized raw or partially cooked beef product was likely a significant contributing factor in the outbreaks.[24] [25] In many

Poultry Products. J of Food Protect. 63: (1321–1325.)

[19] Bruhn (1997) shows that 17% of consumers changed their behavior based on reading safe handling instructions. Consumer Concerns Motivating to Action, Emerging Infectious Diseases. 3(4): 511–515.

[20] Adul-Nyako *et al* (2003) show a significant positive influence of labels on safe handling practices. Safe Handling Labels and Consumer Behavior in the Southern U.S.

[21] Cates, Sheryl C., Cignetti, Connie, Kosa, Katherine M. March 22, 2002. RTI: Consumer Research on Food Safety Labeling Features for the Development of Responsive Labeling Policy.

[22] Cates, Sheryl C., Cignetti, Connie, Kosa, Katherine M. March 22, 2002. RTI: Consumer Research on Food Safety Labeling Features for the Development of Responsive Labeling Policy.

[23] Cates, Sheryl C., Carter-Young, Heather L., Gledhill, Erica C. April 25, 2001. RTI: Consumer Perceptions of Not-Ready-to-Eat Meat and Poultry Labeling Terminology.

[24] Swanson, L. E., Scheftel, J.M., Boxrud, D.J., Vought, K.J., Danila, R.N., Elfering, K.M., and Smith, K.E. 2005. Outbreak of *Escherichia coli* O157:H7 infections associated with nonintact blade-tenderized frozen steaks sold by door-to-door vendors. J. Food Prot 68:(1198–1202).

Continued

cases, patients reported preparing or ordering steaks as ''rare'' or ''medium rare.''

Because restaurants may not know that products are mechanically tenderized, they may prepare for their customers mechanically tenderized beef products that are ''rare'' or ''medium-rare.'' Indeed, their customers may ask them to do so. Research on the sensory and cooking characteristics of various beef cuts suggests that the palatability of beef cuts decreases as the internal endpoint temperature increases. Other research has shown that consumers tend to prefer beef products that are cooked to a lower degree of doneness than that needed to reach the necessary internal temperature for a mechanically tenderized product, which needs to be fully cooked throughout its interior.[26] In some studies, consumers have given highest ratings to such underdone beef products.[27] [28] [29] Consumers thus may order steaks that are cooked to a lesser degree of doneness than that necessary to fully cook them and restaurateurs may consequently serve the less-done products. FSIS requests comments on how the proposed labeling changes are likely to impact restaurants and other food service operations.

On the basis of these studies, scientific evidence referred to earlier in this document, and other studies [30] [31] [32] that indicate that mechanically tenderized beef products need to be cooked more thoroughly than intact beef products, FSIS is making an additional proposal. Thus, in addition to a descriptive designation that identifies that needle- or blade-tenderized beef products have been mechanically tenderized, FSIS is proposing to require that labels of raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants and similar institutions include cooking instructions that have been validated to ensure that potential pathogens throughout the product are destroyed.

Under this proposal, needle- or blade-tenderized beef products that are destined to be fully cooked at an official establishment would not be required to include validated cooking instructions on product labels. Official establishments are required to follow regulatory performance standards to ensure that ready-to-eat products receive a full lethality treatment (for cooked beef, roast beef, and cooked corned beef products, see 9 CFR 318.17) and use controls to prevent post-lethality contamination with *Listeria monocytogenes* (9 CFR 430.4).

FSIS is proposing to require that the validated cooking instructions include, at a minimum: (1) the method of cooking; (2) a minimum internal temperature validated to ensure that potential pathogens are destroyed throughout the product; (3) whether the product needs to be held for a specified time at that temperature or higher before consumption; and (4) instruction that the internal temperature should be measured by the use of a thermometer. The Agency is proposing to require that the cooking instruction statement include the cooking method because consumers need explicit information about how to cook a product in order to ensure that it is safe for consumption. The cooking instructions included on the label should be practical and likely to be followed by consumers. FSIS is proposing that cooking instructions must be validated to ensure that potential pathogens are destroyed throughout the product as determined by the specified minimum internal temperature and dwell time for the product before consumption.

Consistent with the regulation on HACCP validation (9 CFR 417.4), to validate the cooking instructions, should this rule become final, the establishment would be required to obtain scientific or technical support for the judgments made in designing the cooking instructions, and in-plant data to demonstrate that it is, in fact, achieving the critical operational parameters documented in the scientific or technical support. HACCP does not require establishments that produce mechanically tenderized product to have validated cooking instructions. But just as establishments have to validate their HACCP plans' adequacy in controlling the food safety hazards identified during the hazard analysis, so too, under this proposed rule, establishments that produce mechanically tenderized beef products will have to validate their cooking instructions. The scientific support would need to demonstrate that: (1) The cooking instructions provided can repeatedly achieve the desired minimum internal temperature and, if applicable, rest time and (2) the minimum internal time and, if applicable, rest time achieved by the instructions will ensure that the product is fully cooked to destroy potential pathogens throughout the product. The in-plant data would need to demonstrate that the establishment is, in fact, achieving the critical operational parameters documented in the scientific or technical support. For additional information on validation see the following **Federal Register** notice on HACCP Systems Validation (77 FR 27135; May 10, 2012) available at: *http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2009–0019.htm*.

Guidance on Validated Cooking Instructions

The Agency has posted on its Significant Guidance Documents Web page (*http://www.fsis.usda.gov/Significant_Guidance/index.asp*) guidance on validated cooking instructions for mechanically tenderized product. This guidance, drawing heavily on the findings of the two recent ARS studies (Luchansky 2011 and 2012) represents current FSIS thinking; however, FSIS requests comment on it and intends to update it as necessary before this rule becomes final. In addition to requesting comments on the guidance document, FSIS specifically requests additional scientifically valid data on cooking instructions developed for various mechanically tenderized beef products that have been found to consistently meet an endpoint temperature and rest time sufficient to ensure the product is fully cooked.

[25] Culpepper W, Ihry T, Medus C, Ingram A, Von Stein D, Stroika S, Hyytia-Trees E, Seys S, Sotir MJ. 2010. Multi-state outbreak of *Escherichia coli* O157:H7 infections associated with consumption of mechanically-tenderized steaks in restaurants—United States, 2009. Presented at International Association for Food Protection; August 1–4, 2010; Anaheim, CA.

[26] Schmidt, T.B., Keene, M.P, and Lorenzen, C.L. 2002. Improving Consumer Satisfaction of Beef Through the use of Thermometers and Consumer Education by Wait Staff. J. Food Sci. 67: (3190–3193).

[27] Lorenzen, C.L., T.R. Neely, R.K. Miller, J.D. Tatum, J.W. Wise, J.F. Taylor, M.J. Buyck, J.O. Reagan, and J.W. Savell. 1999. Beef Customer Satisfaction: Cooking Methods and Degree of Doneness Effects on the Top Loin Steaks. J. Animal Science 77:637–644.

[28] Savell, J.W., Lorenzen, C.L., Neely, T.R., Miller, R.K., Tatum, J.D., Wise, J.W., Taylor, J.F., Buyck, M.J., Reagan, J.O. 1999. Beef Customer Satisfaction: Cooking Methods and Degree of Doneness Effects on the Top Sirloin Steaks. J. Animal Science 77:645–652.

[29] Neely, T.E., Lorenzen,C.L., Miller,R.K., Tatum,J.D., Wise, J.W.,Taylor, J.F., Buyck,M.J., and Savell, J.W.. 1999. J. Animal Science 77:653–660. Beef Customer Satisfaction: Cooking Method and Degree of Doneness Effects on the Top Round Steak.

[30] Luchansky, J.B., Porto-Fett, A.C.S., Shoyer, B.A., Call, J.E., Schlosser, W., Shaw, W., Bauer, N., Latimer, H. 2012. Fate of Shiga toxin-Producing O157:H7 and non-O157:H7 *Escherichia coli* Cells within Blade-Tenderized Beef Steaks after Cooking on a Commercial Open-Flame Gas Grill. J. of Food Protect 75: (62–70).

[31] Johnston, R.W., M.E. Harris, A.B. Moran. 1978. The Effect of Mechanically Tenderization on Beef Rounds Inoculated with Salmonella. J. Food Safety 1:201–209.

[32] Johnston, R.W., M.E. Harris, A.B. Moran. 1978. The Effect of Mechanically Tenderization on Beef Rounds Inoculated with Salmonella. J. Food Safety 1:201–209.

Should this rule become final, establishments could collect their own scientific data to support the cooking instruction, use a study from an outside source, or use the guidance provided by FSIS. The guidance document provided by FSIS includes a summary of cooking instructions (*e.g.,* place product in an oven heated to X degrees F for X minutes to achieve the desired endpoint temperature of X degrees F for X minutes) drawn from the peer reviewed literature to achieve endpoint temperatures sufficient to ensure the product is fully cooked and the risk of contamination with a pathogen is sufficiently reduced. The format and wording of the instructions are based on best practices seen by the FSIS Labeling and Program Delivery Division (LPDD). The critical operational parameters from each study (*e.g.,* the cut of meat, method of tenderization, product thickness, and cooking method) are included in the summary so that establishments can select cooking instructions that will be applicable to their product. Establishments could utilize these cooking instructions on the labels of their products, without needing to conduct any additional experiments or provide any further scientific support, provided that the actual product being produced and labeled is similar to the product the instructions were developed for.

In the event that establishments are unable to use the specific examples in the guidance (*e.g.,* because the product is of a different thickness or is to be cooked using a different method than was previously studied), the guidance document also contains instructions on how to develop such support. The protocol provided is based on the experimental design employed in the recent ARS studies. Specifically, the document addresses the factors that should be considered when designing a validation study (*e.g.,* number of replicates, factors that affect heat transfer, testing methodology, etc.).

Affected Industry

The proposed new descriptive designation requirement would apply to all raw or partially cooked needle- or blade-tenderized beef products going to retail stores, restaurants, hotels, or similar institutions or to other official establishments for further processing other than cooking. The proposed requirements for validated cooking instructions would apply to raw or partially cooked mechanically tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions. If a second establishment repackages the product for household consumers, hotels, restaurants or similar institutions, the second establishment would be responsible for applying the validated cooking instructions to the product label. If retail stores repackage the product, they would be required to include the descriptive designation and validated cooking instructions from the official establishment on the retail label.

If this proposal is adopted as a final rule, establishments or retail stores would be permitted to add the required information to existing label designs, or they could apply a separate sticker with the required information to existing labels. FSIS would generically approve the modifications made to the labels for needle- or blade-tenderized beef products from official establishments based on the provisions for generic approval in 9 CFR 317.5(a)(1).

If this proposal is finalized, raw or partially cooked needle- or blade-tenderized beef products would have descriptive designations that are different from those of whole, intact products. Once implemented, raw or partially cooked beef products subject to this rule whose labels do not include the descriptive designation ''mechanically tenderized,'' and such products destined for household consumers, hotels, restaurants, or similar institutions whose labels do not include validated cooking instructions, would be misbranded because the product labels would be false or misleading, because the products would be offered for sale under the name of another food, and because the product labels would fail to bear the required handling information necessary to maintain the products' wholesome condition (21 U.S.C. 601(n)(1), 601(n)(2), and 601(n)(12)).

Of the 555 official establishments that produce mechanically tenderized beef products that could be affected by this proposed rule, 542 are small or very small according to the FSIS HACCP definition. There are about 251 very small establishments (with fewer than 10 employees) and 291 small establishments (with more than 10 but less than 500 employees). Therefore, a total of 542 small and very small establishments could possibly be affected by this rule. The FSIS HACCP definition assigns a size based on the total number of employees in each official establishment. The Small Business Administration definition of a small business applies to a firm's parent company and all affiliates as a single entity. These small and very small manufacturers, like the large manufacturers, would incur the costs associated with modifying product labels to add on the labels ''mechanically tenderized'' and validated cooking instructions needed to ensure adequate pathogen destruction.

Descriptive Designations on Intact Product

Note that intact beef products may bear a descriptive designation of ''intact,'' consistent with 9 CFR 317.2(e). However, such a descriptive designation is not required. If producers want to use such a descriptive designation on labels of intact product to distinguish it from non-intact product, FSIS would allow the designation and would not consider it a special statement requiring label approval by the Agency. Rather, FSIS would generically approve the labels with the statement based on the provisions for generic approval in 9 CFR 317.5(a)(1).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 12866 and Executive Order 13563

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

Baseline: The Final Report of the Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Product, February 2012 (February 2012 Report),[33] estimates that

[33] Muth, Mary K., Ball, Melanie, and Coglaiti, Michaela Cimini February 2012.: RTI International

Continued

there are 555 official establishments that produce blade, needle, and both blade and needle mechanically tenderized beef products.[34] In terms of assigned HACCP processing size, the 555 establishments are comprised of 251 very small, 291 small, and 13 large establishments. Total U.S. beef production was 24.3 billion pounds in 2010.[35] The February 2012 Report estimates that the proportion of beef products that is mechanically tenderized is about 10.5 percent of total beef products sold, or 2.6 billion pounds. Of these products, an estimated 318 million pounds were brand name packaged by the establishment for retail sales; 640 million pounds private label packaged by the establishment for retail sales; 1,594 million pounds were packaged by the establishment for food service, and 479 million pounds were packaged in retail operations.[36]

Retail establishments would be involved in repackaging products to be sold at retail. FSIS has not estimated the number of retail establishments that would be involved with repackaging raw or partially cooked mechanically tenderized beef products or the number of labels they would require to be in compliance with this rule.[37] FSIS expects that very few retail facilities are producing mechanically tenderized beef. FSIS requests data on the number and size distribution of retail establishments that could be possibly affected by this proposed rule.

The proposed new descriptive designation requirement would apply to all raw or partially cooked needle- or blade-tenderized beef products going to retail stores, restaurants, hotels, or similar institutions, or other official establishments for further processing, unless such product is destined to be fully cooked at an official establishment. The proposed requirements for validated cooking instructions would apply to raw or partially cooked mechanically tenderized products destined for household consumers, hotels, restaurants, or similar institutions. If a second establishment repackages the product for household consumers, hotels, restaurants, or similar institutions, the second establishment would also be responsible for applying the validated cooking instructions to the product label. If retail stores repackage the product, they would have to include the descriptive designation and validated cooking instructions from the official establishment on the retail label.

This rule would affect foreign establishments that manufacture and export to the United States raw or partially cooked beef products that are mechanically tenderized, because foreign establishments that manufacture and export these products to the United States will be required to follow these same labeling requirements. FSIS requests information on the number of foreign establishments that would be affected if this proposed rule is finalized.

Expected Cost of the Proposed Rule

The proposed rule would require all official establishments that produce raw mechanically tenderized beef products to modify their product labels to include the term ''mechanically tenderized'' as part of the products' descriptive name and to add validated cooking instructions to the labels of all raw and partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions. To incorporate this information, establishments may add the required information to existing label designs with minor changes. As discussed below, establishments' and stores' costs likely would be mitigated because the uniform compliance date may result in a number of labeling rules going into effect at the same time. Therefore, the establishments will have additional time to comply based on the delayed effective date provided by the uniform compliance labeling rule and will be able to limit label supplies based on the day that the labels will need to be modified. In addition, the uniform compliance date allows establishments time to use existing labels and will, therefore, result in minimal loss of inventory of labels.

Cost Analysis

On the basis of data provided by the FSIS Labeling and Program Delivery Staff, the Agency estimates that there are approximately 270,000 meat and poultry labels in the marketplace.[38] Of those, FSIS estimates that 50 percent of the total labels, or 135,000, are unique labels for raw meat and poultry products labeled at official establishments. This estimate of 135,000 may be an overestimate because it assumes an exclusive label for each variation of a product. Of the 135,000 labels, FSIS assumes that 23.8 percent,[39] or 32,130 labels, are for beef products. Using the 10.5-percent estimate for the share of beef products that are mechanically tenderized, and the 32,130 estimated number of beef labels, the estimated number of labels for mechanically tenderized beef products is 3,374. This proposed rule would require these products to add ''mechanically tenderized'' to their labels.

FSIS is developing a final rule that would require additional labeling of products with added solutions. If this proposed rule becomes final before the added solutions rule is in effect, then an additional 15.8 percent of all beef products, or 5,077 labels, would require the ''mechanically tenderized'' designation on their labels. (See proposed rule ''Common or Usual Name Requirements for Meat and Poultry Products with Added Solutions'' (76 FR 44855.) If both this rule on mechanically tenderized products and products with added solutions are in effect, establishments are likely to make all labeling changes at the same time.

The number of labels was not tracked by the FSIS Labeling Information System Database because many mechanically tenderized beef products are single ingredient products, and establishments may be eligible for generic approval of these labels. FSIS does not have data on partially cooked mechanically tenderized beef products but expects that the amount of these products is small and therefore has not included them in the cost calculations.

Final Report—Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Products, Table 3–11 on p. 3–17.

[34] The February 2012 report estimates that 490 establishments produce products that are both mechanically tenderized and containing added solutions.

[35] Based on slaughter volumes multiplied by average carcass weights in the Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Meat and Poultry Products, RTI International, February 2012.

[36] Ibid. Table 3–8 Proportions of Mechanically Tenderized-only Beef Product pounds by Packaging and labeling Type on p. 3–13, and Table 3–14 Estimated Pounds of Mechanically Tenderized-only Beef Products by Packaging and Labeling Type (Millions), p. 3–18.

[37] FSIS believes that the number of retailers involved in repackaging mechanically tenderized beef is small and declining, with large retailers and warehouse clubs moving toward ordering case-ready packaged beef products.

[38] In the proposed rule for Prior Label Approval System: Generic Label Approval (Docket FSIS–2005–0016), FSIS estimated that there were approximately 266,061 approved meat and poultry product labels in the marketplace. For the purpose of this analysis, FSIS chose to round the number of approved meat and poultry product labels in the marketplace to 270,000.

[39] From Muth, Mary K., Ball, Mary K., and Coglaiti, Michaela Cimini February 2012.: RTI International Final Report—Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Products, p. 3–8.

FSIS requests comments on the number of labels approved by establishments for raw and partially cooked mechanically tenderized beef products.

This cost analysis uses the mid-point label design modification costs for a minor coordinated label change, as provided in a March 2011 FDA report.[40] This report defines a minor change as one in which only one color is affected and the label does not need to be redesigned. We conclude that the labeling change that would be required by this proposed rule is a minor change because the words ''mechanically tenderized'' need to be added to the label, which is comparable to the addition of an ingredient to the ingredient list and the addition of validated cooking instructions is comparable to minimal changes to a facts panel (*e.g.* nutrition facts, supplement facts, or drug facts). For comparison purposes, in 2011, the Food and Drug Administration estimated that the required labeling costs for its final rule [41] on the labeling of bronchodilators were deemed minor. The FDA required revisions to the ''Indications,'' ''Warnings,'' and ''Directions'' sections of the Drug Fact label. Using the RTI labeling model described in the March 2011 report, the FDA concluded that the revisions would be deemed minor. FSIS assumes that the addition of validated cooking instruction is similar to the aforementioned changes to the drug fact panel, and is therefore deemed minor. FSIS requests comments on these cost estimates.

FSIS expects that all label changes resulting from this proposed rule will be coordinated with planned label changes. The mid-point label design modification costs for a minor coordinated label change are an estimated $310 per label. A coordinated label change is when a regulatory label change is coordinated with planned labeling changes by the firm. A coordinated change is likely because of uniform compliance labeling rules. These rules help affected establishments minimize the economic impact of labeling changes because affected establishments can incorporate multiple label redesigns required by multiple Federal rulemakings into one modification at 2-year intervals, to reduce the cost of complying with the final regulation.[42] Moreover, this allows time to use existing labels and results in minimal losses of inventories of labels.

In the case of a coordinated label change, only administrative and recordkeeping costs are attributed to the regulation, and all other costs are not.[43] FSIS estimates the cost to be $1.05 million (3,374 labels × $310) for mechanically tenderized beef products only; such products do not contain added solution. The annualized cost to the industry for products that are mechanically tenderized only is estimated to be $140 thousand at 7 percent for 10 years ($120 thousand when annualized at 3 percent for 10 years).

FSIS is developing a final rule that would require additional labeling of products with added solutions. If this proposed rule becomes final before the added-solution rule is finalized, the cost estimated would be higher to reflect an additional 15.8 percent (or 5,077 labels) of all beef products that are both mechanically tenderized and containing added solutions. This would result in an additional one-time total cost (for all affected labels for mechanically tenderized beef containing added solutions) of $1.57 million or $209 thousand when annualized at 7 percent for 10 years ($179 thousand when annualized at 3 percent for 10 years).

This proposed rule would require validated cooking instructions on packages for beef that is only mechanically tenderized and beef that is both mechanically tenderized and contains added solutions. Establishments could also incur costs to validate the required cooking instructions for raw and partially cooked needle- or blade-tenderized beef products. These costs would be incurred to ensure that the cooking instructions are adequate to destroy any potential pathogens that may remain in the beef products after being tenderized. Most cooking instruction validations would be contracted out to universities or conducted by trade associations or large establishments. It is estimated that a validation study would cost between $5,000 and $10,000 per product line with one formulation. Most studies will validate cooking instructions for beef products with two formulations: injected with or without solution; therefore, the total cost per validation study would be between $10,000–$20,000.[44] Industry cost would likely be relatively small because FSIS is issuing guidance along with this NPRM that establishments can use to develop cooking instructions. FSIS is requesting comments on the number of cuts per establishment that would require validated cooking instructions and comment on whether establishments would use FSIS' guidance to develop the validated cooking instructions. In addition, FSIS requests comments on the estimated costs for developing validated cooking instructions. For purposes of this analysis, FSIS has assumed that the costs of developing validated cooking instructions would be minimal because FSIS assumes that most establishments will follow FSIS' guidance.

FSIS Budgetary Impact of the Proposed Rule

This proposed rule will result in no impact on the Agency's operational costs because the Agency will not need to add any staff or incur any non-labor expenditures since inspectors periodically perform tasks to verify the presence of mandatory label features and to ensure that the label is an accurate representation of the product. The Agency's cost to develop guidance material that establishments can use to develop cooking instructions will be minimal because such guidance exists and can be modified and posted on the

[40] Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011. (Contract No. GS–10F–0097L, Task Order 5).

[41] Labeling for Bronchodilators To Treat Asthma; Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic 2011.

Drug Products for Over-the-Counter Human Use, 76 FR 143

[42] On December 14, 2004, FSIS issued a final rule that provided that the Agency will set uniform compliance dates for new meat and poultry product labeling regulations in 2-year increments and will periodically issue final rules announcing those dates. FSIS established January 1, 2016 as the uniform compliance date for new meat and poultry product labeling regulations that are issued between January 1, 2013, and December 31, 2014 (See 77 FR 76824). The final mechanically tenderized beef rule will likely be issued during this period. The March 2011 FDA report states that changes in labels for food products can be coordinated with firms' planned label changes within 42 months (see Table 3–1, Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5)).

[43] From the 2011 FDA labeling model paper, the costs of a label change (p. 3–3) include administrative and recordkeeping activities, graphic design, market testing (organizing focus groups), prepress (convert design to plates), engraving, printing, and disposing of old inventory. The regulatory costs of a coordinated label change are administrative and recordkeeping costs ''associated with understanding the regulation, determining their responses, tracking the required change throughout the labeling change process, and reviewing and updating their records of product labels. The costs other than administrative and recordkeeping are not attributable to the regulation if the labeling change is coordinated with a planned change.'' (p. 3–5). Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011. (Contract No. GS–10F–0097L, Task Order 5).

[44] Per telephone conversation with the Grocery Manufacturers Association Director of Science Operations, Food Protection.

FSIS Web site in fewer than six staff-hours.

FSIS is soliciting comments and data on any other potential federal costs that might result from finalizing this rule.

Expected Benefits and Miscellaneous Impacts of the Proposed Rule

The Agency has determined that the proposed new labeling requirements will improve public awareness of product identities. The proposed rule will clearly differentiate non-intact, mechanically tenderized beef products from intact products, thereby providing truthful and accurate labeling of beef products.

As stated earlier, when purchasing a beef product, tenderness is a key factor. However, not all needle- or blade-tenderized beef products are readily distinguished from non-tenderized beef products. Therefore, by requiring the descriptive designation ''mechanically tenderized'' on the labels of this product, the consumers will be informed of the additional attributes of the product when deciding whether to purchase the product. Although the benefits of having such additional information cannot be quantified, providing better market information to consumers could promote better competition among establishments that produce beef products. In addition, if the new label causes a divergence in price between intact and mechanically-tenderized beef, there would be a number of changes in consumer and producer surplus. Consumers who purchase mechanically-tenderized beef in the absence of the rule and would continue doing so in its presence would gain surplus due to the decrease in price for mechanically-tenderized beef, while consumers purchasing intact beef in the absence of the rule would experience a loss of surplus due to the increase in price for intact beef. Some producers of intact beef or other meats would realize a surplus increase because consumers may substitute such products for mechanically tenderized beef.

FSIS has concluded that labeling information on needle- or blade-tenderized beef products may help consumers and retail establishments better understand the product they are purchasing. This knowledge is the first step in helping consumers and retail establishments become aware that they need to cook these products differently than intact beef products before the products can be safely consumed. Additionally, by including cooking instructions, the food service industry and household consumers will be made aware that a mechanically tenderized beef product or injected beef product needs to be cooked to a minimum internal temperature and may need to be maintained at this temperature for a specific period of time to sufficiently reduce the presence of potential pathogens in the interior of the beef product.

FSIS generated an estimate of the annual number of illnesses from mechanically (needle- or blade-) tenderized beef steaks and roasts and mechanically tenderized beef steaks and roasts that contain added solutions that could potentially be avoided as a result of this proposed rule. FSIS evaluated the effect of additional cooking of non-intact product by first determining the implied concentration of organisms prior to cooking given current information, then determining the effect of adding additional cooking. Additional cooking is modeled to a minimum temperature of 160 °F. Current cooking practices as captured in the EcoSure dataset do not specifically include the time from when the final cooking temperature was recorded to when consumption occurred. It is likely that product in this data set encountered a range of dwell times. FSIS recommends in its guidance concerning steaks and roasts a cooking temperature of 145 °F with 3 minutes resting time for cooking steaks and whole roasts because data support that this would be equivalent to cooking at 160 °F without holding a product at that temperature for any dwell time.[45] FSIS' guidance concerning cooking steaks and whole roasts is located at *http://blogs.usda.gov/2011/05/25/cooking-meat-check-the-new-recommended-temperatures/*. If consumers adopt such practices, results would be comparable to consumers cooking product to 160° F but not holding product at that temperature for any dwell time.[46] Therefore, FSIS used the results from the risk analysis that estimate the benefits of consumers cooking mechanically tenderized product to 160° F without a dwell time because they are equivalent to 145° F with 3 minutes of dwell time and because the Agency did not have information about dwell time from the risk analysis.

The Centers for Disease Control and Prevention (CDC) recently completed an analysis attributing foodborne illnesses to their sources. Painter, *et al.,* examined outbreak data from 1998 through 2008 and identified 186 outbreaks of *E. coli* O157 resulting in 4,844 illnesses during that period.[47] As a consequence of this analysis, Painter, *et al.,* attributed 39.4% of illnesses or 1,909 (4,844 × 0.394) to beef.

Of the 6 outbreaks in tenderized products described in Table 2, 5 occurred during the time frame analyzed by Painter, *et al.* These 5 outbreaks (occurring between 2000 and 2007) resulted in 151 illnesses. Thus, approximately 7.9% (151/1,909) of *E. coli* O157 illnesses are attributable to tenderized beef product.

Painter *et al.'s* work includes the illnesses associated with outbreaks, which constitute only a fraction of the overall *E. coli* O157 illnesses that occur each year. For an estimate of overall illness numbers, we turn to another CDC study, whose authors estimate that there are 63,153 annual illnesses due to *E. coli* O157 in the United States from all sources.[48] To determine the annual number of illnesses from *E. coli* O157 (STEC O157), CDC begins with the annual incidence of STEC O157 infections reported to CDC's Foodborne Diseases Active Surveillance Network (FoodNet) sites from 2005 to 2008. This value is adjusted up using an under-diagnosis multiplier that is based on the following factors:

1. Whether a person with diarrhea seeks medical care. CDC bases this on unpublished surveys of persons with bloody or non-bloody diarrhea conducted in 2000–2001, 2002–2003, and 2006–2007. CDC estimates that about 35% of persons with bloody diarrhea (about 90% of STEC O157 illnesses) would seek medical care and about 18% of persons with non-bloody diarrhea would seek medical care.

2. Whether a person seeking medical care submits a stool specimen. This is

[46] Equivalency in cooking temperatures and times can be estimated using D and Z-values. The D-value is a measure of how long bacteria must be exposed to a particular temperature to effect a 1 log10 reduction. The Z-value is a measure of how much temperature change is necessary to effect a 1 log10 change in the D-value. Although these values have not been measured for *E. coli* O157:H7 in steaks, they have been measured in ground beef. At 158 °F (70° C) *E. coli* O157:H7 had a D-value of about 3.3 seconds, at 144.5 °F (62.5 °C) the D-value was 52.8 seconds. (Murphy, R. Y., E. M. Martin, *et al.* (2004). ''Thermal process validation for *Escherichia coli* O157:H7, Salmonella, and Listeria monocytogenes in ground turkey and beef products.'' *J Food Prot* 67(7): 1394–1402.) Three minutes at 145 °F would be equivalent to more than 10 seconds at 160 °F. Using the Z-value for *E. coli* O157:H7 in ground beef yields similar estimates. The Z-value was given as 9.8 °F (5.43°C). Changing the temperature from 160 °F to 145 °F would then represent an increase in D-value of about 1.5 log10. Thus, 3 minutes at 145 °F would be equivalent to 5.7 seconds at 160 °F. In either case, three minutes at 145 °F is more than equivalent to an instantaneous temperature (< 1 sec) at 160 °F.

[47] Painter, J., R. Hoekstra, *et al.* (2013). ''Attribution of foodborne illnesses, hospitalizations, and deaths to food commodities by using outbreak data, United States, 1998–2008.'' Emerg Infect Dis 9(3): 407–415.

[48] Scallan, E., R.M. Hoekstra, *et al.* (2011). ''Foodborne illness acquired in the United States—major pathogens.'' *Emerg Infect Dis* 17(1): 7–15.

also based on unpublished surveys of persons with bloody or non-bloody diarrhea conducted in 2000–2001, 2002–2003, and 2006–2007. CDC estimates that about 36% of persons with bloody diarrhea seeking medical care and about 19% of persons with non-bloody diarrhea seeking medical care would submit stool specimens.

3. Whether a laboratory receiving a stool specimen would routinely test it for STEC O157. This is based on a published study from the FoodNet Laboratory Survey.[49] CDC estimates that 58% of laboratories would routinely test for O157 STEC.

4. How sensitive the testing procedure is. CDC used a laboratory test sensitivity rate of 70% based on studies of Salmonella.[50] [51]

5. CDC also adjusted for geographical coverage of the FoodNet sites and for the changing United States population for the years 2005–2008.

The value was also adjusted down for the following factors:

1. The proportion of illnesses that were acquired outside of the United States. Based on the proportion of FoodNet cases of STEC O157 infection who reported travel outside the United States within 7 days of illness onset (2005–2008), CDC estimated that 96.5% of illnesses were domestically acquired.

2. The proportion of STEC O157 outbreak-associated illnesses that was due to foodborne transmission. Based on reported outbreaks CDC estimated that 68% were foodborne.[52] The overall effect of the upward and downward adjustments is a multiplier of 26.1 that is applied to the reported number of illness which is then adjusted down by about 35% to account for domestically acquired foodborne illness.

CDC's credible interval surrounding this point estimate ranges from 17,587 to 149,631.[53] The estimated annual illnesses due to mechanically tenderized product is given by 63,153 (annual estimated illnesses of *E. coli* O157:H7 [54]) × 0.394 (proportion of *E. coli* O157:H7 illnesses attributable to beef [55]) × 0.079 (proportion of beef attributable illnesses due to tenderized product [56]) = 1,965. This gives a range of estimated annual illnesses from 547 (= 17,587 × 0.394 × 0.079) to 4,657 (= 149,631 × 0.394 × 0.079). FSIS requests comments on the methods used, including the application of the underlying datasets, to estimate illnesses attributable to mechanically tenderized beef and alternative methods for making this estimate. Because, combining three sources of information introduces uncertainty around the precision of these estimates, we are particularly interested in approaches to quantifying the uncertainty inherent in the method used.

An analysis of the NHANES 2005–2006 Dietary Interview, Individual Foods, First Day, and Second Day files estimated approximately 11.7 billion servings annually of steaks and roasts. FSIS contracted with Research Triangle Institute to estimate market shares for mechanically tenderized beef and mechanically tenderized beef with added solutions.[57] After accounting for the proportion of all beef that was ground, FSIS estimated that 21.0% of non-ground product was mechanically tenderized only and that 31.6% of non-ground product was mechanically tenderized with added solutions. Thus, FSIS estimates that mechanically tenderized beef accounts for 6.2 billion servings annually. FSIS also estimates that the frequency of illness for mechanically tenderized product is 1,965/6.2 billion or 320 illnesses per billion servings, with a range from 88 (= 547/6.2 billion) to 751 (= 4,657/6.2 billion) illnesses per billion servings.

The dose response function for a pathogen associates an average dose with a corresponding frequency of illness. For *E. coli* O157:H7 the dose response function is characterized by a linear part in which the predicted probability of illness per serving across all exposures is proportional with respect to an average dose and by a non-linear part in which the predicted probability of illness is not proportional.

In the case of *E. coli* O157 illnesses attributable to mechanically tenderized beef, the frequency of illness is very low; therefore the mean dose across the population of servings that could account for this frequency of illness is also low. For one set of parameters the dose response function for *E. coli* O157:H7 corresponds to an average dose of 0.0001 *E. coli* O157:H7 bacteria per serving with a frequency of illness of 320 per billion.[58] This average dose is more than 5 $\log_{10}$ below the point at which the dose response function becomes non-linear. This makes the average dose an appropriate surrogate for the distribution of all doses.[59] At the lower end of the range of illnesses, a dose of 0.000028 *E. coli* O157:H7 bacteria per serving corresponds to a frequency of illness of 88 per billion servings. At the upper end of the range of illnesses, a dose of 0.00024 *E. coli* O157:H7 bacteria per serving corresponds to a frequency of illness of 751 per billion servings. Both of these values also fall well below the point at which the dose response function becomes non-linear.

From a post-cooking dose of 0.0001, a pre-cooking dose of *E. coli* O157:H7 bacteria can be calculated by determining the average contamination level needed to survive cooking. The 2007 EcoSure consumer cooking temperature audit [60] involved the collection of data from primary shoppers of over 900 households geographically dispersed across the country. Participants were asked to record the final cooking temperature and name or main ingredient of any entrée they prepared during the week of the study. Of the 3,257 recorded consumer cooking temperatures in the database for all products, 318 recorded consumer cooking temperatures ranging from 82 °F to 212 °F for beef (not ground). Table 3 shows the number of observations for each recorded cooking temperature.

[49] Voetsch, A.C., F.J. Angulo, *et al.* (2004). ''Laboratory practices for stool-specimen culture for bacterial pathogens, including *Escherichia coli* O157:H7, in the FoodNet sites, 1995–2000.'' Clin Infect Dis 38 Suppl 3: S190–197.

[50] Chalker, R.B. and M.J. Blaser (1988). ''A review of human salmonellosis: III. Magnitude of Salmonella infection in the United States.'' Rev Infect Dis 10(1): 111–124.

[51] Voetsch, A.C., T.J. Van Gilder, *et al.* (2004). ''FoodNet estimate of the burden of illness caused by nontyphoidal Salmonella infections in the United States.'' Clin Infect Dis 38 Suppl 3: S127–134.

[52] Rangel, J.M., P.H. Sparling, *et al.* (2005). ''Epidemiology of *Escherichia coli* O157:H7 outbreaks, United States, 1982–2002.'' Emerg Infect Dis 11(4): 603–609.

[53] Scallan, E., R.M. Hoekstra, *et al.* (2011). ''Foodborne illness acquired in the United States—major pathogens.'' *Emerg Infect Dis* 17(1): 7–15.

[54] Ibid.

[55] Painter, J., R. Hoekstra, *et al.* (2013). ''Attribution of foodborne illnesses, hospitalizations, and deaths to food commodities by using outbreak data, United States, 1998–2008.'' Emerg Infect Dis 9(3): 407–415.

[56] 151 outbreak illnesses attributable to tenderized beef out of 1,909 outbreak illnesses attributable to all beef (151/1,909 = 0.079).

[57] Muth, M.K., M. Ball, *et al.* (2012). Expert Elicitation on the Market Shares for Raw Meat and Poultry Products Containing Added Solutions and Mechanically Tenderized Raw Meat and Poultry Products. Research Triangle Park, NC 27709, RTI International, 3040 Cornwallis Road.

[58] Powell, M., E. Ebel, *et al.* (2001). ''Considering uncertainty in comparing the burden of illness due to foodborne microbial pathogens.'' *Int J Food Microbiol* 69(3): 209–215.

[59] Williams, M.S., E.D. Ebel, *et al.* (2011). ''Methodology for determining the appropriateness of a linear dose-response function.'' *Risk Anal* 31(3): 345–350.

[60] EcoSure-EcoLab. (2007). ''EcoSure 2007 Cold Temperature Database.'' *FoodRisk.org* Retrieved May 26, 2010, from *http://foodrisk.org/exclusives/EcoSure/*.

TABLE 3—FINAL RECORDED CONSUMER COOKING TEMPERATURES FOR BEEF (NOT GROUND) IN 2007 ECOSURE CONSUMER COOKING TEMPERATURE AUDIT

[EcoSure-EcoLab, 2007]

Final cooking temperature	Observations	Percent
80–89	1	0.3
90–99	3	0.9
100–109	6	1.9
110–119	11	3.5
120–129	19	6.0
130–139	27	8.5
140–149	38	11.9
150–159	54	17.0
160–169	61	19.2
170–179	31	9.7
180–189	45	14.2
190–199	14	4.4
200–209	7	2.2
210–219	1	0.3

Sixty seven (21%) of the recorded cooking temperatures were below 140 °F and 159 (50%) of the temperatures were below 160 °F. A 2010 USDA Agricultural Research Service (ARS) study by Luchansky *et al.,*[61] looked at the relationship between final cooking temperatures and $\log_{10}$ reductions for mechanically tenderized beef. An additional ARS study by Luchansky, *et al.,*[62] also examined the relationship between final cooking temperatures and $\log_{10}$ reductions for chemically injected beef (mechanically tenderized beef with added solutions). Equations derived from these studies combined with the distribution of final cooking temperatures shown in Table 3 estimate that an average pre-cooking dose of 0.0188 *E. coli* O157:H7 bacteria per serving would result in an average post-cooking dose of 0.0001. Thus, a pre-cooking dose of 0.0188 corresponds with the estimate of 1,965 illnesses. Given the current cooking distribution, more than 98% of the 1,965 illnesses are attributed to cooking temperatures below 160 °F and less than 1% to cooking temperatures equal to or greater than 160 °F.

To evaluate the effect of using a higher minimum cooking temperature, FSIS modified the distribution derived from the EcoSure (2007) data set so that all of the observations that were originally below 160 °F were set to 160 °F. FSIS then calculated a new predicted number of illnesses using this modified cooking temperature distribution with the pre-cooking dose of 0.0188. This changes the post-cooking average dose from 0.0001 *E. coli* O157:H7 bacteria per serving to an average dose of 0.0000039, which corresponds to a frequency of illness of 13 per billion. With this change, the predicted number of illnesses decreases from 1,965 to 78. Thus, if all consumers cook all mechanically tenderized beef to at least 160 °F, the resulting total number of illness will be 78. Analogous calculations yield illness estimates of 22 and 184 illness, respectively, if the baseline annual illness totals are 547 and 4,657.

The annual estimated number of illness averted or prevented is estimated at 1,887 (1,965 illness less 78 illness), with a range of 525 illness (547 illness − 22 illness) to 4,473 illnesses (4,657 illness − 184 illness), if mechanically tenderized and mechanically tenderized beef containing added solution is cooked to a minimum temperature of 160 °F (which is equivalent to cooking to a minimum internal temperature of 145 °F with 3 minutes of dwell time). However, FSIS knows that not all consumers or food service providers will change their behavior based on reading the labels and, therefore, the Agency has estimated the uncertainty surrounding the number of illnesses that will be averted by obtaining ranges for both the consumer and food service provider response rate, as well as using the range for the estimated number of illnesses if all consumers and food service providers cooked the product at a minimum recommended temperature.

To determine this, FSIS used studies on the impacts of food product labels on consumer behavior. These studies estimated the proportion of consumers changing their behavior in response to the presence of cooking instructions (safe handling instructions) ranging from 15 to 19 percent. [63] In a study of the nutrition fact panel on food products, the American Dietetic Association (ADA) conducted a survey which indicated that 56 percent of the people interviewed claimed to have modified their food choices after using this nutrition fact labeling (American Dietetic Association, 1995).[64] Finally, the Food Marketing Institute (FMI) in early 1995 indicated that the nutrition fact label may be causing some dietary change. Fifteen percent of the shoppers indicated that they had stopped buying products they had regularly purchased, after reading the label.[65] We use the range (15 to 56 percent) as the estimate for the impact of labels on consumer behavior in retail, with our primary estimate equaling the average of available estimates, or 24 percent. FSIS requests comments on the percentage of consumers who would change their behavior after reading the labels.

In addition, the RTI study indicates that the food service industry market share for mechanically tenderized beef and beef containing added solution is estimated at 53 percent and the market share for retail for the same products is estimated at 47 percent.[66] In the absence of data, FSIS assumes for its primary estimate that the rule-induced percentage reduction in illness will be the same for food service establishments as for mechanically-tenderized beef purchased at retail (24 percent), and presents a range in which between 0% and 100% of food service providers will follow the validated cooking instructions. Should the rule become final, food service providers will be able to identify mechanically tenderized beef product as such and will therefore be able to follow the Food Code cooking instructions. The Food Code (developed by the Conference for Food Protection and adopted by 49 states, which represent 96 percent of the population) recommends cooking mechanically tenderized and injected meats to a minimum temperature of 145°F for a minimum of 3 minutes. The Food Code, however, states that retail service facilities may serve such product rare if they notify consumers of the risk.[67] Therefore, FSIS assumes that at a minimum, zero food service providers will follow the cooking instructions.

[61] Luchansky, J.B., A.C. Porto-Fett, *et al.* (2012). ''Fate of Shiga toxin-producing O157:H7 and non-O157:H7 *Escherichia coli* cells within blade-tenderized beef steaks after cooking on a commercial open-flame gas grill.'' *J Food Prot* 75(1): 62–70.

[62] Ibid.

[63] Yang states that 15% (51% of respondents seen the Safe Handling Instruction labels × 79% remembered reading the labels × 37% changing their behavior after seeing and reading the labels), and Bruhn states that 17% (60% of respondents seen the labels × 65% said that their awareness was increased × 43% said that they changed their behavior). Ralston states that 19% (67% of respondents seen the label × 29% who changed their behavior).

[64] America's Eating Habits: Changes and Consequences. U.S. Department of Agriculture, Economic Research Service, Food and Rural Economics Division. Agriculture Information Bulletin No. 750.

[65] Food Marketing Institute (FMI) states that of the 43 percent of the shoppers interviewed, who had seen the label, 22 percent indicated it had caused them to start buying and using food products they had not used before, and 34 percent said they had stopped buying products they had regularly. We use the higher percentage of 15% (43% × 34%) in our estimate. FMI and Prevention Magazine Report Shopping for Health: Balancing, Convenience, Nutrition and Taste, 1997.

[66] RTI, pp. 3–12 and 3–14.

[67] In the U.S. Department of Health and Human Services, Public Health Service, FDA Food Code, 2009, S3–411.11 (D), a rare animal food such as rare meat other than whole-muscle, intact steaks, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if the consumer is informed that to ensure its safety, the food is to be more fully cooked.

FSIS is including the lower end to recognize that some food service providers may recognize customers' requests that the meat be cooked rare. FSIS is requesting comments on food service providers' likely response to new labeling of mechanically-tenderized beef, including any cost that would be incurred by such establishments as a result of changing standard operating procedures related to intact and mechanically-tenderized beef.

Table 4 shows the estimated reduction in illness numbers based on these assumptions for consumer and food service provider behavior. To derive the estimated number of illnesses averted and focusing first on inputs derived from Scallan *et al.*'s primary estimate, the range for the estimate would be 133 illness (1,887 illnesses (mid-point estimate from the risk analysis) * 47% (retail share of mechanically tenderized beef market) * 15% (lower end of the range for percent of consumer using validated cooking instructions) + 53% (food service share of mechanically tenderized beef) * 0% (lower end of the range for food service compliance with validated cooking instructions)) to 1,497 illness averted (1,887 illnesses (mid-point estimate from the risk analysis) * 47% (retail share of mechanically tenderized beef market) * 56% (upper end of the range for percent of consumers using validated cooking instructions) + 53% (food service share of mechanically tenderized beef) * 100% (upper end of the range for food service compliance with validated cooking instructions)). The primary estimate is 460 illnesses.

TABLE 4—RESPONSE RATE AND RESULTING AVERTED ILLNESSES

Category	Retail	Food service	Total	Averted illnesses	Expected benefits
Share of Mechanically Tenderized Beef in Retail vs. Food Service.	47%	53%	100%		
Response to Label	15 to 56% [1]	0% to 100%	7% to 79%	133 to 1,497	$436,000 to $4,911,000.
Primary [2]	24% [1]	24% [1]	24%	460	$1,511,000.
Lower Bound [3]			24% (7% to 79%)	128 (37 to 416)	$420,000 ($121,000 to $1,366,000).
Upper Bound [4]			24% (7% to 79%)	1,091 (315 to 3,548)	$3,581,000 ($1,035,000 to $11,641,000).

[1] The average of the percentages of consumer response rate: Yang 15%, Bruhn 17%, Ralston 19%, American Dietetic Association 56%, and FMI 15% as discussed in the benefits section.
[2] Using estimated mechanically tenderized beef preventable illnesses of 1,887 illnesses.
[3] Using estimated mechanically tenderized beef preventable illnesses of 128 illnesses.
[4] Using estimated mechanically tenderized beef preventable illnesses of 1,091 illnesses.

With the primary estimate, 24% of all mechanically tenderized beef previously cooked to a lower temperature is cooked to the suggested temperature, which is equivalent to 460 illnesses averted or prevented.

Using the FSIS estimate for the average cost per case for an *E. coli* O157:H7 illness of $3,281,[68] expected benefits from this proposed rule are $1,511,000 per year (with a range of $436,000 to $4,911,000). Using the credible interval from Scallan et. al provides expected benefits of $420,000 per year for 128 illnesses prevented (with a range of $121,000 to $1,366,000) for the lower bound of the credible interval and expected benefits of $3,581,000 per year for 1,091 illnesses prevented (with a range of $1,035,000 to $11,641,000) in the upper bound of the credible interval. This estimate for the average cost of an *E. coli* O157:H7 illness is derived by using the current version of ERS Cost calculator (for *E. coli*) and replacing the case numbers with new case numbers based on Scallan's report.

For *E. coli,* FSIS adjusted Scallan's case distribution to fit the ERS Cost Calculator because Scallan reported each illnesses in three categories (doctor visits, hospitalization, and death) while the ERS Cost Calculator for *E. coli* O157 has seven severity categories. By changing only the case numbers, FSIS kept all other assumptions in the ERS Cost Calculator. ERS has recently updated the dollar units to 2010 dollars and FSIS is using these estimates.

These estimates represent a minimal estimate for an average cost of illness because they only include medical costs and loss-of-productivity costs. They do not include pain and suffering costs.

FSIS believes that consumers prefer lower cooking temperatures [69] and therefore they may substitute other meat choices rather than cooking at a higher recommended temperature included in cooking instructions. This welfare loss associated with substituting to less-preferred meats or cooking to temperatures that are higher than ideal (from a taste perspective) was not quantified in the analysis.

Conclusion

The cost to produce labels for mechanically tenderized beef is a one-time cost of $1.05 million or $2.62 million if this rule is in effect before the added solutions rule. The annualized cost is $140,000 for 10 years at a 7 percent discount rate or $349,000 over 10 years at a 7 percent discount rate if this rule is in effect before the added solutions rule.

The expected number of illnesses prevented would be 460 per year, with a range of 133 to 1,497, if the predicted percentages of beef steaks and roasts are cooked to an internal temperature of 160 °F (or 145 °F and 3 minutes of dwell time). These prevented illnesses amount to $1,511,000 per year in benefits with a range of $436,000 to $4,911,000. The expected annualized net benefits are $296,000 to $4,771,000 with a primary estimate of $1,371,000.

If, however, this rule is in effect before the added solutions rule, the expected annualized net benefits are then $1,162,000, with a range of $87,000 to $4,562,000.

Using the lower end of the credible interval from Scallan et. al provides an expected number of illness prevented of 128 per year, with a range of 37 to 416, as discussed earlier. These prevented

[68] The FSIS estimate for the cost of *E. coli* O157:H7 ($3,281 per case,—2010 dollars) was developed using the USDA, ERS Foodborne Illness Cost Calculator: STEC O157 (June 2011). FSIS updated the ERS calculator to incorporate the Scallan (2011) case distribution for STEC O157. Scallan E. Hoekstra, Angulo FJ, Tauxe RV, Widdowson MA, Roy SL, et. al. 2011 January. ''Foodborne Illness Acquired in the United States—Major Pathogens''. *Emerging Infectious Diseases.*

illnesses amount to $420,000 in benefits, with a range of $121,000 to $1,366,000. The expected annualized net benefits for the lower end of the Scallan's credible interval are $280,000, with a range of −$19,000 to $1,226,000, if this rule goes into effect before the added solutions rule.

Using the upper end of the credible interval from Scallan et. al provides an expected number of illness prevented of 1,091 per year, with a range of 315 to 3,548 as discussed earlier. These prevented illnesses amount to $3,581,000 in benefits, with a range of $1,035,000 to $11,641,000. The expected annualized net benefits for the upper end of the Scallan's credible interval are $3,441,000, with a range of $895,000 to $11,501,000, if this rule goes into effect after the added solutions rule.

In addition to the quantified net benefits mentioned above, the rule would generate the unquantifiable benefits of increased consumer information and market efficiency, an unquantified consumer surplus loss and an unquantified cost associated with food service establishments changing their standard operating procedures.

As mentioned above, FSIS is using an estimate of the number of establishments producing needle- or blade-tenderized beef products and the number of labels that would need to be modified as a result of this proposed rule. FSIS requests comments on the number of official and retail establishments that are producing or packaging mechanically tenderized beef products and the number of labels that they might need to modify should this proposal be finalized.

Additionally, FSIS cannot estimate the number of validation studies that would be necessary to develop cooking instructions for raw and partially cooked needle- or blade-tenderized beef products. In addition, FSIS requests comments on the costs of conducting these validation studies.

Alternatives

Vacuum-Tumbled Beef Products

Some beef products are vacuum-tumbled to marinate and tenderize the product. The vacuum increases absorption of the marinade, while tumbling both tenderizes the product and increases absorption of the marinade. Vacuum-tumbled beef is a non-intact product, though its appearance is similar to whole, intact product. Research shows that the process of vacuum tumbling a product increases bacterial migration into the interior of the product.[70] [71] However, FSIS does not have sufficient data to understand the magnitude of the risk of pathogens that may be introduced into product as a result of vacuum tumbling. Therefore, the Agency is requesting that the public submit data concerning the safety of vacuumed tumbled beef products. In addition, FSIS is asking for comments to see whether vacuum tumbled beef product should be considered mechanically tenderized product and thus subject to the provisions of this proposed rule if it becomes final.

Enzyme-Formed Product

Some meat and poultry products are formed with transglutaminase enzyme (TG enzyme). TG enzyme is approved for use as a cross-linking binder to form product, *e.g.,* through binding pieces of beef tenderloin together to form a larger beef tenderloin steak or roast. FSIS regulations (9 CFR 317.8(b)(39) and 381.129(e)) require labeling for meat and poultry products that are formed or re-formed with TG enzyme as a binder as part of the product name, *e.g.,* ''Formed Turkey Thigh Roast.'' Formed products are non-intact. However, the formed products are already labeled in a manner that distinguishes them from other products. FSIS requests comment on whether this labeling is sufficient to inform consumers of the nature of formed product and on whether any final rulemaking should include additional labeling requirements, such as validated cooking instructions on any not-ready-to-eat formed product. FSIS requests data on the volume of formed product, the volume of formed product sold at retail stores versus food service facilities, and any available data on whether consumers typically cook formed product at time and temperature combinations sufficient to destroy pathogens.

FSIS considered several alternatives to the proposed rule:

Option 1. Extend labeling requirements to include vacuum tumbled beef products and enzyme-formed beef products. FSIS considered the option of proposing to amend the labeling regulations to include a new requirement for labeling all vacuum tumbled and enzyme-formed beef products. But, as discussed earlier, FSIS does not have sufficient data concerning the production practices and risks of consuming vacuum tumbled beef products and enzyme-formed beef products to proceed with this option. FSIS is requesting comments and data on these products.

Option 2. Extend the proposed labeling requirements to all needle- or blade-tenderized meat and poultry products. FSIS considered the option of proposing to amend the labeling regulations to include a new requirement for labeling all mechanically tenderized meat and poultry products. However, as discussed above, FSIS does not have sufficient data concerning the production practices and risks of consuming mechanically tenderized poultry products or mechanically tenderized meat products, other than beef, to proceed with this option.

Option 3. Validated cooking instructions for needle or blade-tenderized beef, needle-injected beef, and all beef containing solutions. FSIS considered the option of proposing to amend the labeling regulations to require validated cooking instructions for needle or blade tenderized beef, needle-injected, and all beef containing solutions. However, FSIS did not find any outbreak data for products that contain added solutions but are not injected. In addition, if products are marinated but not injected, the pathogen remains on the surface of the product and would typically be eliminated, even if the product is cooked to rare temperatures. Therefore, FSIS does not have any data necessary to substantiate the need for this alternative.

Regulatory Flexibility Analysis

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination was made because the rule will affect the labeling of about 10.5% of 24.3 billion pounds of beef products. Over 97 percent of the 555 federal establishments that produce mechanically tenderized beef products could possibly be affected by this proposed rule are small or very small according to the FSIS HACCP definition. There are about 251 very small establishments (with fewer than 10 employees) and 291 small establishments (with more than 10 but less than 500 employees). Therefore, a total of 542 small and very small establishments could possibly be affected by this rule. The FSIS HACCP

[70] Warsaw, CR, Orta-Ramirez A, Marks BP, Ryser ET, Booren AM. 2008. Single directional migration of *Salmonella* into marinated whole muscle turkey breast. *Journal of Food Protection.* 71(1):13–156.

[71] Warsow, C.R., Marks, B.P., Ryser, E.T., Orta-Ramirez, A., Booren, A.M., Effects of vacuum tumbling on Salmonella migration into the interior of intact, marinated turkey breasts. *http://ift.confex.com/ift/2003/techprogram/paper_19598.htm.*

definition assigns a size based on the total number of employees in each official establishment. The Small Business Administration definition of a small business applies to a firm's parent company and all affiliates as a single entity.

These small and very small manufacturers, like the large manufacturers, would incur the costs associated with modifying product labels to add on the labels ''mechanically tenderized'' and validated cooking instructions needed to ensure adequate pathogen destruction.

Based on the estimated number of labels that will be required by the establishments, the cost will add an average of $0.001 per package ($1.05 million/951 million packages of needle- or blade-tenderized beef).[72] The average cost per establishment would be $1,884 per establishment ($1.05 million/555). Also, small and very small establishments will tend to have a smaller number of unique products and will therefore have a smaller number of labels to modify, and therefore less labeling cost.

The labeling costs discussed above are one-time costs. FSIS believes these one-time costs will not be a financial burden on small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the information collection requirement included in this proposed rule has been submitted for approval to OMB.

Title: Mechanically Tenderized Beef Products.

Type of Collection: New.

Abstract: FSIS is proposing to require the use of the descriptive designation ''mechanically tenderized'' on the labels of needle- or blade-tenderized beef products, including beef products injected with marinade or solution, that do not fall under a regulatory standard of identity. FSIS is also proposing that the print for all words in the descriptive designation appear as the product name in the same style, color, and size and on a single-color contrasting background. In addition, FSIS is proposing to require that labels of raw and partially cooked needle- or blade-tenderized beef products include validated cooking instructions that inform consumers that these products need to be cooked to a specified minimum internal temperature and whether they need to be held at that minimum temperature or higher for a specified time before consumption, *i.e.,* dwell time or rest time, to ensure that they are fully cooked.

The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Estimated Annual Burden: Mechanically Tenderized Beef Products Recordkeeping:

Estimated Annual Recordkeeping Burden for Mechanically Tenderized Beef Products

Respondents: Official meat establishments.

Estimated Number of Respondents: 555.

Estimated Number of Responses per Respondent: 30.454.

Estimated Total Annual Responses: 16,902.

Estimated Total Annual Recordkeeping Burden: 985.95 hours.

	Estimated number of respondents	Number of responses per respondent	Total annual responses	Time for responses in minutes	Total annual burden hours
Establishments maintain labels on file	555	15.227	8,451	2	281.7
Establishments maintain validated cooking instructions on file	555	15.227	8,451	5	704.25
Total Recordkeeping Burden	555	30.454	16,902	7	985.95

Reporting

Estimated Annual Reporting Burden for Mechanically Tenderized Beef Products

Respondents for this Proposed Rule: Official meat establishments.

Estimated Number of Respondents: 555.

Estimated Number of Responses per Respondent: 30.454.

Estimated Total Annual Responses: 16,902.

Estimated Total Annual Reporting Burden on Respondents: 18,733.05 hours.

	Estimated number of respondents	Number of responses per respondent	Total annual responses	Time for responses in minutes	Total annual burden hours
Establishments are to prepare labels with descriptive designation and validated cooking instructions	555	15.227	8,451	13	1,831.05
Establishments are to develop validated cooking instructions	555	15.227	8,451	120	16,902
Total Reporting Burden	555	30.454	16,902	133	18,733.05

SUMMARY OF BURDEN—MECHANICALLY TENDERIZED BEEF PRODUCTS

Total No. Respondents	555
Average No. Responses per Respondent	60.908
Total Annual Responses	33,804

SUMMARY OF BURDEN—MECHANICALLY TENDERIZED BEEF PRODUCTS—Continued

Average Hours per Response	2.417
Total Burden Hours	19,719

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 Avenue SW., Room 6083, South Building, Washington, DC 20250.

[72] FSIS estimates that the annual quantity of mechanically tenderized beef at is about 951 million packages (2.6 billion pounds of mechanical tenderized beef produced/2.735 average weight of a retail package according to the National Cattlemen's Beef Association).

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 on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. To be most effective, comments should be sent to OMB within 60 days of the publication date of this proposed rule.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

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

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).

Additional Public Notification

FSIS will announce this proposed rule online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Proposed_Rules/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.

List of Subjects in 9 CFR Part 317

Food labeling, Food packaging, Meat inspection, Nutrition, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

■ 1. The authority citation for Part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Amend § 317.2 by adding and reserving paragraphs (e)(1) and (2), and adding a new paragraph (e)(3) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(e) * * *

(3) *Product name and required validated cooking instructions for needle- or blade-tenderized beef products.* (i) Unless the product is destined to be fully cooked at an official establishment, the product name for a raw or partially cooked beef product that has been mechanically tenderized, whether by needle or by blade, must contain the term ''mechanically tenderized'' as a descriptive designation and an accurate description of the beef component.

(ii) The product name must be printed in a single font style, color, and size and must appear on a single-color contrasting background.

(iii) The labels on raw or partially cooked needle- or blade-tenderized beef products destined for household consumers, hotels, restaurants, or similar institutions must contain validated cooking instructions, including the cooking method, that inform consumers that these products need to be cooked to a specified minimum internal temperature, whether the product needs to be held for a specified time at that temperature or higher before consumption to ensure that potential pathogens are destroyed throughout the product, a statement that the internal temperature should be measured by a thermometer.

* * * * *

Done at Washington, DC on: June 3, 2013.

Alfred V. Almanza,

Administrator.

[FR Doc. 2013–13669 Filed 6–7–13; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–107; NRC–2013–0077]

Submitting Complete and Accurate Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; acceptance, docketing, and request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for comment a petition for rulemaking (PRM) filed with the Commission by Mr. James Lieberman (the petitioner) on April 15, 2013. The petitioner requests that the NRC expand its ''regulatory framework to make it a legal obligation for those non-licensees who seek NRC regulatory approvals be held to the same legal standards for the submittal of

complete and accurate information as would a licensee or an applicant for a license.''

DATES: Submit comments by August 26, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0077. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Manash Bagchi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2905, email: *Manash.Bagchi@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0077 when contacting the NRC about the availability of information for this petition for rulemaking. You may access information related to this petition for rulemaking, 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–2013–0077.
- *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.

B. Submitting Comments

Please include Docket ID NRC–2013–0077 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

The Petition

The NRC has received a PRM (ADAMS Accession No. ML13113A443) requesting the NRC to revise its regulations at §§ 50.1, 50.9, 52.0, and 52.6 of Title 10 of the *Code of Federal Regulations* to expand its ''regulatory framework to make it a legal obligation for those non-licensees who seek NRC regulatory approvals be held to the same legal standards for the submittal of complete and accurate information as would a licensee or an applicant for a license.''

The Petitioner

James Lieberman is a regulatory and nuclear safety consultant. The petition states that Mr. Lieberman is submitting the petition ''based on [his] own experiences as a former NRC employee and a consultant in the nuclear industry.'' The petition further states that James Lieberman was involved in the development of both the NRC rule on completeness and accuracy of information and the NRC rule on deliberate misconduct. The petition notes that Mr. Lieberman's interest is that ''the NRC should have a regulatory framework that requires persons who seek NRC approval on regulatory matters to have a legal obligation to provide materially complete and accurate information and be subject to sanction for failure to meet those requirements.''

Request for Comment

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under § 2.802, ''Petition for rulemaking,'' and the petition has been docketed as PRM–50–107. The full text of the incoming petition is available at *www.regualtions.gov* by searching on Docket ID NRC–2013–0077 and in ADAMS under Accession No. ML13113A443. The NRC is requesting public comments on the petition for rulemaking.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 5th day of June 2013.

Richard J. Laufer,

Acting Secretary of the Commission.

[FR Doc. 2013–13684 Filed 6–7–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0407; Directorate Identifier 2012–NE–22–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all CFM56–3 and CFM56–7B series turbofan engines with certain accessory gearboxes (AGBs) not equipped with a handcranking pad ''oil dynamic seal'' assembly. This proposed AD was prompted by 42 events of total loss of engine oil from CFM56 series turbofan engines while in flight. This proposed AD would require an independent inspection to verify re-installation of the handcranking pad cover after removal of the pad cover for maintenance until installation of a handcranking pad oil dynamic seal assembly. This inspection requirement exceeds normal maintenance and is necessary due to the design and location of the handcranking pad cover on the accessory gear box. We are proposing this AD to prevent loss of engine oil while in flight, which could result in engine failure, loss of thrust control, and damage to the airplane.

DATES: We must receive comments on this proposed AD by August 9, 2013.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts, 01803; phone: 781–238–7751; fax: 781–238–7199; email: *antonio.cancelliere@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0407; Directorate Identifier 2012–NE–22–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of 42 incidents of total loss of engine oil from engines while in flight. Thirty-four incidents were single-engine events and resulted in an in-flight shutdown of the engine or an air turnback (ATB). Four incidents involved total loss of engine oil in both engines installed on dual-engine airplanes, which caused an immediate ATB of the airplane. The loss of engine oil was traced to the AGB handcranking pad cover, which had not been reinstalled after maintenance, for example, after a borescope inspection of the engine.

This proposed AD would require an independent inspection of the AGB handcranking pad cover to verify its re-installation after removal. This inspection requirement exceeds normal maintenance and is necessary due to the design and location of the handcranking pad on the AGB. If an operator's approved maintenance program includes an independent inspection of the AGB handcranking pad cover after removal then compliance with those procedures will constitute compliance to the inspection requirements of the AD. This condition, if not corrected, could result in loss of engine oil in flight, which could lead to engine failure, loss of thrust control, and damage to the airplane.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require an independent inspection to verify correct installation of the handcranking pad cover after removal of the pad cover for maintenance. Introduction of a handcranking pad oil dynamic seal is available as an optional terminating action to the repetitive inspection requirements of this AD.

Costs of Compliance

We estimate that this proposed AD would affect 2,702 CFM56–3 and CFM56–7B engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 hour to perform the independent inspection required by this AD. The average labor rate is $85 per hour. We estimate that normal maintenance will require the AGB handcranking pad cover to be removed every 1,300 flights cycles. Based on an average use of these model engines of approximately 6,000,000 flight cycles per year, we estimate that an independent inspection would be required approximately 4,615 times per year. Therefore, assuming that an operator does not already have an independent inspection of the AGB handcranking pad cover in its approved maintenance program, we estimate the cost of the proposed AD for U.S. operators to be $392,275.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This

proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

CFM International S.A.: Docket No. FAA–2013–0407; Directorate Identifier 2012–NE–22–AD.

(a) Comments Due Date

We must receive comments by August 9, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International S.A. CFM56–3 series and CFM56–7B series turbofan engines equipped with the accessory gearbox (AGB) part numbers (P/Ns) listed in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (C)

CFM56–3	CFM56–7B (except CFM56–7B27A, CFM56–7B27A/3, and CFM56–7B27AE)	CFM56–7B27A, CFM56–7B27A/3, and CFM56–7B27AE
335–300–103–0	340–046–503–0	340–188–601–0
335–300–105–0	340–046–504–0	340–188–603–0
335–300–106–0	340–046–505–0	
335–300–107–0		
335–300–108–0		
335–300–109–0		
335–300–110–0		

(d) Unsafe Condition

This AD was prompted by 42 events of total loss of engine oil while in flight. We are issuing this AD to prevent loss of engine oil while in flight, which could result in engine failure, loss of thrust control, and damage to the airplane.

(e) Compliance

Unless already done, do the following:

(f) Inspection of the AGB handcranking pad cover

(1) Perform an independent inspection to verify re-installation of the AGB handcranking pad cover after maintenance.

(2) The presence of an independent inspection as a required inspection item in the approved continuous airworthiness maintenance program satisfies the requirement of paragraph (f)(1) of this AD.

(g) Optional Terminating Action

(1) As an optional terminating action to the inspection requirement of paragraph (f) of this AD, do the following:

(i) For CFM56–3 series engine models, modify the AGB handcranking pad per Paragraph 3, ''Accomplishment Instructions'' in CFM International Service Bulletin (SB) 72–1129, Revision 2, dated November 16, 2012.

(ii) For CFM56–7B series engine models, with the exception of the models listed in paragraph (g)(2), modify the AGB handcranking pad per Paragraph 3, ''Accomplishment Instructions'' in CFM International SB 72–0564, Revision 3, dated May 25, 2011 or Paragraph 3, ''Accomplishment Instructions'' in CFM International SB 72–0879, Revision 1, dated April 12, 2012.

(2) No terminating action is available at this date for engine models CFM56–7B27A, CFM56–7B27A/3, and CFM56–7B27AE, equipped with AGB P/N 340–188–601–0 and AGB P/N 340–188–603–0.

(h) Definition

For the purposes of this AD, an independent inspection means a second inspection by a qualified individual who was not involved in the original re-installation of the AGB handcranking pad cover following maintenance to confirm that the cover is installed correctly.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts, 01803; phone: 781–238–7751; fax: 781–238–7199; email: *antonio.cancelliere@faa.gov.*

(2) For service information identified in this proposed AD, contact CFM International Inc., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; USA phone: 877–432–3272; USA fax: 877–432–3329; International phone: 1–513–552–3272; International fax: 1–513–552–3329; email: *geae.aoc@ge.com;* or CFM International SA, Customer Support Center, International phone: 33 1 64 14 88 66; fax: 33 1 64 79 85 55; email: *snecma.csc@snecma.fr.*

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

Issued in Burlington, Massachusetts, on May 24, 2013.

Thomas A. Boudreau,

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

[FR Doc. 2013–13721 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0433; Airspace Docket No. 12–AAL–5]

Proposed Establishment of Class D Airspace; Bryant AAF, Anchorage, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is issuing a SNPRM for the Notice of Proposed Rulemaking (NPRM) published on August 22, 2012 to establish Class D airspace at Bryant Army Airfield (AAF), Anchorage, AK. After review of comments received, the FAA determined that the portion of controlled airspace east of Glenn Highway needs further review and, therefore, would be eliminated from this proposal for the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before July 25, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0433; Airspace Docket No. 12–AAL–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

History

On August 22, 2012, the FAA published a NPRM to establish Class D airspace at Bryant AAF, Anchorage, AK, to provide controlled airspace due to an increase in the complexity, volume and variety of aircraft in the immediate vicinity of Bryant AAF (77 FR 50646). Thirteen comments were received, including comments from the Aircraft Owners and Pilots Association (AOPA), Alaska Airmen's Association (AAA), and the Alaskan Aviation Safety Foundation (AASF). One commenter believes it is a good idea to reestablish the Class D airspace, which previously existed at Bryant AAF.

AOPA identified three issues that affect pilots using the Eastside VFR corridor they would like to see addressed. These include the impact on pilots' situational awareness due to additional communication frequencies to monitor, the possible compression of traffic using the Eastside VFR flyway (Glenn Highway), and the availability of weather information at Fort Richardson. The FAA agrees that additional information is needed to adequately address these concerns and will exclude that portion of the original design east of the highway from the surface to 1,600 feet MSL. The FAA does not agree with their concern for weather observation. The establishment of Class D airspace requires weather observation at the primary airport (Bryant AAF). As part of the activation of this airspace the United States Air Force (USAF) will assume responsibility for weather support and dissemination through normal means.

AASF, along with several commenters, requested additional time to review the proposal. They were concerned with the impact of the proposal on pilots operating east of Glenn Highway, citing an increase in military aircraft operating east of the highway, a possible change in communication requirements, a potential negative impact in the pilots' situational awareness, the compression of traffic along the VFR corridor, a decrease in safety when weather is below 1600 feet AGL; and that reestablishment of the Class D at Bryant AAF will reduce the maneuvering room for aircraft entering the Merrill Field airspace area. The FAA finds merit in these comments and will exclude that portion of the original design east of the highway from the surface to 1,600 feet MSL. AASF also noted that there was an error in the latitude and longitude for two waypoints, which has been corrected in this SNPRM; and AWOS weather observation needs to be broadcast through all normal weather dissemination channels. The USAF will assume responsibility for weather support and dissemination through normal methods at the primary airport (Bryant AAF) as required for Class D airspace.

The AAA requested additional time to review the proposal and that the entire composition of airspace be considered before making a determination. The FAA has completed an aeronautical study of the air traffic operations in this area and concludes that the majority of air traffic transits east of Glenn Highway. As previously stated, the FAA has excluded that portion east of Glenn Highway.

Remove Return

After review of public comments, analysis of the traffic flow and the operational requirements for this area, the FAA believes the effects of operating with Class D airspace east of Glenn Highway would require further study. This SNPRM has excluded that portion of the original design east of the highway from the surface to 1,600 feet MSL. The FAA seeks comments on this SNPRM.

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0433 and Airspace Docket No. 12–AAL–5) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0433 and airspace Docket No. 12–AAL–5''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

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

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

The Supplemental Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D airspace extending upward from the surface to and including 2,900 feet MSL at Bryant AAF, Anchorage AK. Controlled airspace is necessary to accommodate the increased volume and variety of aircraft arriving and departing the immediate vicinity of Bryant AAF. This action would enhance the safety and management of terminal VFR operations at the airport.

Class D airspace designations are published in paragraph 5000 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 airspace designation listed in this document will be published subsequently in this 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. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Bryant AAF, Anchorage AK.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AAL AK D Bryant Army Airfield, Anchorage AK [NEW]

Bryant AAF, AK

(Lat. 61°15′57″ N., long. 149°39′12″ W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within an area bounded by a line beginning at lat. 61°17′3″ N., long. 149°37′35″ W.; to lat. 61°17′13″ N., long. 149°43′08″ W.; to lat. 61°13′49″ N., long. 149°43′08″ W.; to lat. 61°13′54″ N., long. 149°42′44″ W.; to lat. 61°14′24″ N., long. 149°41′23″ W.; to lat. 61°15′54″ N., long. 149°38′20″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13596 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1174; Airspace Docket No. 12–AAL–12]

Proposed Modification of Class D and E Airspace; Kenai, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D and E airspace at Kenai, AK, to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at Kenai Municipal Airport. A minor adjustment also would be made to the geographic coordinates of the airport. This action, initiated by the biennial review of the Kenai airspace area, would enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before July 25, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–1174; Airspace Docket No. 12–AAL–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–1174 and Airspace Docket No. 12–AAL–12) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–1174 and Airspace Docket No. 12–AAL–12''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class D airspace, Class E surface airspace and Class E airspace designated as an extension to Class D surface area, at Kenai Municipal Airport, Kenai, AK. Also, the geographic coordinates of the airport would be updated to coincide with the FAA's aeronautical database. After biennial review of the airspace, the FAAs Aeronautical Products Office found modification of the airspace necessary for the safety and management of aircraft departing and arriving under IFR operations at the airport. The Class D airspace and Class E surface area airspace excluded below 1,100 feet MSL beyond 4 miles from the airport would be decreased, and the segment of the Class E airspace designated as an extension extending to 10.2 miles northeast of the airport would be adjusted to coincide with the dimensions of the cutout.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AAL AK D Kenai, AK [Amended]

Kenai Municipal Airport, AK
(Lat. 60°34′24″ N., long. 151°14′41″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.2-mile radius of Kenai Municipal Airport, excluding the airspace below 1,100 feet MSL beyond 4 miles from the airport extending from the 310° bearing clockwise to the 346° bearing of the 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.

* * * * *

AAL AK E2 Kenai, AK [Amended]

Kenai Municipal Airport, AK
(Lat. 60°34′24″ N., long. 151°14′41″ W.)

That airspace extending upward from the surface to and including 2600 feet MSL within a 5.2-mile radius of Kenai Municipal Airport, excluding the airspace below 1,100 feet MSL beyond 4 miles from the airport extending from the 310° bearing clockwise to the 346° bearing of the airport; and that airspace extending upward from the surface beginning at lat. 60°39′25″ N., long. 151°17′17″ W.; to lat. 60°45′01″ N., long. 151°10′27″ W.; to lat. 60°41′12″ N., long. 150°57′33″ W.; to lat. 60°35′34″ N., long. 151° 04′25″ W., thence counterclockwise along the 5.2-mile radius of the airport to the point of beginning. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to Class D or Class E Surface Area.

* * * * *

AAL AK E4 Kenai, AK [Amended]

Kenai Municipal Airport, AK
(Lat. 60°34′24″ N., long. 151°14′41″ W.)

That airspace extending upward from the surface beginning at lat. 60°39′25″ N., long. 151°17′17″ W.; to lat. 60°45′01″ N., long. 151°10′27″ W.; to lat. 60°41′12″ N., long. 150°57′33″ W.; to lat. 60°35′34″ N., long. 151° 04′25″ W., thence counterclockwise along the 5.2-mile radius of the airport to the point of beginning.

Issued in Seattle, Washington, on May 24, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–13570 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–300–L13100000.FJ0000]

RIN 1004–AE26

Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental notice of proposed rulemaking; extension of comment period.

SUMMARY: On May 11, 2012, the Bureau of Land Management (BLM) published in the **Federal Register** a proposed rule to regulate hydraulic fracturing on Federal and Indian land. Due to the complexity of the rule and the issues surrounding it, the BLM extended the comment period for 60 days beyond the end of the initial comment period. On May 24, 2013, the BLM published a supplemental notice of proposed rulemaking and request for comment. Key issues in the revised proposed rule include: the use of an expanded set of cement evaluation tools to help ensure that usable water zones have been isolated and protected from contamination and more detailed guidance on how trade secrets claims will be handled. The revised proposed rule would also provide opportunities for the BLM to coordinate standards and processes with individual States and tribes to reduce administrative costs and improve efficiency. This notice extends the public comment period on the revised proposed rule for 60 days beyond the initial comment period.

DATES: The comment period for the proposed rule published May 24, 2013 (78 FR 31636), is extended. Send your comments on this proposed rule to the BLM on or before August 23, 2013. The BLM need not consider, or include in the administrative record for the final rule, comments that the BLM receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**).

ADDRESSES: *Mail:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE26. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street, SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143, for information regarding the substance of the rule or information about the BLM's Fluid Minerals Program. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

If you wish to comment, you may submit your comments by any one of several methods: *Mail:* You may mail comments to U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134LM, 1849 C Street, NW., Washington, DC 20240, Attention: 1004–AE26. *Personal or messenger delivery:* Bureau of Land Management, 20 M Street, SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at this Web site.

Please make your comments as specific as possible by confining them to issues directly related to the content of the revised proposed rule, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The revised proposed rule was published on May 24, 2013 (78 FR 31636), with a 30-day comment period closing on June 24, 2013. Since publication, the BLM has received numerous requests for extension of the comment period on the revised proposed rule. Because of the complexity of the rule and due to the controversial nature of well stimulation procedures, the BLM is hereby extending the comment period on the rule for 60 days. The closing date of the extended comment period is August 23, 2013.

Dated: June 5, 2013.

Tommy P. Beaudreau,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 2013–13708 Filed 6–7–13; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 12–201, 13–140, 08–65; FCC 13–74]

Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; and Assessment and Collection of Regulatory Fees for Fiscal Year 2008

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) will revise its Schedule of Regulatory Fees in order to recover an amount of $339,844,000 that Congress has required the Commission to collect for fiscal year 2013. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees, respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Submit comments on or before June 19, 2013, and reply comments on or before June 26, 2013.

ADDRESSES: You may submit comments, identified by MD Docket No. 13–140, 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://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.
- *Email: ecfs@fcc.gov.* Include MD Docket No. 13–140 in the subject line of the message.
- *Mail:* 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 should be addressed to 445 12th Street SW., Washington, DC 20554.

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: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 13–74, MD Docket No. 13–140, adopted on May 22, 2013 and released May 23, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

I. Procedural Matters

A. Ex Parte Rules Permit-But-Disclose Proceeding

1. The *Notice of Proposed Rulemaking (FY 2013 NPRM)* and *Further Notice of Proposed Rulemaking (FNPRM)* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Comment Filing Procedures

2. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 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: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies 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 St. 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 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.

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).

3. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

4. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (''PDF'') at: *http://www.fcc.gov*.

C. Paperwork Reduction Act

5. This *NPRM and FNPRM* document solicits possible proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the possible proposed information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Initial Regulatory Flexibility Analysis

6. An initial regulatory flexibility analysis (''IRFA'') is contained herein. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the *Notice of Proposed Rulemaking* (NPRM). The Commission will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

II. Introduction and Executive Summary

7. In the *FY 2013 NPRM* and *FNPRM,* two interrelated proceedings, we seek comment on the collection of regulatory fees in Fiscal Year (FY) 2013 and on proposals to more generally reform the Commission's policies and procedures for assessing and collecting regulatory fees. Specifically, in the *FY 2013 NPRM,* we seek comment on our annual process of assessing regulatory fees to offset the Commission's FY 2013 appropriation, as directed by Congress. We propose several reforms to the process for calculating and collecting the FY 2013 fees. The regulatory fees calculated in response to the *FY 2013 NPRM* will be collected later this year. We also seek comment on more long-range proposals to reform and revise our regulatory fee schedule after FY 2013 (for FY 2014 and beyond) to take into account changes in the communications industry and in the Commission's regulatory processes and staffing in recent years.

8. The *FY 2013 NPRM* seeks comment concerning adoption and implementation of proposals to reallocate regulatory fees to more accurately reflect the subject areas worked on by current Commission full time employees (FTEs) [1] for FY 2013. We seek comment on, among other things, reallocating for purposes of regulatory fee calculations: Direct FTEs working on Interstate Telecommunications Service Providers (ITSPs) and other fee categories to reflect current workloads devoted to these subject areas and FTEs in the International Bureau to more accurately reflect the Commission's regulation and oversight of the International Bureau regulatees. We also seek comment on whether, if these proposals are adopted, we should limit any increase in regulatory fee assessments to industry segments resulting from such reallocation. In addition, we seek comment generally on whether direct and indirect FTEs should be allocated differently as described below. Further, we seek comment on whether to delay our proposal to reallocate FTEs for regulatory fee purposes and, in the interim, maintain the same allocation percentages from last year for FY 2013.

9. In addition, we seek comment concerning adoption and implementation of proposals for FY 2014 and beyond, which include: (1) Combining ITSPs with wireless telecommunications services into one regulatory fee category and using revenues as the basis for calculating the resulting regulatory fees; (2) using revenues to calculate regulatory fees for other industries that now use subscribers as the basis for regulatory fee calculations, such as the cable industry; (3) consolidating UHF and VHF television stations into one regulatory fee category; (4) proposing a regulatory fee for Internet Protocol TV (IPTV) at the rate of cable fees; (5) alleviating large fluctuations in the fee rate of Multiyear Wireless Services; and (6) determining whether the Commission should modify the methodology in collecting regulatory fees for regulatees in declining industries (*e.g.,* CMRS Messaging). We also clarify that licensees of Digital Low Power, Class A, and TV Translators/Boosters should pay only one regulatory fee on their analog or digital station, but not on both. As required by Treasury and Office of Management and Budget (OMB) initiatives, we also announce and seek comment on our proposal to require that all regulatory fee payments be made electronically beginning in FY 2014. Finally, we state that beginning in FY 2014 the Commission will no longer mail out initial regulatory fee assessments to CMRS licensees, and we propose to transfer unpaid regulatory fees for collection by the Department of the Treasury at the end of the payment period (instead of waiting 180 days) beginning in FY 2014.

10. The attached *FNPRM* seeks comment on the treatment of non-U.S.-Licensed Space Stations; Direct Broadcast Satellites; and other services, such as broadband, in our regulatory fee process. We invite comment on these topics to better inform the Commission on whether and/or how these services should be assessed under our regulatory fee methodology in future years.

11. We propose to collect $339,844,000 in regulatory fees for Fiscal Year (FY) 2013, pursuant to Section 9 of the Communications Act of 1934, as amended (the Act or

[1] One FTE, typically called a ''Full Time Equivalent,'' is a unit of measure equal to the work performed annually by a full time person (working a 40 hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget. Any reference to FTE or ''Full Time Employee'' used herein refers to such Full Time Equivalent.

Communications Act) and the FY 2013 Continuing Appropriations Resolution. Section 9 regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[2] Further, as provided by section 9(a)(2), the amount of regulatory fees to be collected is established each year by Congress,[3] which directs the Commission to use the fees to offset its entire appropriation. For FY 2013, the sequester effectuated by the Budget Control Act of 2011 [4] reduces the agency's permitted FY 2013 salary and expenses expenditures by $17M to $322,844,000. However, that Act does not alter the congressional directive set out in the FY 2012 appropriation [5] (and continued in effect in FY 2013 by virtue of the Further Continuing Appropriations Act, 2013) to collect $339,844,000 in regulatory fees.[6]

III. Background

12. We began this regulatory fee reform analysis in the *Fiscal Year (FY) 2008 Further Notice of Proposed Rulemaking.*[7] In 2012, a report on the Commission's regulatory fee program issued by the Government Accountability Office (GAO Report) provided further support for a more fundamental reevaluation of how to align regulatory fees more closely with regulatory costs.[8] In our *FY 2012 NPRM* proposing basic changes to the current fee assessment process, we incorporated the GAO Report into the record and sought comment on it.[9] To encourage a more robust discussion of the record in this docket, the Commission invited all the parties who filed comments to the *FY 2012 NPRM* to further discuss their comments and any other regulatory fee reform issues they wished to raise with Commission staff. Staff has met with commenters representing the wireline, wireless, broadcast, cable, satellite, and submarine cable industries. Their additional comments have been summarized in ex parte filings and placed in the record of the proceeding in compliance with the Commission's rules.[10] To facilitate a more robust record to better inform the Commission as it contemplates further reform of our regulatory fee policies and procedures for FY 2013 and beyond, we seek comment not only on the issues raised herein, but also on the concerns and comments raised by the GAO Report, the issues presented and comments filed in response to the *FY 2012 NPRM* and any issues raised in ex parte filings by industry representatives. We anticipate that in the Report and Order we will adopt certain proposals discussed herein for FY 2013 and other proposals for implementation in FY 2014 and beyond.

IV. Notice of Proposed Rulemaking

A. Regulatory Fee Allocation Process and Need for Reform.

13. Each year the Commission derives the fees that Congress requires it to collect ''by determining the full-time equivalent number of employees performing'' these activities ''adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities . . . .'' [11] To calculate regulatory fees, the Commission allocates the total amount to be collected, among the various regulatory fee categories. Each regulatee within a fee category must pay its proportionate share based on an objective measure, *e.g.,* revenues, subscribers, or licenses. The first step, allocating fees to fee categories, is based on the Commission's calculation of the number of FTEs devoted to each regulatory fee category. FTEs are categorized as either ''direct'' or ''indirect.'' An FTE is considered ''direct'' if the employee is in one of the core bureaus, i.e., the Wireless Telecommunications Bureau, Media Bureau, Wireline Competition Bureau, or International Bureau.[12] If an employee is not assigned to one of those four bureaus, that employee is considered an ''indirect'' FTE.[13] Thus, the total FTEs for each fee category includes the direct FTEs associated with that category (*i.e.,* the FTEs in the bureau associated with that category), plus a proportional allocation of the indirect FTEs. This preliminary allocation has been based on the concept that the FTEs in each of those four bureaus perform activities related to the service providers regulated by those bureaus.

14. The current allocations of direct and indirect FTEs are taken from FTE data compiled in FY 1998.[14] A comparison of current FTE numbers in the various bureaus to their respective share of the overall regulatory fee burden illustrates the need to reexamine the FTE data used. For example, the International Bureau currently employs 22 percent of the Commission's direct FTEs, yet International Bureau regulatees contribute 6.3 percent of the total regulatory fee collection.[15] On the other hand, ITSPs, regulated by the Wireline Competition Bureau, pay 47 percent of the total annual regulatory fee collection, while the Wireline Competition Bureau employs only 29.2 percent of the Commission's direct FTEs. The proposals herein seek not only to address this issue, but also to make the allocation of regulatory fee burden more transparent.[16] Although we seek to better align regulatory fees with the level of current regulation, it is important to note that there is no statutory requirement that regulatory

[2] 47 U.S.C. 159(a).

[3] In FY 2013, the Consolidated and Further Continuing Appropriations Act, Public Law 113–6 (2013) at Division F authorizes the Commission to collect offsetting regulatory fees at the level provided to the Commission's FY 2012 appropriation of $339,844.00. *See* Financial Services and General Government Appropriations Act, 2012, Division C of Public Law 112–74, 125 Stat. 108–9 (2011).

[4] Budget Control Act of 2011, Public Law 112–15, 101, 125 Stat. 241 (2011) (amending 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99–177, 99 Stat. 1037 (2005).

[5] *See* Financial Services and General Government Appropriations Act, 2012, Division C of Public Law 112–74, 125 Stat. 108–9 (2011);

[6] Further Continuing Appropriations Act, 2013, Public Law 113–6, xxx Stat. xxx (2013) at Division F, 1101(c).

[7] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) (*FY 2008 FNPRM*).

[8] *See* GAO, ''Federal Communications Commission Regulatory Fee Process Needs to be Updated,'' Aug. 2012, GAO–12–686.

[9] *Assessment and Collection of Regulatory Fees,* Notice of Proposed Rulemaking, 27 FCC Rcd 8458 (2012) (*FY 2012 NPRM*). We cite some of the comments filed in response to the *FY 2012 NPRM* in the discussion herein.

[10] *See, e.g.,* American Cable Association, Notice of Ex Parte Presentation (Feb. 22, 2013); North American Submarine Cable Association, MD Docket Nos. 12–201 and 08–65, Notice of Ex Parte Presentation (Feb. 15, 2013); Enterprise Wireless Alliance, MD 12–201 Ex Parte Presentation (Feb. 15, 2013); North American Submarine Cable Association, MD Docket Nos. 12–201 and 08–65, Notice of Ex Parte Presentation (Mar. 27, 2013).

[11] 47 U.S.C. 159(b)(1)(A).

[12] The current numbers of direct FTEs are as follows: International Bureau, [119]; Media Bureau, [171]; Wireline Competition Bureau, [160]; and Wireless Telecommunications Bureau, [98]. FTEs involved in Section 309 auctions, [194 FTEs], are not included in this analysis because auctions activities are funded separately.

[13] The ''indirect'' FTEs are the employees from the following bureaus and offices: Enforcement Bureau, Consumer and Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Chairman and Commissioners' offices, Office of Managing Director, Office of General Counsel, Office of the Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Strategic Planning and Policy Analysis, Office of Workplace Diversity, Office of Media Relations, and Office of Administrative Law Judges, totaling [967] FTEs.

[14] *FY 2012 NPRM,* 27 FCC Rcd at 8461, para. 8.

[15] *See FY 2012 NPRM,* 27 FCC Rcd at 8467, paras. 24–25.

[16] The GAO noted the lack of transparency of the regulatory fee process, and was particularly concerned with the regulatory fee allocations for the International Bureau and the Wireline Competition Bureau, *see* GAO Report at p. 23.

fees offset only the actual costs of regulating each service. In fact, the FY 2013 Further Continuing Resolution requires that the Commission collect an amount of regulatory fees sufficient to offset its entire appropriation. Thus the total benefit received by any particular regulatee from Commission actions will not necessarily correlate directly with the quantity of Commission resources used for that regulatee's benefit.[17] For example, regulatory fees also cover the costs the Commission incurs in regulating entities that are statutorily exempt from paying regulatory fees,[18] entities whose regulatory fees are waived,[19] and entities that provide nonregulated services, as well other Commission activities, such as consumer-related services.

15. As discussed in the *FY 2012 NPRM,* the FY 1998 FTE data may no longer fairly and accurately reflect the time that Commission employees devote to these activities.[20] Using updated [21] FTE data (without other significant changes in our methodology) would reduce the percentage of regulatory fees allocated to Wireline Competition Bureau regulatees from 47 percent to 29.2 percent and increase the percentage of fees allocated to International Bureau regulatees from 6.3 percent to 22 percent.[22] Therefore, substituting current FTE data for FY 1998 FTE data would subject some international service providers to significant fee increases.[23] In determining how to update the FTE data to more accurately reflect the current composition of the Commission, we recognize that not only can the regulatory fees not be calculated to reflect the exact costs of each regulated industry, but such direct relationship of costs to each industry is not consistent with the statutory mandate to allocate based on the FTEs performing the enumerated functions in each named bureau. Nevertheless, we find that it is consistent with section 9 of the Act to better align, to the extent feasible, these regulatory fees with the current costs of Commission oversight and regulation of each industry group. Specifically, a more accurate alignment of FTE work to subject matter promotes the requirement in section 9 to ensure the benefits provided to the payor of the fee are consistent with the Commission's activities.[24]

16. The GAO Report concluded that, due to changes in the communications industry and in the Commission during the past 15 years, the Commission should perform an updated FTE analysis, determine whether the fee categories should be revised, and increase the transparency of the regulatory fee process.[25] For this purpose, we examine whether these functions and activities performed by FTEs in the International Bureau, often to the benefit of multiple categories of regulatees, warrant considering only a portion of the International Bureau as a ''core bureau.'' We also examine whether wireline and wireless telecommunications services should be combined into a single new category.

B. Discussion

1. Changes to the Interstate Telecommunications Service Providers (ITSPs) Fee Category

17. One of the primary issues discussed in the *FY 2012 NPRM* is how to fairly allocate the FTEs for ITSPs, which are the Wireline Competition Bureau fee payors.[26] ITSPs—interexchange carriers (IXCs), incumbent local exchange carriers (LECs), toll resellers, and other IXC service providers—use end-user revenues to calculate regulatory fee assessments based on the reported revenue in the FCC Form 499–A, filed April 1 of each year with the prior year's interstate and international revenue.[27] As stated previously, in FY 2012, ITSPs paid 47 percent of the total regulatory fees collection, even though the Wireline Competition Bureau employees comprised 29.2 percent of the Commission's direct FTEs. In addition, since ITSPs pay regulatory fees based on revenues, the regulatory fee assessment rates for ITSPs generally have increased over time due to a declining revenue base in that industry segment.[28] At the same time, wireless revenues have increased significantly, in part due to substitution of wireless services for wireline services. Nevertheless, as wireless revenues have increased, the proportion of all regulatory fees paid by wireless providers has not significantly increased. Thus, our regulatory fee methodology has not kept pace with the changes in both the communications industry and within the Commission. We seek comment on reallocating the direct FTEs for ITSP for FY 2013, based on current FTEs in the core bureaus, which would significantly decrease the regulatory fee allocation for ITSPs. We propose this reallocation in conjunction with a reallocation of International Bureau FTEs, as explained in more detail below. We also seek comment on revising our methodology to account for changes in the wireless and wireline industries by making additional changes to the ITSP fee category for FY 2014, such as combining wireless and wireline into a new ITSP category, as discussed below.

18. Currently wireless and wireline telecommunications services are in separate regulatory fee categories. The Independent Telephone and Telecommunications Alliance (ITTA) proposes that the Commission assess all voice service providers on the basis of revenues to ensure that like services are treated in a similar manner.[29] We agree with ITTA that wireless services are comparable to wireline services in many ways and therefore both encompass similar regulatory policies and programs, such as universal service and number portability.[30] As wireless services are increasingly displacing wireline services, we seek comment on whether it would be fair to combine both services into one category by including all wireless and wireline FTEs in the same allocation to arrive at one uniform regulatory fee rate for ITSP and wireless providers, assessed based on revenues.

19. Under section 9 of the Communications Act, the Commission must make certain changes to the regulatory fee schedule if it ''determines that the Schedule requires amendment to comply with the requirements'' of section 9(b)(1)(A).[31] The Commission must add, delete, or reclassify services in the fee schedule to reflect additions,

[17] *FY 2004 Report and Order,* 19 FCC Rcd at 11667, para. 11.

[18] *Id.* For example, governmental and nonprofit entities are exempt from regulatory fees under section 9(h) of the Act. 47 U.S.C. 159(h); 47 CFR 1.1162.

[19] 47 CFR 1.1166.

[20] *FY 2012 NPRM,* 27 FCC Rcd at 8464, para. 12.

[21] The FTEs used herein are determined as of Sept. 30, 2012.

[22] *FY 2012 NPRM,* 27 FCC Rcd at 8467, para. 25.

[23] *Id.*

[24] 47 U.S.C. 159.

[25] GAO Report at 36.

[26] *See FY 2012 NPRM,* 27 FCC Rcd at 8467, para. 25.

[27] The Commission has separated revenues listed on Form 499–A into two fee categories: ITSP providers and non-ITSP providers. Providers that derive a predominant amount of their revenues from Lines 412(e), 420(d), and 420(e) on FCC Form 499–A are ITSP providers and subject to ITSP regulatory fees. Those providers that do not derive their revenues predominantly from Lines 412(e), 420(d), and 420(e) on FCC Form 499–A, non-ITSP providers, paid a regulatory fee calculated differently, such as by number of subscribers.

[28] Wireline revenues have not decreased for all carriers. Verizon, for example, reported for 2012 that ''Consumer wireline revenues grew by 3.2 percent for the year—the best in a decade—fueled by double-digit growth in FiOS.'' Verizon 2012 Annual Report at p. 3.

[29] ITTA Comments at 3.

[30] The GAO Report discussed using revenues for assessing wireless providers' regulatory fees, as proposed by ITTA. *See* GAO Report at 19–20.

[31] 47 U.S.C. 159(b)(3).

deletions, or changes in the nature of its services ''as a consequence of Commission rulemaking proceedings or changes in law.'' [32] These ''permitted amendments'' require Congressional notification [33] and resulting changes in fees are not subject to judicial review.[34] Combining wireless and wireline FTEs in the same allocation, for a new ITSP category, would be such a ''permitted amendment'' requiring Congressional notification. Therefore, if adopted, this allocation change would not take effect until FY 2014.

20. We recognize, however, that carriers whose regulatory fees are calculated on the basis of revenues, instead of subscribers, may have an incentive to allocate more of their revenues to data services in order to reduce their regulatory fees.[35] Therefore, we invite commenters to also discuss whether there are alternate ways to assess regulatory fees for wireless and wireline telecommunications services to achieve fair, sustainable, and predictable results, such as moving both industry groups to another common objective measure as the basis for calculating regulatory fees, and what such common measure should be.

2. Reallocation of FTEs

21. The GAO Report recommended that the Commission reexamine the activities performed by FTEs in the various bureaus.[36] This Notice of Proposed Rulemaking is responsive to the GAO's recommendation. Adjusting the allocation fee category percentages and rates to reflect current FTEs, without further examining precisely what regulatory functions these FTEs are performing would result in an incomplete reexamination of the issues involved in updating our FTE allocations. Moreover, using updated FTE calculations without other significant changes in our methodology would subject some classes of regulatees to significant fee increases.

22. While we are required by section 9 of the Act to calculate regulatory fees based on an allocation of FTEs, we are not required to use the same methodology year after year. We tentatively conclude that our methodology of using the direct and indirect FTEs based on the four core bureaus and supporting bureaus and offices should be revised to more accurately reflect the direct and indirect costs for those regulatees. Such revisions should take into account the impact on all regulatees, because any change in the allocation of the total regulatory fee amount for one category of fee payors necessarily affects the fees paid by payors in all the other fee categories. The GAO Report noted the disparity in the allocation for the International Bureau, the Wireline Competition Bureau, and the Wireless Telecommunications Bureau.[37] The current FTE allocations, as of September 30, 2012, and the FTE allocations what would result from our reallocation proposals are shown in the table below.

TABLE 1—DIRECT AND INDIRECT FTE ALLOCATIONS/CURRENT AND PROPOSED

Bureaus (all FTE amounts shown exclude auctions-funded employees)	Current allocations based on 1998 direct FTE analysis (percent)	Effective FY 2013 allocation resulting from the reallocation proposal in this NPRM, applying proposed cap of 7.5% on fee rate increases [38] (percent)
International Bureau	6.3	5.99
Media Bureau	30.2	33.33
Wireline Competition Bureau	46.7	[39] 41.26
Wireless Telecommunications Bureau	16.8	19.42

23. We propose to update our FTE analysis using data from September 30, 2012. The International Bureau, which employs 22 percent of the Commission's direct FTEs, currently pays, as illustrated in the table above, 6.3 percent of the total regulatory fees. [40] Conversely, ITSPs, based on the current allocation, would pay almost 47 percent of the total regulatory fees while the Wireline Competition Bureau employs roughly 30 percent of the Commission's direct FTEs. We seek comment on how to revise the apportionment of direct and indirect FTEs to reach a fair and equitable regulatory fee allocation, under proposals including, but not limited to, those described herein. Our proposed reallocation, without further reforms or adjustments (such as the caps discussed herein at paragraphs 30 and 31) would result in allocation of 5.92 percent to the International Bureau, 37.50 percent to the Media Bureau, 35.09 percent to the Wireline Competition Bureau, and 21.49 percent to the Wireless Telecommunications Bureau. When these figures are adjusted to reflect the proposed 7.5 percent cap on rate increases for FY 2013, the resulting effective allocations for FY 2013 are as set forth in the far right column in the table above.

24. We had previously sought comment on revising the regulatory fee schedule, which would thereby increase the amount paid by the International Bureau's regulatees to 22 percent of the total.[41] Although our proposals in this proceeding are based, in part, on such a reallocation, we believe that, as discussed below, fairness warrants an allocation that more closely reflects the appropriate proportion of direct costs required for regulation and oversight of International Bureau regulatees. Under such an analysis, the regulatory fee allocation of these regulatees, should be decreased, rather than significantly increased, for the reasons stated herein. When section 9 was adopted, the total FTEs were to be calculated based on the number of FTEs in the Private Radio

[32] 47 U.S.C. 159(b)(3).

[33] 47 U.S.C. 159(b)(4)(B).

[34] 47 U.S.C. 159(b)(3).

[35] We do not currently assess regulatory fees on broadband revenues.

[36] GAO Report at 36.

[37] *See* GAO Report at 14–15.

[38] The percentages shown are the estimated allocations for FY 2013 when the fee rate increases are capped at 7.5%. The actual fees to be paid for FY 2013 may be affected by additional factors, such as number of subscribers, revenues, or other units to which the capped fee rate will be applied.

[39] This result reflects an approximately ten percent (10%) reduction in the ITSP fee rate from what it would have been in FY 2012 but for the offsetting rate freeze for ITSP's applied in our FY 2012 Order.

[40] *See FY 2012 NPRM,* 27 FCC Rcd at 8467, paras. 24–25.

[41] *FY 2012 NPRM,* 27 FCC Rcd at 8467, paras. 24–25.

Bureau,[42] Mass Media Bureau,[43] and Common Carrier Bureau.[44] Satellites and submarine cable were regulated through the Common Carrier Bureau before the International Bureau was created. As discussed below, the services offered by regulatees in the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Media Bureau have evolved and converged over time and, therefore their regulation involves many similar issues and generates common Commission costs. To cite but one example, wireline, wireless, and cable companies compete with each other for customers.[45]

25. During this technological convergence among wireline, wireless, and cable services, the International Bureau's work has expanded beyond its regulation of international licensees. It also has unique duties to assist bureaus and their regulatees throughout the Commission, and represent the Commission on a variety of international issues affecting those regulatees. In discharging these duties, the International Bureau works on matters including but not limited to spectrum use, cross-border coordination, broadband deployment, and foreign ownership. At the same time, International Bureau licensees have required less Commission oversight and regulation. Thus, the International Bureau now serves the entire Commission's international needs, not just the specific requirements of the International Bureau regulatees. For these reasons, we propose that the International Bureau should no longer be entirely classified as a ''core bureau'' in the way that the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Media Bureau are classified today. Below, we seek comment on proposals to reallocate the International Bureau FTEs for regulatory fee purposes.

a. Strategic Analysis and Negotiations Division, International Bureau

26. Consistent with section 9(b) of the Act, any reallocation methodology we adopt must be reasonably related to the benefits provided to the payor of the fee by the Commission's activities. A reallocation that reflects benefits provided to the fee payor will also meet our objectives of being fair and sustainable. Revising the percentage of the total regulatory fees paid by international service providers to reflect the full percentage of direct FTEs in the International Bureau would promote fairness if we determined that the increase in International Bureau FTEs is due to a corresponding increase in FTEs working on regulation and oversight of international service providers. If, instead, the increase is attributable to the increasing number of International Bureau FTEs performing duties that are related to the Commission as a whole or benefit service providers regulated by other Bureaus, the fee increase should not be imposed solely on international service providers. Rather, it should also be allocated to the other regulatory fee categories whose fee payors benefit from that work.

27. For example, the largest division in the International Bureau is the Strategic Analysis and Negotiations Division (SAND), which is not significantly involved in regulation or oversight of International Bureau regulatees. Instead, SAND is responsible for intergovernmental and regional leadership, negotiating, and planning—processes that benefit offices and bureaus throughout the Commission. SAND oversees the Commission's global participation in international forums such as the International Telecommunication Union (ITU), including World Radio-communication Conferences; various regional organizations, such as the Asia-Pacific Economic Cooperation, the Inter-American Telecommunications Conference, and the Organization for Economic Cooperation and Development; and cross-border negotiations with Canada and Mexico. These activities cover telecommunications services outside of the bureau's direct oversight and regulatory activities, *e.g.,* coordination of wireless services with Canada and Mexico.[46] SAND also performs oversight to enable the International Bureau to integrate international and bilateral meetings with visits to the Commission by foreign regulators and other government officials. SAND is responsible for performing economic and policy analyses for the International Bureau concerning trends in the international communications markets and services. Finally, SAND conducts research and studies concerning international regulatory trends, as well as their implications on U.S. policy. For these reasons we propose excluding the SAND FTEs from the International Bureau for regulatory fee purposes and instead allocating them as indirect FTEs.[47] We seek comment on this proposal.

b. Satellite Division, International Bureau

28. In contrast to SAND, the International Bureau's Satellite Division is responsible for the regulation and oversight of satellite system licensees, specifically operators of space stations and earth stations, by authorizing satellite systems to facilitate deployment of satellite services and fostering efficient use of the radio frequency spectrum and orbital resources. In addition to the application and licensing process, the Satellite Division provides expertise about the commercial satellite industry in the domestic spectrum management process and advocates U.S. satellite radiocommunication interests in international coordinations and negotiations. The Satellite Division is also responsible for the process of placing non-U.S.-licensed space stations on a ''Permitted List,''[48] a process that is similar to the application process and allows access to the U.S. market for certain non-U.S. licensed satellites.[49] The Satellite Division also reviews market access requests that are not eligible for inclusion on a Permitted List.

29. We propose that of all the International Bureau's Satellite Division employees whose work involves regulation of International Bureau regulatees, we use 25 direct FTEs[50] to determine the regulatory fees for both

[42] The predecessor to the Wireless Telecommunications Bureau.

[43] Now the Media Bureau.

[44] The predecessor to the Wireline Competition Bureau.

[45] Apart from DBS video services, for the most part the International Bureau regulatees do not offer the same services as the wireline, wireless, and cable companies, although wireline and wireless companies use the services, e.g. submarine cables that International Bureau regulatees provide.

[46] *See FY 2012 NPRM,* 27 FCC Rcd at 8467–68, para. 26.

[47] *See id.,* 27 FCC Rcd at 8467–68, paras. 26–27; North American Submarine Cable Association Comments at 28.

[48] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States,* IB Docket No. 96–111, First Order on Reconsideration, 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*) (adopting the original procedure for making changes to the Permitted List). *See also 2006 Biennial Regulatory Review—Revision of Part 25, Establishment of a Permitted List Procedure for Ka-band Space Stations,* IB Docket 06–154, Declaratory Order, 25 FCC Rcd 1542 (2010).

[49] This is the process used by certain non-U.S.-licensed satellite operators to serve customers in the United States. These satellite operators may file a petition for a Declaratory Ruling seeking approval to provide service in the United States. These operators do not pay application fees or regulatory fees to the Commission, yet their petitions, together with the information required by an application, are analyzed by Satellite Division staff and these operators benefit from International Bureau regulatory activities.

[50] Indirect FTEs would be allocated to these entities as they are for all regulatory fee payors.

satellite space stations and earth stations.[51] We seek comment on this proposal.

c. Policy Division, International Bureau

30. The work of the third division in the International Bureau, the Policy Division, is multifaceted. The Policy Division work involves development of polices in connection with regulation and licensing of international facilities and services (including submarine cable systems, which provide bearer circuits). The Policy Division conducts international spectrum rulemakings, handles applications for transfer and assignment of international service providers and implements Commission policies designed to protect competition in international telecommunications, and promotes lower international calling rates for U.S. consumers. It coordinates and provides guidance to and shares its expertise with the Commission and other agencies. For example, the Policy Division oversees Commission policies involving foreign ownership of U.S. telecommunications providers, and in this connection, coordinates major mergers and other license applications with U.S. agencies on matters relating to national security, law enforcement, foreign policy, and trade policy. Many of these functions involve wireless and wireline issues and therefore benefit regulatees in other Bureaus.[52] Commenters to the *FY 2012 NPRM* argued that the Policy Division's limited regulation and oversight of submarine cable systems does not support the current allocation of 36.08 percent of all the International Bureau regulatory fees or 2.28 percent of all regulatory fees to the submarine cable industry.[53]

31. Sixty submarine cable systems are licensed by the Commission, including 43 international submarine cable systems.[54] Submarine cable systems transport most of the U.S. international traffic,[55] including Internet broadband, video, other high bandwidth applications, voice services (public switched and interconnected VoIP), and non-public, private traffic for various international carriers, content and Internet providers, corporations, wholesale operators, and governments. Large corporate customers include financial and news companies and other content providers. Cable capacity is generally sold on an indefeasible right of use (IRU) basis for 10–15 year terms and also on a long-term lease basis;[56] therefore, a large increase in regulatory fees is likely difficult to recover from customers as a ''pass-through'' charge.[57] Commenters responding to the *FY 2012 NPRM* noted that regulatory fee charges in the U.S. are much higher than those charged by other countries.[58] Therefore, substantially increasing the regulatory fees paid by submarine cable service providers would serve as a disincentive for carriers to land new cables in the U.S. and an incentive to land new cables in Mexico and Canada instead. Over time, this would result in increased costs to American consumers as well as potential national security issues.[59] These commenters contend that if the newer submarine cable systems choose to land in Canada or Mexico to avoid our high regulatory fees, eventually almost all international traffic will leave from (or arrive into) Canada or Mexico instead of the U.S.[60]

32. We recognize that submarine cable systems have been subject to significant regulatory fee reform recently.[61] In the *Submarine Cable Order,* the Commission adopted a new submarine cable bearer circuit methodology to assess regulatory fees on a cable landing license basis, based on the proposal (the ''Consensus Proposal'') of a large group of submarine cable operators representing both common carriers and non-common carriers with both large and small submarine cable systems.[62] This methodology allocates international bearer circuit (IBC) costs among service providers without distinguishing between common carriers and non-common carriers, by assessing a flat per cable landing license fee for all submarine cable systems, with higher fees for larger submarine cable systems and lower fees for smaller systems. The *Submarine Cable Order* did not assess a particular regulatory fee for the submarine cable systems but instead it adopted a new methodology that was considered fairer and easier to administer than the previous method of assessing regulatory fees. This recent in-depth review and revision of the regulatory fee methodology for submarine cable serves as another important factor to consider in determining the appropriate allocation of regulatory fees in this proceeding.

33. The 2.28 percent of all regulatory fees submarine cable service providers now pay is the sixth highest regulatory fee percentage among all fee categories,[63] notwithstanding the fact that the provision of international submarine cable service involves little regulation and oversight from the Commission after the initial licensing process. Under Part 43 of the Commission's rules, common carriers must file Traffic and Revenue Reports regarding international services and, for U.S. facilities-based international common carriers, Circuit Status Reports for information concerning leased or owned circuits.[64] Within the Policy Division, submarine cable licensing,

[51] *See* Satellite Industry Association Comments at 13.

[52] *See* Satellite Industry Association Comments at 14.

[53] *See* Joint Reply Comments of International Carrier Coalition at 3. *See also* Telstra Incorporated and Australia-Japan Cable (Guam) Limited Comments at 3 (''the Commission's primary regulatory activity is the granting of the cable landing license.'').

[54] There are 42 international submarine cable systems in operation subject to regulatory fees and one more licensed system that will become subject to regulatory fees when it becomes operational.

[55] Submarine cables transport approximately 95 percent of U.S. international traffic. *See* North American Submarine Cable Association Comments at 15.

[56] *See* North American Submarine Cable Association Comments at 4.

[57] *See id.* at 18–19; Telstra Incorporated and Australia-Japan Cable (Guam) Limited Comments at 4.

[58] The annual regulatory fees charged to submarine cable systems are much higher in the U.S. than in other countries. *See* Joint Comments of International Carrier Coalition at 13. Canada charges $100 (Canadian) per year. *Id.* at 14. Several other countries charge fees on telecommunications companies that would include submarine cable operators, although there is no special category or assessment for submarine cable systems; e.g., the United Kingdom (.0609% of UK revenues); Spain (less than .2% of revenues in Spain); the Netherlands (.077% of revenues in the Netherlands), Argentina (.5% of revenues in Argentina); and Australia ($1,000 (Australian) plus .00118% Australian revenues. *Id.* Many other countries, such as Japan, Germany, and Mexico, do not charge regulatory fees at all. *Id. See also* North American Submarine Cable Association, MD Docket Nos. 12–201 and 08–65, Notice of Ex Parte Presentation (Mar. 27, 2013) at 3 (''Asia, Hong Kong, Singapore, and Malaysia compete fiercely for submarine cable landings to maintain and improve their connectivity and support their services industries.'').

[59] *See, e.g.,* Joint Comments of International Carrier Coalition at 17 (additionally, ''[l]andings outside of the US are also outside the reach of US law enforcement authorities and cannot be monitored for evidence of criminal or terrorist activity.'').

[60] *Id.*

[61] *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009) (*Submarine Cable Order*).

[62] The 15 parties to the Consensus Proposal represented 35 of the 42 international submarine cable systems in operation as well as three planned systems. *Submarine Cable Order,* 24 FCC Rcd at 4213, para. 11.

[63] Geostationary Space Stations are higher, at 3.23%, as are ITSP (46.66%), CMRS Mobile (14.33%), Cable TV (16.55%), and FM Classes B, C, C0, C1, & C2 (2.62%). Of all the International Bureau regulatees, (presently, 6.32% of all regulatory fees) the Submarine Cable systems pay 36.08%.

[64] The Commission recently made changes to the international reporting requirements, which have yet to go into effect. *See Reporting Requirements for U.S. Providers of International Telecommunications Services,* IB Docket No. 04–112, Second Report and Order, 28 FCC Rcd 575 (2013).

regulation, and oversight is handled by a small number of FTEs during each fiscal year.[65] The Policy Division employees whose work involves the regulation of submarine cable systems and bearer circuits, equates to only two FTEs. The remaining Policy Division FTEs handle other matters involving international issues and, like the SAND FTEs, should more accurately be considered indirect FTEs, together with the remaining bureau level employees.

34. To summarize, we propose to reclassify SAND's FTEs as indirect FTEs and reallocate them among the remaining core bureaus. In light of the number of employees in the Satellite Division who work on satellite and earth station issues, the number of employees in the Policy Division who work on bearer circuits and submarine cable issues, and the amount of time Satellite Division and Policy Division employees spend on other issues that are not specific to the International Bureau regulatees, we estimate that the appropriate number of FTEs to allocate as direct for regulatory fee purposes is 27. This calculation factors in 25 FTEs from the Satellite Division and 2 from the Policy Division. We recognize in reaching this estimate that most of the International Bureau FTEs should be considered indirect because their activities benefit the Commission as a whole and are not specifically focused on International Bureau regulatees. Therefore, we also propose that only a total of 27 of the FTEs in the Satellite Division and the Policy Division involved in regulation and oversight of International Bureau regulatees, *i.e.,* satellites, earth stations, submarine cable, and bearer circuits, be considered in the direct International Bureau FTE allocation for regulatory fee purposes. All remaining International Bureau FTEs would be indirect because their activities benefit the Commission as a whole and are not focused on International Bureau regulatees. This proposal, if adopted, would be implemented in FY 2013. We ask commenters to address the substance and timing of this proposal.

d. Reallocation of Other FTEs

35. Many Commission functions are not directly attributable to only one specific regulated industry; the regulatory fee allocation, therefore, has a large number of FTEs that we currently consider indirect. As explained in the *FY 2012 NPRM,* our current approach is to distribute these indirect FTEs proportionally across the core bureaus according to these bureaus' respective percentages of the Commission's total direct FTE costs. As we also noted, this approach is based on the view that ''the work of the FTEs in the support bureaus and offices is not primarily focused on any one bureau or regulatory fee category, but instead services the needs of all four core bureaus.'' Further analysis indicates, however, that work of the FTEs in a support bureau may tend to focus disproportionately more on some of the core bureaus than others and that this focus may shift over time. It might be difficult to allocate these indirect FTEs on a task-by-task basis. We seek comment on whether the work of indirect FTEs is focused disproportionately on one or more core bureaus and if we should allocate indirect FTEs among the core bureaus on this basis. For example, if a particular support bureau or office routinely does a disproportionate amount of work on matters affecting the regulatees of a particular core bureau or bureaus, should the allocation of its indirect FTEs be adjusted to reflect such focus in its work? We seek comment on whether there are any divisions in non-core bureaus that should be assigned as indirect FTEs in a different manner or assigned as direct FTEs for a particular group of regulatees. We also seek comment on whether there are other divisions within the core bureaus that should be treated as indirect FTEs instead of as direct FTEs and reassigned proportionally among the bureaus.

3. Limitation on Increases of Regulatory Fees

36. The proposals set forth above will likely reduce the regulatory fee assessment for some regulatory fee categories, such as ITSPs and regulatees of the International Bureau, significantly, while increasing the assessment for many other fee categories. In order to provide a reasonable transition to our new allocations and because there are unresolved regulatory fee reform issues that may be adopted in FY 2014 that could further impact these allocations, we propose limiting any rate increases resulting from our reallocations for this fiscal year. Such a limitation of, for example, 7.5 percent, would prevent ''unexpected, substantial increases which could severely impact the economic wellbeing of these licensees [regulatees].''[66] We propose implementing such a limitation on the increase in regulatory fee rates, before any rounding to the nearest applicable dollar unit as set forth in our rules, above FY 2012 fee rates.[67] This limitation, if adopted, would be effective in FY 2013. Below are tables illustrating the impact of limiting the increase to 7.5 percent on regulatory fee collection and its associated Schedule of Fees. This will allow us to begin the transition toward better alignment of regulatory fees with Commission work performed, permitting necessary downward adjustment of regulatory fees in some sectors without imposing undue economic hardship on regulates in other sectors. Limiting increases will, necessarily, limit the decrease in fees for other regulatory fee categories, since the overall fee collection amount does not change.

TABLE 2—MAINTAIN THE SAME PERCENTAGE ALLOCATIONS AS IN PRIOR YEARS CALCULATION OF FY 2013 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee category	FY 2013 Payment units	Years	FY 2012 Revenue estimate	Pro-rated FY 2013 revenue requirement	Computed new FY 2013 regulatory fee	Rounded new FY 2013 regulatory fee	Expected FY 2013 revenue
PLMRS (Exclusive Use)	1,400	10	490,000	507,072	36	35	490,000
PLMRS (Shared use)	15,000	10	2,250,000	2,426,700	16	15	2,250,000
Microwave	13,200	10	2,640,000	2,390,480	18	20	2,640,000
218–219 MHz (Formerly IVDS)	5	10	3,500	3,622	72	70	3,500
Marine (Ship)	6,550	10	655,000	796,827	12	10	655,000
GMRS	7,900	5	192,500	289,755	7	5	197,500
Aviation (Aircraft)	2,900	10	290,000	362,194	12	10	290,000

[65] The Commission, through the International Bureau Policy Division, seeks to ensure that the applicant controls one of the necessary inputs of the submarine cable system (the wet link, cable landing station, or back haul facilities).

[66] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* Report and Order, 12 FCC 17161, 17176, para. 37 (1997).

[67] The cap would not limit changes in regulatory fees paid by a particular payor resulting from other factors, such as increased or decreased revenues, changes in subscriber numbers, number of licenses, etc.

TABLE 2—MAINTAIN THE SAME PERCENTAGE ALLOCATIONS AS IN PRIOR YEARS CALCULATION OF FY 2013 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

Fee category	FY 2013 Payment units	Years	FY 2012 Revenue estimate	Pro-rated FY 2013 revenue requirement	Computed new FY 2013 regulatory fee	Rounded new FY 2013 regulatory fee	Expected FY 2013 revenue
Marine (Coast)	285	10	142,500	144,878	51	50	142,500
Aviation (Ground)	900	10	135,000	144,878	16	15	135,000
Amateur Vanity Call Signs	14,300	10	214,500	217,316	1.52	1.52	217,360
AM Class A [4]	68	1	250,100	253,978	3,735	3,725	253,300
AM Class B [4]	1,454	1	3,125,875	3,161,850	2,175	2,175	3,162,450
AM Class C [4]	837	1	1,107,975	1,129,223	1,349	1,350	1,129,950
AM Class D [4]	1,406	1	3,698,400	3,742,299	2,662	2,650	3,725,900
FM Classes A, B1 & C3 [4]	2,935	1	7,764,750	7,836,522	2,670	2,675	7,851,125
FM Classes B, C, C0, C1 & C2 [4]	3,110	1	9,513,000	9,611,273	3,090	3,100	9,641,000
AM Construction Permits	51	1	35,750	28,658	562	560	28,560
FM Construction Permits [1]	170	1	84,000	118,614	698	700	119,000
Satellite TV	129	1	178,125	181,097	1,404	1,400	180,600
Satellite TV Construction Permit	3	1	3,580	3,622	1,207	1,200	3,600
VHF Markets 1–10	22	1	1,761,650	1,804,524	82,024	82,025	1,804,550
VHF Markets 11–25	23	1	1,836,875	1,880,596	81,765	81,775	1,880,825
VHF Markets 26–50	39	1	1,512,400	1,549,293	39,725	39,725	1,549,275
VHF Markets 51–100	61	1	1,255,500	1,290,409	21,154	21,150	1,290,150
VHF Remaining Markets	140	1	798,025	814,033	5,815	5,825	815,500
VHF Remaining Markets	140	1	798,025	814,033	5,815	5,825	815,500
VHF Construction Permits [1]	1	1	11,650	5,825	5,825	5,825	5,825
UHF Markets 1–10	109	1	3,853,150	3,880,922	35,605	35,600	3,880,400
UHF Markets 11–25	106	1	3,458,250	3,478,876	32,820	32,825	3,479,450
UHF Markets 26–50	135	1	2,959,875	2,977,132	22,053	22,050	2,976,750
UHF Markets 51–100	225	1	2,868,750	2,884,066	12,818	12,825	2,885,625
UHF Remaining Markets	247	1	845,975	852,059	3,450	3,450	852,150
UHF Construction Permits [1]	7	1	23,975	24,150	3,450	3,450	24,150
Broadcast Auxiliaries	25,400	1	248,000	254,000	10	10	254,000
LPTV/Translators/Boosters/Class A TV	3,725	1	1,436,820	1,448,776	389	390	1,452,750
CARS Stations	325	1	178,125	181,097	557	555	180,375
Cable TV Systems	60,000,000	1	59,090,000	59,943,108	.99905	1.00	60,000,000
Interstate Telecommunication Service Providers	$39,000,000,000	1	148,875,000	146,250,000	0.003750	0.00375	146,250,000
CMRS Mobile Services (Cellular/Public Mobile)	321,000,000	1	53,210,000	52,821,422	0.1646	0.17	54,570,000
CMRS Messag. Services	3,000,000	1	272,000	240,000	0.0800	0.080	240,000
BRS [2]	920	1	451,250	588,800	640	640	588,800
LMDS	170	1	225,625	108,800	640	640	108,800
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	4,220,000	1	1,157,602	1,167,825	.277	.28	1,181,600
Submarine Cable Providers (see chart in Table 3) [3]	38.313	1	8,150,984	8,249,219	215,314	215,325	8,249,639
Earth Stations	3,400	1	893,750	905,485	266	265	901,000
Space Stations (Geostationary)	87	1	11,560,125	11,698,866	134,470	134,475	11,699,325
Space Stations (Non-Geostationary)	6	1	858,900	869,266	144,878	144,875	869,250
****** Total Estimated Revenue to be Collected			340,568,811	339,521,495			341,106,534
****** Total Revenue Requirement			339,844,000	339,844,000			339,844,000
Difference			724,811	−322,505			1,262,534

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, Report & Order and FNPRM of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, ¶6 (2004).

[3] The chart at the end of Table 3 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order (MD Docket No. 08–65, RM–11312), released March 24, 2009; and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Notice of Proposed Rulemaking and Order (MD Docket No. 09–65, MD Docket No. 08–65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled "Rounded New FY 2013 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2013 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 3.

TABLE 3—MAINTAIN THE SAME PERCENTAGE ALLOCATIONS AS IN PRIOR YEARS

[FY 2013 schedule of regulatory fees]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	70
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15

TABLE 3—MAINTAIN THE SAME PERCENTAGE ALLOCATIONS AS IN PRIOR YEARS—Continued

[FY 2013 schedule of regulatory fees]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.52
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	640
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	640
AM Radio Construction Permits	560
FM Radio Construction Permits	700
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	82,025
Markets 11–25	81,775
Markets 26–50	39,725
Markets 51–100	21,150
Remaining Markets	5,825
Construction Permits	5,825
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	35,600
Markets 11–25	32,825
Markets 26–50	22,050
Markets 51–100	12,825
Remaining Markets	3,450
Construction Permits	3,450
Satellite Television Stations (All Markets)	1,400
Construction Permits—Satellite Television Stations	1,200
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	390
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	555
Cable Television Systems (per subscriber) (47 CFR part 76)	1.00
Interstate Telecommunication Service Providers (per revenue dollar)	.00375
Earth Stations (47 CFR part 25)	265
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	134,475
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	144,875
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.28
International Bearer Circuits—Submarine Cable	See Table Below

TABLE 3 (CONTINUED)—FY 2013 SCHEDULE OF REGULATORY FEES: MAINTAIN ALLOCATION

FY 2013 Radio station regulatory fees						
Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
<=25,000	$750	$625	$575	$650	$700	$875
25,001–75,000	1,500	1,250	875	975	1,400	1,525
75,001–150,000	2,250	1,575	1,150	1,625	1,925	2,850
150,001–500,000	3,375	2,650	1,725	1,950	2,975	3,725
500,001–1,200,000	4,875	4,075	2,875	3,250	4,725	5,475
1,200,001–3,000,00	7,500	6,250	4,325	5,200	7,700	8,750
>3,000,000	9,000	7,500	5,475	6,500	9,800	11,375

FY 2013 SCHEDULE OF REGULATORY FEES

[International bearer circuits—submarine cable]

Submarine cable systems (capacity as of December 31, 2012)	Fee amount	Address
<2.5 Gbps	$13,450	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	26,925	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	53,825	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	107,675	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

FY 2013 SCHEDULE OF REGULATORY FEES—Continued

[International bearer circuits—submarine cable]

Submarine cable systems (capacity as of December 31, 2012)	Fee amount	Address
20 Gbps or greater	215,325	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

37. We seek comment on the reasonableness of this proposed limitation for FY 2013. We also invite comment on higher or lower percentages, and whether, rather than a uniform limitation for increases to all regulatory fee categories resulting solely from the reallocations proposed herein, we should consider different limitations for certain industry groups in light of other reform proposals and the likely impact on the regulatory fees of such groups. For example, as we seek to combine regulatory fees for ITSP and wireless services into one category, should we consider a limitation that brings the allocation of FTEs for these two groups closer to equal in this fiscal year? Without such limitation, would increases for certain regulatory fee categories still be fair, taking into account the work of the Commission benefiting such payors? Commenters suggesting a different percentage for regulatory fee increases applicable to any or all fee categories should explain how their proposals would prevent a severe impact on the economic wellbeing of regulatees, be consistent with the goals of more accurately aligning FTEs with their areas of work, promoting fairness, and allowing the Commission to recover its regulatory costs as Congress has directed. As we continue with regulatory fee reform in the future, we will consider the need for similar limits if significant increases in regulatory fee rates occur in any one year as a result of our adoption of further reform measures. We, therefore, seek comment on the appropriate timeline for fully implementing the reallocation proposed herein and whether similar limits to increases in regulatory fee rates resulting from such reallocation should be used in FY 2014 and beyond.

4. Interim Measures for FY 2013

38. We seek comment on whether, in lieu of using updated FTE data and implementing the FTE reallocations proposed above in FY 2013, we should maintain the allocation percentages we now use for all fee categories in FY 2013 and maintain the ITSP fee rate for FY 2013 at .00375 per revenue dollar for the third consecutive year. The tables below illustrate the impact of this proposal on regulatory fee collection, and its associated Schedule of Fees. If we maintained the allocation percentages we now use, but did not maintain the ITSP fee rate for FY 2013 at .00375, the FY 2013 ITSP fee rate would increase to .00409.[68]

TABLE 4—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,[5] FEE RATE INCREASES CAPPED AT 7.5%, PRIOR TO ROUNDING[6]

[Calculation of FY 2013 Revenue Requirements and Pro-Rata Fees]

Fee category	FY 2013 Payment units	Years	FY 2012 Revenue stimate	Pro-rated FY 2013 revenue requirement	Uncapped FY 2013 regulatory fee	Rounded & capped FY 2013 regulatory fee	Expected FY 2013 revenue
PLMRS (Exclusive Use)	1,400	10	490,000	606,762	43	40	560,000
PLMRS (Shared use)	15,000	10	2,250,000	2,903,790	19	15	2,250,000
Microwave	13,200	10	2,640,000	2,860,449	22	20	2,640,000
218–219 MHz (Formerly IVDS)	5	10	3,500	4,334	87	75	3,750
Marine (Ship)	6,550	10	655,000	953,483	15	10	655,000
GMRS	7,700	5	192,500	346,721	4	5	395,000
Aviation (Aircraft)	2,900	10	290,000	433,401	15	10	290,000
Marine (Coast)	285	10	142,500	173,361	61	55	156,750
Aviation (Ground)	900	10	135,000	173,361	19	15	135,000
Amateur Vanity Call Signs	14,300	10	214,500	260,041	1.82	1.61	230,230
AM Class A[4]	68	1	250,100	295,438	4,345	4,350	295,800
AM Class B[4]	1,454	1	3,125,875	3,671,874	2,525	2,275	3,307,850
AM Class C[4]	837	1	1,107,975	1,308,369	1,563	1,375	1,150,875
AM Class D[4]	1,406	1	3,698,400	4,347,161	3,092	2,575	3,620,450
FM Classes A, B1 & C3[4]	2,935	1	7,764,750	8,989,760	3,063	2,750	8,071,250
FM Classes B, C, C0, C1 & C2[4]	3,110	1	9,513,000	11,057,826	3,556	3,375	10,496,250
AM Construction Permits	51	1	35,750	42,205	828	590	30,090
FM Construction Permits[1]	170	1	84,000	422,054	2,483	750	127,500
Satellite TV	129	1	178,125	211,027	1,636	1,525	196,725
Satellite TV Construction Permit	3	1	3,580	4,221	1,407	960	2,880
VHF Markets 1–10	22	1	1,761,650	2,364,840	107,493	86,075	1,893,650
VHF Markets 11–25	23	1	1,836,875	2,452,884	106,647	78,975	1,816,425
VHF Markets 26–50	39	1	1,512,400	2,031,796	52,097	42,775	1,668,225
VHF Markets 51–100	61	1	1,255,500	1,757,986	28,819	22,500	1,372,500
VHF Remaining Markets	140	1	798,025	1,023,545	7,311	6,250	875,000
VHF Construction Permits[1]	1	1	11,650	42,205	42,205	6,250	6,250
UHF Markets 1–10	109	1	3,853,150	4,177,004	38,321	38,000	4,142,000
UHF Markets 11–25	106	1	3,458,250	3,709,111	34,992	35,000	3,710,000
UHF Markets 26–50	135	1	2,959,875	3,159,479	23,404	23,400	3,159,000
UHF Markets 51–100	225	1	2,868,750	3,053,435	13,571	13,575	3,054,375
UHF Remaining Markets	247	1	845,975	917,906	3,716	3,675	907,725
UHF Construction Permits[1]	7	1	23,975	295,438	42,205	3,675	25,725
Broadcast Auxiliaries	25,400	1	248,000	337,644	13	10	254,000
LPTV/Translators/Boosters/Class A TV	3,725	1	1,436,820	1,688,218	453	415	1,545,875

[68] The fee rate of .00409 is based on the current allocation percent of 46.67 of our target goal of $339,844,000 with a projected ITSP revenue base (calendar year 2012) of $39 billion.

TABLE 4—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,[5] FEE RATE INCREASES CAPPED AT 7.5%, PRIOR TO ROUNDING[6]—Continued

[Calculation of FY 2013 Revenue Requirements and Pro-Rata Fees]

Fee category	FY 2013 Payment units	Years	FY 2012 Revenue stimate	Pro-rated FY 2013 revenue requirement	Uncapped FY 2013 regulatory fee	Rounded & capped FY 2013 regulatory fee	Expected FY 2013 revenue
CARS Stations	325	1	178,125	211,085	649	510	165,750
Cable TV Systems	60,000,000	1	59,090,000	69,868,996	1.164	1.02	61,200,000
Interstate Telecommunication Service Providers	$39,000,000,000	1	148,875,000	119,251,260	0.0030577	0.00359	140,010,000
CMRS Mobile Services (Cellular/Public Mobile)	321,000,000	1	53,210,000	63,253,310	0.1899	0.18	57,780,000
CMRS Messag. Services	3,000,000	1	272,000	240,000	0.0800	0.080	240,000
BRS[2]	920	1	451,250	693,442	754	510	469,200
LMDS	170	1	225,625	130,020	765	510	86,700
Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common)	4,220,000	1	1,157,602	1,030,004	.244	.23	970,600
Submarine Cable Providers (see chart in Table 5)[3]	38.313	1	8,150,984	7,246,703	189,145	191,475	7,335,886
Earth Stations	3,400	1	893,750	795,837	234	250	850,000
Space Stations (Geostationary)	87	1	11,560,125	10,282,217	118,186	119,600	10,405,200
Space Stations (Non-Geostationary	6	1	858,900	764,004	127,334	128,825	772,950
Total Estimated Revenue to be Collected			340,568,811	339,844,006			339,332,436
Total Revenue Requirement			339,844,000	339,844,000			339,844,000
Difference			724,811	6			(511,564)

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands, Report & Order and FNPRM of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, ¶ 6 (2004).

[3] The chart at the end of Table 5 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order (MD Docket No. 08–65, RM–11312), released March 24, 2009; and *Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Notice of Proposed Rulemaking and Order (MD Docket No. 09–65, MD Docket No. 08–65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled ''Rounded New FY 2012 Regulatory Fee'' constitute a weighted average media regulatory fee by class of service. The actual FY 2013 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 5.

[5] The allocation percentages represent FTE data as of September 30, 2012, and include the proposal to use 27 Direct FTEs (rather than 119 FTEs) for the International Bureau.

[6] The ITSP and international services fee categories received a fee rate reduction.

TABLE 5—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,[5] FEE RATE INCREASES CAPPED AT 7.5%, PRIOR TO ROUNDING[6]

[FY 2013 Schedule of regulatory fees]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	40
Microwave (per license) (47 CFR part 101)	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	75
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	55
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.61
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	510
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	510
AM Radio Construction Permits	590
FM Radio Construction Permits	750
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	86,075
Markets 11–25	78,975
Markets 26–50	42,775
Markets 51–100	22,500
Remaining Markets	6,250
Construction Permits	6,250
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	38,000
Markets 11–25	35,000
Markets 26–50	23,400

TABLE 5—REVISED FTE (AS OF 9/30/12) ALLOCATIONS,[5] FEE RATE INCREASES CAPPED AT 7.5%, PRIOR TO ROUNDING [6]—Continued

[FY 2013 Schedule of regulatory fees]

Fee category	Annual regulatory fee (U.S. $'s)
Markets 51–100	13,575
Remaining Markets	3,675
Construction Permits	3,675
Satellite Television Stations (All Markets)	1,525
Construction Permits—Satellite Television Stations	960
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	415
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	510
Cable Television Systems (per subscriber) (47 CFR part 76)	1.02
Interstate Telecommunication Service Providers (per revenue dollar)	.00359
Earth Stations (47 CFR part 25)	250
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	119,600
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	128,825
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.23
International Bearer Circuits—Submarine Cable	See Table Below

TABLE 5 (CONTINUED)—FY 2013 SCHEDULE OF REGULATORY FEES: FEE RATE INCREASES

[Capped at 7.5%, prior to rounding [6]]

FY 2013 Radio station regulatory fees						
Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
≤25,000	$775	$650	$600	$675	$750	$950
25,001–75,000	1,575	1,325	925	1,025	1,525	1,675
75,001–150,000	2,375	1,650	1,200	1,725	2,100	3,100
150,001–500,000	3,550	2,800	1,800	2,050	3,250	4,025
500,001–1,200,000	5,125	4,275	3,000	3,425	5,150	5,950
1,200,001–3,000,00	7,900	6,550	4,525	5,450	8,375	9,525
>3,000,000	9,475	7,875	5,725	6,825	10,700	12,375

FY 2013 SCHEDULE OF REGULATORY FEES: FEE RATE INCREASES

[Capped at 7.5%, Prior to Rounding [6]]

International bearer circuits— submarine cable submarine cable systems (capacity as of December 31, 2012)	Fee amount	Address
< 2.5 Gbps	$11,975	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	23,925	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	47,875	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	95,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	191,475	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

5. Revenue Based Regulatory Fee Assessments

39. In addition to using revenues to calculate regulatory fees for the wireless industry, discussed above, we invite comment on whether revenues would be a more appropriate measure for other industries in FY 2014 or future years. For example, should the Commission use revenues instead of number of subscribers in determining the regulatory fee for the cable industry? Would revenues be a more appropriate measure for calculating regulatory fees for the satellite industry? If so, how should the Commission account for satellite revenue from foreign sources? Commenters should address whether foreign revenues would be relevant if we assessed fees in that manner. Commenters also should discuss how we would determine the revenues for companies that do not file a FCC Form 499–A, what information should be provided to the Commission, and whether such information would require confidential treatment. Conversely, we seek comment on whether it would be fairer and more sustainable to assess more fee categories

on some other basis, such as subscribers.

C. Other Telecommunications Regulatory Fee Issues

1. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters

40. The digital transition to full-service television stations was completed on June 12, 2009, but the digital transition for Low Power, Class A, and TV Translators/Boosters still remains voluntary with a transition date of September 1, 2015. Historically, we have considered the digital transition only in the context of regulatory fees applicable to full-service television stations, and not to Low Power, Class A, and TV Translators/Boosters. Because the digital transition in the Low Power, Class A, and TV Translator/Booster facilities is still voluntary, some of these facilities may transition from analog to digital service more rapidly than others. During this period of transition, licensees of Low Power, Class A, and TV Translator/Booster facilities may be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. Therefore, for regulatory fee purposes, we clarify that we are assessing a fee for each facility operating either in an analog or digital mode. In instances in which a licensee is simulcasting in both analog and digital modes, a single regulatory fee will be assessed for the analog facility and its corresponding digital component. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

2. Combining UHF/VHF Television Media Regulatory Fees

41. Regulatory fees for full-service television stations are calculated based on two, five-tiered market segments for Ultra High Frequency (UHF) and Very High Frequency (VHF) television stations, respectively. There is also a construction permit fee category for UHF and VHF. After the transition to digital television on June 12, 2009, we received comment on this issue, suggesting that the Commission combine the UHF and VHF regulatory fee categories.[69] Combining UHF and VHF full-service television stations into a single five-tiered fee category (by market size) would in effect eliminate any distinctions between UHF and VHF services.

42. Historically, analog VHF channels (channels 1–13) have been coveted for their greater prestige and larger audience, and thus the regulatory fees assessed on VHF stations have been higher than the regulatory fees assessed for UHF (channels 14 and above) stations in the same market area. Conversely, digital VHF channels are less desirable than digital UHF channels, and thus there may no longer be a basis on which to assess higher regulatory fees for VHF channels. Combining VHF and UHF into one fee category would eliminate the current fee disparity between UHF and VHF television stations. We propose that the UHF and VHF full service television station categories be combined into one fee category, divided into tiers based on market size, with one resulting rate. This proposal, if adopted, will be implemented in FY 2014. We seek comment on this proposal.

TABLE 6—PROPOSED COMBINED UHF/VHF DIGITAL TELEVISION FEE

[Based on Figures from Table 2, Allocation % Same as in Prior Years]

Combined fee category	Units	Pro-rated rev. req.	Rounded FY12 fee	Expected revenue
Digital Television Markets 1–10	131	$5,685,446	$43,400	$5,685,400
Digital Television Markets 11–25	129	5,359,471	41,550	5,359,950
Digital Television Markets 26–50	174	4,526,425	26,025	4,528,350
Digital Television Markets 51–100	286	4,174,475	14,600	4,175,600
Digital Television Remaining Markets	387	1,666,092	4,300	1,664,100
Digital Television Construction Permits	8	34,400	4,300	34,400

3. Internet Protocol TV (IPTV)

43. IPTV is digital television delivered through a high speed Internet connection, instead of through traditional formats such as cable or terrestrial broadcast. IPTV service generally is offered bundled with the customer's Internet and telephone or VoIP services. In the *FY 2008 Report and Order* we sought comment on whether this video service should be subject to regulatory fees, and if so, should the IPTV provider count this service for regulatory fee purposes in the same manner as cable services, which is on a per subscriber basis.[70] By assessing regulatory fees on cable services but not on IPTV, we may place cable providers at a competitive disadvantage. Commenters should discuss whether IPTV is sufficiently similar to cable services to be included in the same regulatory fee category and to be assessed regulatory fees in the same manner. This proposal, if adopted, would be implemented in FY 2014.

4. Multi-Year Wireless Services

44. Multi-year wireless services is a fee category that encompasses various different wireless services (*e.g.,* microwave, land mobile) whose regulatory fees are paid up front only at the time that the five-year or 10-year license is renewed. Most of these multi-year wireless licenses are 10-year licenses. The number of licensees seeking renewal or filing new applications for licenses (the unit count) could fluctuate dramatically from one year to the next as companies go out of business, directly impacting the fee rate for that year. Further, because the time between license renewals is 10 years, the regulatory fee amount paid can also increase or decrease substantially from one renewal to the next because of unit fluctuations and changes in the annual appropriation from one year to the next. We seek comment on appropriate steps to take, if any, when the fee rate in this

[69] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2010,* Report and Order, 25 FCC Rcd 9278, 9285–86, at paras. 18–20 (2010) (*FY 2010 Report and Order*) (Fireweed Communications argued that we should base the regulatory fee structure on three tiers; Sky Television, LLC, Spanish Broadcasting System, Inc., and Sarkes Tarzian argued that instead of six separate categories for both VHF and UHF we should combine them into six categories based on market size and thus eliminate any distinction between VHF and UHF.). *See also* Notice of Ex Parte Presentation, filed by Sarkes Tarzian, Inc. and Sky Television, LLC (Feb. 15, 2013) (arguing that VHF stations are less desirable than UHF stations and it was unfair to have higher fees for such stations; instead the fee category should be combined.).

[70] *FY 2008 FNPRM,* 24 FCC Rcd at 6406–07, paras. 48–49.

fee category fluctuates dramatically from one year to the next because of changes in the unit count. These proposals, if adopted, would be implemented in FY 2014.

5. Commercial Mobile Radio Service (CMRS) Messaging

45. CMRS Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.[71] Initially, as a measure to provide relief to the paging industry, the Commission froze the regulatory fee for this fee category at the FY 2002 level, setting an applicable rate at $0.08 per subscriber beginning in FY 2003.[72] At that time we noted that CMRS Messaging units had significantly declined from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent.[73] Commenters argued this decline in subscribership was not just a temporary phenomenon, but a lasting one. Commenters further argued that, because the messaging industry is spectrum-limited, geographically localized, and very cost sensitive, it is difficult for this industry to pass on increases in costs to its subscribers.[74]

46. The decline in subscribership for this industry raises a more fundamental issue: Whether the Commission should modify the methodology in collecting regulatory fees from entities in declining industries. For industries such as paging, our methodology may be burdensome on the industry and of negligible value to the Commission, due to the administrative burden of assessing the fee on many very small companies. We seek comment on whether to modify the way in which we assess fees from providers in declining industries and how to define a declining industry. Commenters should discuss whether there are other similarly situated categories that need regulatory fee relief. Proposals, if adopted, would be implemented in FY 2014.

D. Administrative Issues

1. Electronic Filing and Payment System

47. In FY 2009, the Commission implemented several procedural changes that simplified the payment and reconciliation processes for FY 2009 regulatory fees. The Commission's current regulatory fee collection procedures can be found in the *Report and Order on Assessment and Collection of Regulatory Fees for FY 2012.*[75]

48. In FY 2013, the Commission will continue to promote greater use of technology (and less use of paper) in improving our regulatory fee notification and collection process. These changes, and the dates on which they will take place, are discussed in more detail below. Specifically, as of October 1, 2013, we will no longer accept paper and transfer electronic invoicing and receivables collection to the Treasury in FY 2014. Finally, in FY 2014, we will no longer mail out initial CMRS assessments, and will instead require licensees to log into the Commission's Web site to view and revise their subscriber counts.

2. Discontinuation of Mail Outs of Initial CMRS Assessments

49. In FY 2014, as part of the Commission's effort to become more ''paperless,'' the Commission will no longer mail out its initial CMRS assessments, but will require licensees to log into the Commission's Web site to view and revise their subscriber counts. A system currently exists for providers to revise their CMRS subscriber counts electronically, and it is possible that this system can be expanded to include letters that can be downloaded to serve as the initial CMRS assessment letter. The Commission will provide more details in future announcements as this system is developed.

3. Discontinuation of Paper and Check Transactions Beginning October 1, 2013

50. Together with the U.S. Department of Treasury, the Commission is taking further steps to meet the OMB Open Government Directive.[76] A component part of the Treasury's current flagship initiative pursuant to this Directive is moving to a paperless Treasury, which includes related activities in both disbursing and collecting select federal government payments and receipts.[77] Going paperless is expected to produce cost savings, reduce errors, and improve efficiencies across government. Accordingly, beginning on October 1, 2013, the Commission will no longer accept checks (including cashier's checks) and the accompanying hardcopy forms (e.g., Form 159's, Form 159–B's, Form 159–E's, Form 159–W's) for the payment of regulatory fees. This new paperless procedure will require that all payments be made by credit card, wire transfer, or ACH payment. Any other form of payment (*e.g.,* checks) will be rejected and sent back to the payor. This change will affect all payments for regulatory fees made on or after that October 1, 2013.[78]

51. Currently, the Commission is working with Treasury to implement procedures that will reduce manual and subscale accounts receivables, reduce hidden costs associated with collections, and increase recoveries. We anticipate measurable enhancements in our program achieved by reducing our delinquency rate, increasing collections, and reducing costs. Under section 9 of the Act, Commission rules, and the debt collection laws, a licensee's regulatory fee is due on the first day of the fiscal year and payable at a date established by our annual regulatory fee Report and Order. The Commission will work with Treasury to facilitate end-to-end billing and collections capabilities for our receivables in the pre-delinquency stage and seeks to implement these changes in FY 2014. Under these revised procedures, the Commission will begin transferring appropriate receivables (unpaid regulatory fees) to Treasury at the end of the payment period instead of waiting for a period of 180 days from the date of delinquency to transfer a delinquent debt to Treasury for further collection action.[79] Accordingly, we anticipate that transfer to Treasury will occur much earlier than it now does. Regulatees, however, likely will not see substantial change in the current procedures of how they are required to pay the fee for FY 2013 and FY 2014. After the date on which the FY 2014 payment fee window closes; however, if a FY 2013 receivable is past due, we

[71] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997,* Report and Order, 12 FCC Rcd 17161, 17184–85, para. 60 (1997) (*FY 1997 Report and Order*).

[72] *Assessment and Collection of Regulatory Fees for Fiscal Year 2003,* Report and Order, 18 FCC Rcd 15985, 15992, para. 22 (2003) (*FY 2003 Report and Order*).

[73] *FY 2003 Report and Order,* 18 FCC Rcd 15992, para. 21. The subscriber base in the paging industry declined 92 percent from 40.8 million to 3.2 million between FY 1997 and FY 2012, according to FY 2012 collection data, as of Sept. 30, 2012. *See FY 2010 Report and Order* at note 8.

[74] *FY 2003 Report and Order,* 18 FCC Rcd 15992, para. 22.

[75] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2012,* Report and Order, 27 FCC Rcd 8390, 8395–97, paras. 17–20, 24–26 (2012) (*FY 2012 Report and Order*).

[76] Office of Management and Budget (OMB) Memorandum M–10–06, Open Government Directive, Dec. 8, 2009; *see also http://www.whitehouse.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov.*

[77] *See* U.S. Department of the Treasury, Open Government Plan 2.1, Sep. 2012.

[78] Payors should note that this change will mean that, to the extent certain entities have, to date, paid both regulatory fees and application fees at the same time via paper check, they will no longer be able to do so, as the regulatory fees payment via paper check will no longer be accepted.

[79] *See* 31 U.S.C. 3711(g); 31 CFR 285.12; 47 CFR 1.1917.

expect some changes in notification procedures and in the process by which to submit payments to Treasury or its designated financial agent. Consistent with those anticipated modifications and any future Treasury procedure, the Commission expects it will modify its informative guidance and amend its rules. We invite comments on this proposed change.

V. Further Notice of Proposed Rulemaking

52. Above we seek comment concerning regulatory reforms we believe may potentially be adopted in FY 2013 or FY 2014.[80] The *FNPRM* below invites comment on proposals and issues that require additional time for consideration and implementation. Accordingly, we seek comment on the viability of these proposals and whether they should be implemented in future years.

A. Non-U.S.-Licensed Space Stations Serving the United States

53. The Commission's goal in assessing satellite regulatory fees is to recover all of the costs associated with satellite regulatory activities and to distribute these costs fairly among fee payers. To recover the costs associated with policy and rulemaking activities associated with space stations, section 1.1156 of the Commission's rules includes ''Space Station (Geostationary Orbit)'' and ''Space Stations (Non-Geostationary Orbit)'' in the regulatory fee schedule.[81] These fees are assessed only for U.S.-licensed space stations. Regulatory fees are not assessed for non-U.S.-licensed space stations that provide service to customers in the United States.[82]

54. The Commission's policies, regulations, international, user information, and enforcement activities all benefit non-U.S. licensed satellite operators that access the U.S. market. Rulemaking proceedings establishing authorization procedures or service rules for satellite services apply both to U.S. licensed satellites and non-U.S. licensed satellites providing service in the United States.[83] A non-U.S. licensed satellite operator may file a petition for a declaratory ruling seeking Commission approval to provide service in the United States. The International Bureau evaluates this petition for consistency with the Commission's legal and technical requirements in the same manner as the Bureau evaluates the application for an FCC space station license and, on the basis of this review, imposes any appropriate conditions for the grant of market access. Once the non-U.S. licensed space stations are granted access to earth stations in the United States, the grant is recorded together with any conditions of access, in the International Bureau Filing System. After a grant of market access, the operations of non-U.S. space stations with U.S. licensed earth stations are also monitored to ensure that their operators satisfy all conditions placed on their grant of U.S. market access, including space station implementation milestones and operational requirements, and are subject to enforcement action if the conditions are not met. Despite the regulatory benefits provided by the Commission to non-U.S. licensed satellite systems serving the United States they do not incur the regulatory fees (or application fees) paid by U.S.-licensed satellite systems. As a result, U.S.-licensed space station operators, which are assessed these fees by the Commission and compete with the non-U.S. licensed operators, may be at a competitive disadvantage.

55. We therefore seek comment on whether regulatory fees should be assessed on non-U.S. licensed space station operators providing service in the United States. Commenters should discuss whether the Commission should revisit the Commission's 1999 conclusion that the regulatory fee category for Space Stations (Geostationary Orbit) and Space Stations (Non-Geostationary Orbit) in section 1.1156(a) of the Commission's rules covers only Title III license holders.[84] Commenters that advocate assessing regulatory fees on non-U.S. licensed space stations providing service in the United States should propose how the fees should be calculated and applied, particularly in instances where the non-U.S. licensed space station operator accesses the U.S. market solely through an application by a U.S.-licensed earth station operator to list the non-U.S. licensed space station as a point of communication. Commenters should also provide specific information as to whether other countries already assess regulatory fees in one form or another on U.S. licensed satellite systems accessing their markets. Would assessing regulatory fees on non-U.S. licensed space stations encourage foreign countries to assess such fees on U.S. licensed space stations? If so, would that place U.S. licensed space stations at a competitive disadvantage in the marketplace?

B. Video Services—Direct Broadcast Satellite (DBS)

56. DBS programming is similar to cable services; it differs in that the programming is not transmitted terrestrially by cable but instead by satellites stationed in geosynchronous orbit. DBS operators are considered multichannel video programming distributors (MVPDs), pursuant to section 522(13) of the Act.[85] DBS operators are licensed as geostationary satellite operators and currently pay a per-geostationary orbit (GSO) satellite regulatory fee but do not pay a per-subscriber regulatory fee.[86] We seek comment on whether regulatory fees paid by DBS providers should be calculated on the same basis as cable television system operators and cable antenna relay system licensees, based on Media Bureau FTEs. In this regard, we note that there are regulatory similarities between these providers; for example, DBS providers may file program access complaints[87] and complaints seeking relief under the retransmission consent good faith rules;[88] and they must comply with the Commercial Advertisement Loudness Mitigation Act (CALM Act),[89] the Twenty-First Century Video Accessibility Act (CVAA),[90] and the closed captioning and video description rules.

57. There are also regulatory differences between cable operators and DBS operators, however. There are only

[80] As noted above, some of these proposals, if adopted, would be effective in FY 2013 and others in FY 2014.

[81] 47 CFR 1.1156.

[82] This issue was raised in the *FY 1999 Report and Order* where the Commission observed that that the legislative history provides that only space stations licensed under Title III—which does not include non-U.S.-licensed satellite operators—may be subject to regulatory fees. *Assessment and Collection of Regulatory Fees for Fiscal Year 1999,* Report and Order, 14 FCC Rcd 9896, 9882, para. 39 (1999) (*FY 1999 Report and Order*).

[83] *See, e.g., Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.8 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service for the Satellite Services Operating Bi-Directionally in the 17.3–17.8 GHz Frequency Band,* IB 06–123, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842 (2007).

[84] *FY 1999 Report and Order,* 14 FCC Rcd at 9882, para. 39.

[85] 47 U.S.C. 522(13). An MVPD is a service provider delivering video programming services, such as cable television operators, DBS providers, and wireline video providers.

[86] Previously, the Commission declined to adopt the same per-subscriber fee for DBS. *See FY 2005 Report and Order,* 20 FCC Rcd at 12264, paras. 10–11.

[87] 47 U.S.C. 548; 47 CFR 76.1000–1004.

[88] 47 U.S.C. 325(b)(1), (3)(C)(ii); 47 CFR 76.65(b).

[89] *See Implementation of the Commercial Advertisement, Loudness Mitigation (CALM) Act,* Report and Order, 26 FCC Rcd 17222 (2011).

[90] 47 U.S.C. 618(b).

two DBS operators in the Nation, while there are 1,141 cable operators and 6,635 cable systems. Each cable operator must keep certain records for each of its cable systems; e.g., Political,[91] Equal Employment Opportunity,[92] Commercial Records on Children's Programs,[93] Proof-of-Performance Test Data,[94] Signal Leakage Logs and Repair Records,[95] Aeronautical Notifications,[96] Leased Access,[97] Principal Headend Location,[98] Availability of Signals,[99] Operator Interests in Video Programming,[100] Emergency Alert System Tests and Activation,[101] Complaint Resolution,[102] Regulatory,[103] and the Sponsorship Identification.[104] (DBS operators also are required to keep Political, Equal Employment Opportunity, Commercial Records on Children's Programs files, and Emergency Alert System Tests and Activation files.)

58. For FY 2012, cable service providers paid approximately $0.95 per subscriber in regulatory fees.[105] The two DBS providers, DirectTV and DISH Network, paid much lower regulatory fees on a per subscriber basis, and their regulatory fees were based on International Bureau FTEs, not Media Bureau FTEs. We seek comment on whether the DBS providers should instead pay regulatory fees that are comparable to the regulatory fees paid by cable service providers; *i.e.,* based on the Media Bureau FTEs. To that end, because DBS providers benefit directly from the work not only of the International Bureau, but also the Media Bureau, should a portion of Media Bureau FTEs be allocated to DBS providers? Or is there some alternative way to more fairly assess regulatory fees to DBS and cable providers? Commenters should also discuss whether we should require both DBS and cable operators to pay regulatory fees based on revenues, and, if so, how we would collect revenue information from these entities.

C. Other Services

59. Should additional regulatory fee categories be added to the regulatory fee schedule set forth in section 9? If so, what categories should be added, and why?[106] To the extent that licensees offer services that are regulated by more than one core bureau, how would the addition of new fee categories affect the allocation of FTEs by core bureau?

VI. Conclusion

60. We are confident the *FY 2013 NPRM and FNPRM* propose a portfolio of options to achieve our goal for revising the regulatory fee schedule in order to fairly address the changing and converging communications industry, changes in the Commission's regulatory processes since established in 1994, and the recommendations in the GAO Report. We invite and encourage interested parties to submit comments in response to numerous proposals discussed above so that a robust record is created to better inform the Commission as it examines reforming the regulatory fee structure.

VII. Additional Tables

TABLE 7—Sources of Payment Unit Estimates for FY 2013

In order to calculate individual service fees for FY 2013, we adjusted FY 2012 payment units for each service to more accurately reflect expected FY 2013 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee databases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (''ULS''), International Bureau Filing System (''IBFS''), Consolidated Database System (''CDBS'') and Cable Operations and Licensing System (''COALS''), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We sought verification for these estimates from multiple sources and, in all cases; we compared FY 2013 estimates with actual FY 2012 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2013 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2013 payment units are based on FY 2012 actual payment units, it does not necessarily mean that our FY 2013 projection is exactly the same number as in FY 2012. We have either rounded the FY 2013 number or adjusted it slightly to account for these variables.

TABLE 8—FACTORS, MEASUREMENTS, AND CALCULATIONS THAT DETERMINES STATION SIGNAL CONTOURS AND ASSOCIATED POPULATION COVERAGES

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (''WTB'') projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 12 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 12 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.

[91] 47 CFR 76.1701.

[92] 47 CFR 76.1702.

[93] 47 CFR 76.1703.

[94] 47 CFR 76.1704.

[95] 47 CFR 76.1706.

[96] 47 CFR 76.1804.

[97] 47 CFR 76.1707.

[98] 47 CFR 76.1708.

[99] 47 CFR 76.1709.

[100] 47 CFR 76.1710.

[101] 47 CFR 76.1711.

[102] 47 CFR 76.1713.

[103] 47 CFR 76.1714.

[104] 47 CFR 76.1715.

[105] *Assessment and Collection of Regulatory Fees for Fiscal Year 2012,* Report and Order, 27 FCC Rcd at Attachment C (2012) (*FY 2012 Order*).

[106] In our *FY 2012 NPRM,* for example, we sought comment on whether the Commission has authority, under section 9, to include broadband as a fee category, and asked how the costs of any such additional fee categories should be assessed. We continue to seek comment on this issue, specifically, and more generally: Are there other fee categories that should be added?

TABLE 8—FACTORS, MEASUREMENTS, AND CALCULATIONS THAT DETERMINES STATION SIGNAL CONTOURS AND ASSOCIATED POPULATION COVERAGES—Continued

Fee category	Sources of payment unit estimates
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2012 payment units.
Broadcast Auxiliaries	Based on actual FY 2012 payment units.
BRS (formerly MDS/MMDS)	Based on WTB reports and actual FY 2012 payment units.
LMDS	Based on WTB reports and actual FY 2012 payment units.
Cable Television Relay Service (''CARS'') Stations.	Based on data from Media Bureau's COALS database and actual FY 2012 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2011 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499–Q data for the four quarters of calendar year 2012, the Wireline Competition Bureau projected the amount of calendar year 2012 revenue that will be reported on 2013 FCC Form 499–A worksheets in April, 2013.
Earth Stations	Based on International Bureau (''IB'') licensing data and actual FY 2012 payment units.
Space Stations (GSOs & NGSOs)	Based on IB data reports and actual FY 2012 payment units.
International Bearer Circuits	Based on IB reports and submissions by licensees.
Submarine Cable Licenses	Based on IB license information.

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (''RMS'') figure (milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[2] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (''ERP'') (kW) and respective height above average terrain (''HAAT'') (m) combination was used. Where the antenna height above mean sea level (''HAMSL'') was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

TABLE 9—REFERENCE TO FY 2012 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	20
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	70
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	50
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.50
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.17
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	475
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	475
AM Radio Construction Permits	550
FM Radio Construction Permits	700

TABLE 9—REFERENCE TO FY 2012 SCHEDULE OF REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. $'s)
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	80,075
Markets 11–25	73,475
Markets 26–50	39,800
Markets 51–100	20,925
Remaining Markets	5,825
Construction Permits	5,825
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	35,350
Markets 11–25	32,625
Markets 26–50	21,925
Markets 51–100	12,750
Remaining Markets	3,425
Construction Permits	3,425
Satellite Television Stations (All Markets)	1,425
Construction Permits—Satellite Television Stations	895
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	385
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	475
Cable Television Systems (per subscriber) (47 CFR part 76)	.95
Interstate Telecommunication Service Providers (per revenue dollar)	.00375
Earth Stations (47 CFR part 25)	275
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	132,875
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	143,150
International Bearer Circuits—Terrestrial/Satellites (per 64KB circuit)	.26
International Bearer Circuits—Submarine Cable	See Table Below

TABLE 9 (CONTINUED)—FY 2012 SCHEDULE OF REGULATORY FEES

FY 2012 Radio station regulatory fees						
Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
≤25,000	$725	$600	$550	$625	$700	$875
25,001—75,000	1,475	1,225	850	950	1,425	1,550
75,001—150,000	2,200	1,525	1,125	1,600	1,950	2,875
150,001—500,000	3,300	2,600	1,675	1,900	3,025	3,750
500,001—1,200,000	4,775	3,975	2,800	3,175	4,800	5,525
1,200,001—3,000,000	7,350	6,100	4,200	5,075	7,800	8,850
>3,000,000	8,825	7,325	5,325	6,350	9,950	11,500

FY 2012 SCHEDULE OF REGULATORY FEES

[International Bearer Circuits—Submarine Cable]

Submarine cable systems (capacity as of December 31, 2011)	Fee amount	Address
< 2.5 Gbps	$13,300	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
2.5 Gbps or greater, but less than 5 Gbps	$26,600	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
5 Gbps or greater, but less than 10 Gbps	$53,200	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
10 Gbps or greater, but less than 20 Gbps	$106,375	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.
20 Gbps or greater	$212,750	FCC, International, P.O. Box 979084, St. Louis, MO 63197–9000.

VIII. Initial Regulatory Flexibility Analysis

61. As required by the Regulatory Flexibility Act (RFA),[107] the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*FY 2013 NPRM*) and FNPRM of Proposed Rulemaking (*FNPRM)* (collectively, ''Notice''). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[108] In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.[109]

A. Need for, and Objectives of, the Notice

62. In the *FY 2013 NPRM* we seek comment on our annual process of assessing regulatory fees to cover the Commission's costs to offset the Commission's Fiscal Year (FY) 2013 appropriation, as directed by Congress. The regulatory fees calculated in response to the *FY 2013 NPRM* will be collected later this year. We also seek comment in the *FY 2013 NPRM* on reforming and revising our regulatory fee schedule for FY 2013 and beyond to take into account changes in the communications industry and changes in the Commission's regulatory processes and staffing in recent years.

63. The *FY 2013 NPRM* seeks comment concerning adoption and implementation of proposals to reallocate regulatory fees to more accurately reflect the subject areas worked on by current Commission FTEs for FY 2013. As such, we seek comment on, among other things, reallocating: (1) direct FTEs currently allocated to the Interstate Telecommunications Service Providers (ITSPs) fee category and other fee categories to reflect current workloads devoted to these subject areas; and (2) FTEs in the International Bureau to more accurately reflect the Commission's regulation and oversight of the International Bureau regulatees. If these proposals are adopted, we also seek comment on limiting any increase in assessments to 10 percent or some other amount to avoid fee shock to industry segments paying higher regulatory fees as a result of reallocation. We ask whether direct FTEs in other Bureaus should be reclassified as indirect and reallocated or, conversely, whether FTEs currently allocated as indirect should be reallocated differently or reclassified as direct and reallocated accordingly. Finally, we seek comment on whether to delay our proposal to reallocate FTEs and, in the interim, maintain the same allocation percentages from last year for FY 2013, including the current .00375 rate for ITSP regulatees.

64. The *FNPRM* seeks comment concerning adoption and implementation of proposals for FY 2014 and beyond, which include: (1) Combining Interstate Telecommunications Service Providers (ITSPs) with wireless telecommunications services, using revenues as the basis for calculating regulatory fees; (2) using revenues to calculate regulatory fees for industries that now use subscribers, such as the wireless and cable industries; (3) eliminating the regulatory fee component pertaining to General Mobile Radio Service; (4) clarifying that licensees of Digital Low Power, Class A, and TV Translators/Boosters should pay only one regulatory fee on their analog or digital station, but not both; (5) consolidating the UHF and VHF Television stations into one fee category; (6) proposing a fee for Internet Protocol TV (IPTV) at the rate of cable fees; (7) alleviating large fluctuations in the fee rate of Multiyear Wireless Services; and (8) providing fee relief for declining industries (*e.g.,* CMRS Messaging). Finally, the *FNPRM* seeks comment on the treatment of non-U.S.-Licensed Space Stations; Direct Broadcast Satellites; and other services, such as broadband in our regulatory fee process. We invite comment on these topics to better inform the Commission concerning whether and/or how these services should be assessed under our regulatory fee methodology in future years. The *Notice* also makes two administrative changes to the regulatory fee collection process and propose a third. Specifically, as required by Treasury and OMB initiatives, we announce that effective in FY 2013 all regulatory fee payments must be made electronically. We also state that beginning in FY 2014 the Commission will no longer mail out initial regulatory fee assessments to CMRS licensees. Finally, we propose to refer to the Department of the Treasury end-to-end billing and collection beginning in FY 2014.

B. Legal Basis

65. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[110]

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

66. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[111] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[112] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[113] 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.[114]

67. Small Businesses. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[115]

68. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.[116] Thus, under this size standard, the majority of firms can be considered small.

69. Local Exchange Carriers (LECs). Neither the Commission nor the SBA

[107] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[108] 5 U.S.C. 603(a).

[109] *Id.*

[110] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[111] 5 U.S.C. 603(b)(3).

[112] 5 U.S.C. 601(6).

[113] 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**.''

[114] 15 U.S.C. 632.

[115] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.*

[116] *See id.*

has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[117] According to Commission data, census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.[118] The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the FNPRM.

70. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable 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.[119] According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.[120] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[121] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the FNPRM.

71. 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.[122] 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.[123] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[124] 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.[125] In addition, 72 carriers have reported that they are Other Local Service Providers.[126] Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.[127] 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 proposals in this FNPRM.

72. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically applicable to interexchange services. The applicable size standard under SBA rules is for the Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[128] According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[129] Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[130] Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

73. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[131] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[132] Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[133] Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees.[134] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

74. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[135] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[136] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[137] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[138] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this FNPRM.

75. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[139] Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000.[140] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[141] Of these, an estimated 857 have 1,500 or fewer employees and 24

[117] 13 CFR 121.201, NAICS code 517110.

[118] *See id.*

[119] 13 CFR 121.201, NAICS code 517110.

[120] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[121] *Id.*

[122] 13 CFR 121.201, NAICS code 517110.

[123] *See Trends in Telephone Service,* at table. 5.3.

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] 13 CFR 121.201, NAICS code 517110.

[129] *See Trends in Telephone Service,* at table 5.3.

[130] *Id.*

[131] 13 CFR 121.201, NAICS code 517911.

[132] *Id.*

[133] *See Trends in Telephone Service,* at table 5.3.

[134] *Id.*

[135] 13 CFR 121.201, NAICS code 517911.

[136] *Id.*

[137] *See Trends in Telephone Service,* at table 5.3.

[138] *Id.*

[139] 13 CFR 121.201, NAICS code 517911.

[140] *Id.*

[141] *Trends in Telephone Service,* at table 5.3.

have more than 1,500 employees.[142] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the FNPRM.

76. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. 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.[143] Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.[144] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[145] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[146] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the FNPRM.

77. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.[147] Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.[148] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[149] For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.[150] Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.[151] 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 proposed action.

78. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[152] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[153] Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

79. Cable Television and other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [154] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[155] Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 had more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the FNPRM.

80. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[156] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[157] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[158] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[159] Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the FNPRM.

81. 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,

[142] *Id.*

[143] 13 CFR 121.201, NAICS code 517110.

[144] *Id.*

[145] *Trends in Telephone Service,* at table 5.3.

[146] *Id.*

[147] 13 CFR 121.201, NAICS code 517210.

[148] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging,'' available at *http://www.census.gov/cgibin/sssd/naics/naicsrch?code=517211&search=2002%20NAICS%20Search;* U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications,'' available at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517212&search=2002%20NAICS%20Search.*

[149] 13 CFR 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[150] U.S. Census Bureau, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210'' (issued Nov. 2010).

[151] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''100 employees or more.''

[152] *Trends in Telephone Service,* at table 5.3.

[153] *Id.*

[154] 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.*

[155] 13 CFR 121.201, NAICS code 517110.

[156] *See* 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *See Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation,* MM Docket Nos. 92–266, 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

[157] These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[158] *See* 47 CFR 76.901(c).

[159] WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' [160] 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.[161] According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year.[162] Of these, 2478 establishments had annual receipts of under $10 million and 145 establishments had annual receipts of $10 million or more.[163] Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, some small businesses whose primary line of business does not involve provision of communications services hold FCC licenses or other authorizations for purposes incidental to their primary business. We estimate that there are many entities that hold private wireless licenses, but we do not have a reliable estimate of how many of these entities are small businesses.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

82. This *Notice* seeks comment on changes to the Commission's current regulatory fee methodology and schedule which may result in additional information collection, reporting, and recordkeeping requirements. Specifically, the *Notice* seeks comment on using revenues instead of subscribers in our regulatory fee procedures. If adopted, this would require entities that do not currently file a Form 499–A to provide the Commission with revenue information. The *Notice* also seeks comment on adding categories to our regulatory fee schedule by changing the treatment of non-U.S.-Licensed Space Stations; Direct Broadcast Satellites; IPTV; and other services, such as broadband in our regulatory fee process. If adopted, those entities that currently do not pay regulatory fees—non-U.S.-Licensed Space Stations, IPTV, and other service providers—would be required to pay regulatory fees to the Commission and DBS providers would pay regulatory fees in a different category.

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

83. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.[164]

84. With respect to reporting requirements, the Commission is aware that some of the proposals under consideration will impact small entities by imposing costs and administrative burdens if these entities will be required to calculate regulatory fees under a different methodology. For example, if the Commission were to adopt a revenue-based approach for calculating regulatory fees, certain entities that currently do not report revenues to the Commission—or that only report some revenues and not others— would have to report such information.

85. The *NPRM* seeks to reform the regulatory fee methodology. We do not propose increasing or imposing a regulatory fee burden on small entities, unless it would be specifically in furtherance of the reform measures proposed. If our proposals in this Notice result in fee increases to small entities, above the annual fee increases that generally occur each year, we intend to mitigate any inequities that might result from such increases, by, for example, limiting the annual increase in regulatory fees. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. One option is to avoid significant fee increases, which is also proposed in the *NPRM.* Another option is to provide interim adjustments, by phasing in the new fees over a period of time. The Commission seeks comment on the abovementioned, and any other, means and methods that would minimize any significant economic impact of our proposed rules on small entities. In addition, the Commission's rules provide a process by which regulatory fee payors may seek waivers or other relief on the basis of financial hardship. 47 CFR 0.1166

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

86. None.

X. Ordering Clauses

87. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *Notice of Proposed Rulemaking is hereby adopted.*

88. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Gloria J Miles,

Federal Register Liaison.

[FR Doc. 2013–13679 Filed 6–7–13; 8:45 am]

BILLING CODE 6712–01–P

[160] 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.*

[161] 13 CFR 121.201, NAICS code 517919.

[162] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, ''Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 517919'' (issued Nov. 2010).

[163] *Id.*

[164] 5 U.S.C. 603(c)(1)–(c)(4).

Notices

Federal Register

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Monday, June 10, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0028]

Notice of Request for Extension of Approval of an Information Collection; Interstate Movement of Certain Land Tortoises

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 regulations for the interstate movement of certain land tortoises.

DATES: We will consider all comments that we receive on or before August 9, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0028-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0028, 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-2013-0028* 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 regulations for the interstate movement of certain land tortoises, contact Dr. Christa Speekmann, Import/Export Specialist-Aquatic Animals, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale MD 20737; (301) 851–3365. 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: Interstate Movement of Certain Land Tortoises.

OMB Number: 0579–0156.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of certain animals and animal products to prevent the introduction into or dissemination within the United States of pests and diseases of livestock.

The regulations in 9 CFR part 93 prohibit the importation of the leopard tortoise, the African spurred tortoise, and the Bell's hingeback tortoise to prevent the introduction and spread of exotic ticks known to be vectors of heartwater disease, an acute, infectious disease of cattle and other ruminants. The regulations in 9 CFR part 74 prohibit the interstate movement of those tortoises that are already in the United States unless the tortoises are accompanied by a health certificate or certificate of veterinary inspection. The certificate must be signed by an APHIS accredited veterinarian and must state that the tortoises have been examined by that veterinarian and found free of ticks.

Since the last extension of approval for these information collection activities, APHIS has refined the number of responses collected, resulting in a decrease of the estimated annual number of responses from 500 to 250. The number of responses fell because of more accurate estimates by APHIS of the actual number of health certificates requested and prepared. As a result, the estimated total annual burden hours has decreased from 1,000 hours to 500 hours.

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 2.0 hours per response.

Respondents: APHIS accredited veterinarians, U.S. tortoise breeders, members of tortoise adoption organizations.

Estimated annual number of respondents: 50.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 500 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 5th day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–13682 Filed 6–7–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0027]

Notice of Request for Extension of Approval of an Information Collection; Importation of Unshu Oranges From Japan

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 Unshu oranges from Japan.

DATES: We will consider all comments that we receive on or before August 9, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0027-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0027, 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-2013-0027* 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 Unshu oranges from Japan, contact Mr. Andrew Wilds, Trade Director, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 851–2275. 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 Unshu Oranges From Japan.

OMB Number: 0579–0173.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to 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. As authorized by the PPA, the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) regulates the importation of citrus fruit from certain parts of the world as provided in ''Subpart—Citrus Fruit'' (7 CFR 319.28).

In accordance with these regulations, APHIS allows the importation of Unshu oranges from Kyushu Island, Honshu Island, and Shikoku Island, Japan, into the United States under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection activities, including box labeling, a USDA–APHIS Application to Import Plants and Plant Products (Plant Protection and Quarantine (PPQ) Form 587), and a USDA–APHIS Foreign Site Certificate of Inspection and/or Treatment (PPQ Form 203).

We are asking the Office of Management and Budget (OMB) to approve our use of 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 0.0830 hours per response.

Respondents: Growers of Unshu oranges, importers, and the national plant protection organization of Japan.

Estimated annual number of respondents: 23.

Estimated annual number of responses per respondent: 2,896.

Estimated annual number of responses: 66,613.

Estimated total annual burden on respondents: 5,535 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 5th day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–13690 Filed 6–7–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0022]

Notice of Request for Extension of Approval of an Information Collection; Importation of Mangoes From the Philippines

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 mangoes from the Philippines into the United States.

DATES: We will consider all comments that we receive on or before August 9, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0022-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0022, 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-2013-0022* 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 importation of mangoes from the Philippines, contact Mr. Andrew Wilds, Trade Director, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 851–2275. 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 Mangoes From the Philippines.

OMB Number: 0579–0172.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to 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. As authorized by the PPA, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of certain fruits and vegetables in accordance with the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–58).

Under these regulations, mangoes from Guimaras Island in the Philippines may be imported into the United States under certain conditions to prevent the introduction of plant pests into the United States. For each shipment, the regulations require information collection activities, including box labeling, a phytosanitary certificate with an additional declaration, trust fund agreement, and an import permit.

We are asking the Office of Management and Budget (OMB) to approve our use of 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 0.0662 hours per response.

Respondents: Growers, packers, and shippers of mangoes on Guimaras Island; and the national plant protection organization of the Philippines.

Estimated annual number of respondents: 1,827.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1,827.

Estimated total annual burden on respondents: 121 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 5th day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–13686 Filed 6–7–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0042]

Dow AgroSciences LLC; Notice of Intent To Prepare an Environmental Impact Statement for Determination of Nonregulated Status of Herbicide Resistant Corn and Soybeans, and Notice of Virtual Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; extension of comment period and notice of virtual public meetings.

SUMMARY: We are extending the comment period for our notice of intent to prepare an environmental impact statement (EIS) on environmental impacts that may result from the potential approval of petitions seeking a determination of nonregulated status of three cultivars of herbicide resistant corn and soybeans produced by Dow AgroSciences LLC. During the comment period, we are requesting public comments to further delineate the scope of the alternatives and environmental impacts and issues to be included in the EIS. This action will allow interested persons additional time to prepare and submit comments. We are also announcing the dates of two virtual public meetings that we will be hosting to provide the public with additional opportunities to comment during the scoping period.

DATES: We will consider all comments that we receive on or before July 17, 2013. Online virtual public meetings will be held June 26, 2013, from 7 p.m. to 9 p.m. EST and June 27, 2013, from 4 p.m. to 6 p.m. EST.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0042-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0042, 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-2013-0042* 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) 7997039 before coming.

Other Information: Details regarding the virtual public meetings, including how to participate, will be posted as they become available at *http://www.aphisvirtualmeetings.com.*

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Stankiewicz Gabel, Branch Chief, Biotechnology Environmental Analysis Branch, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1238; (301) 851–3954. To obtain copies

of the petition, contact Ms. Cindy Eck at (301) 851–3882, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2013, the Animal and Plant Health Inspection Service published in the **Federal Register** (78 FR 28798–28800, Docket No. APHIS–2013–0042) a notice stating our decision to complete an environmental impact statement (EIS) for the potential determinations of nonregulated status of cultivars of corn and soybeans produced by Dow AgroSciences LLC that are resistant to certain broadleaf herbicides in the auxin growth regulator group (particularly the herbicide 2,4-D). The EIS will perform a comprehensive environmental analysis of the potential selection of 2,4-D resistant weeds and other potential environmental impacts that may occur as a result of making determinations of nonregulated status of these events.

Comments on the notice were required to be received on or before June 17, 2013. We are extending the comment period on Docket No. APHIS–2013–0042 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We are also providing an opportunity to comment at two virtual public meetings during the comment period. Information on the virtual public meetings is available under **DATES** and **ADDRESSES**.

All comments received during the scoping period will be carefully considered in developing the final scope of the EIS. Upon completion of the draft EIS, a notice announcing its availability and an opportunity to comment on it will be published in the **Federal Register**.

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 5th day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–13685 Filed 6–7–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0043]

Monsanto Co.; Notice of Intent To Prepare an Environmental Impact Statement for Determination of Nonregulated Status of Herbicide Resistant Soybeans and Cotton, and Notice of Virtual Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; extension of comment period and notice of virtual public meetings.

SUMMARY: We are extending the comment period for our notice of intent to prepare an environmental impact statement (EIS) on environmental impacts that may result from the potential approval of petitions seeking a determination of nonregulated status of cultivars of dicamba herbicide resistant soybeans and cotton produced by the Monsanto Company. During the comment period, we are requesting public comments to further delineate the scope of the alternatives and environmental impacts and issues to be included in the EIS. This action will allow interested persons additional time to prepare and submit comments. We are also announcing the dates of two virtual public meetings that we will be hosting to provide the public with additional opportunities to comment during the scoping period.

DATES: We will consider all comments that we receive on or before July 17, 2013. Online virtual public meetings will be held June 26, 2013, from 7 p.m. to 9 p.m. EST and June 27, 2013, from 4 p.m. to 6 p.m. EST.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0043-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0043, 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-2013-0043* 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.

Other Information: Details regarding the virtual public meetings, including how to participate, will be posted as they become available at *http://www.aphisvirtualmeetings.com.*

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Stankiewicz Gabel, Branch Chief, Biotechnology Environmental Analysis Branch, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1238; (301) 851–3954. To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3882, email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2013, the Animal and Plant Health Inspection Service published in the **Federal Register** (78 FR 28796–28798, Docket No. APHIS–2013–0043) a notice stating our decision to complete an environmental impact statement (EIS) for the potential determinations of nonregulated status of cultivars of dicamba herbicide resistant soybeans and cotton produced by the Monsanto Company in order to perform a comprehensive environmental analysis of the potential selection of dicamba resistant weeds and other potential environmental impacts that may occur as a result of making determinations of nonregulated status of these events.

Comments on the notice were required to be received on or before June 17, 2013. We are extending the comment period on Docket No. APHIS–2013–0043 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We are also providing an opportunity to comment at two virtual public meetings during the comment period. Information on the virtual public meetings is available under **DATES** and **ADDRESSES**.

All comments received during the scoping period will be carefully considered in developing the final scope of the EIS. Upon completion of the draft EIS, a notice announcing its availability and an opportunity to comment on it will be published in the **Federal Register**.

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 5th day of June 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–13691 Filed 6–7–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Supplemental Final Environmental Impact Statement for the Restart of Healy Power Plant Unit #2

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of a Supplemental Final Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Rural Utilities Service (RUS), has issued a Supplemental Final Environmental Impact Statement (SFEIS) for the restart of Healy Power Plant's Unit #2 in Healy, Alaska. The (SFEIS) supplements a Final Environmental Impact Statement (FEIS), completed by the Department of Energy (DOE) in 1993 to evaluate potential impacts to the human environment from DOE's proposal to partially fund construction of Unit #2 of the Healy Power Plant to demonstrate emissions control technologies. In 1994, the DOE published a Record of Decision (ROD) for their FEIS in the **Federal Register**, Volume 59, Issue 54 (March 21, 1994). In 1997, Healy Unit #2 was constructed as a major modification to the existing Healy Power Plant's Unit #1, using funding from DOE and the Alaska Industrial Development and Export Authority (AIDEA). Healy Unit #1 is a 25 megawatt (MW) coal-fired boiler that has been owned and operated by Golden Valley Electric Association (GVEA) since 1967. Healy Unit #2 is a 50 MW coal-fired steam generator owned by AIDEA, which underwent test operation for two years as part of DOE's project. Unit #2 has been in warm layup since late 1999. The SFEIS updates information in DOE's FEIS and considers impacts of restarting Unit #2 for commercial operation. The SFEIS is available for a 30-day public review and comment period. Subsequent to the comment period RUS may issue a ROD.

DATES: Written comments on this Notice must be received on or before July 10, 2013.

FOR FURTHER INFORMATION CONTACT: Deirdre M. Remley, Environmental Protection Specialist, RUS, Water and Environmental Programs, Engineering and Environmental Staff, 1400 Independence Avenue SW., Stop 1571, Washington, DC 20250–1571, Telephone: (202) 720–9640 or email: *deirdre.remley@wdc.usda.gov*. The SFEIS is available online at *http://www.rurdev.usda.gov/UWP-eis4.htm* or you may contact Ms. Remley for a hard copy.

SUPPLEMENTARY INFORMATION: RUS makes loans and loan guarantees to finance new infrastructure and upgrades to existing facilities in the areas of electricity, telecommunications, and water and wastewater in rural areas that qualify for federal assistance. During the 1994 USDA reorganization, the former Rural Electrification Administration (REA) utility programs were consolidated under RUS. The RUS Electric Program is authorized to make loans and loan guarantees that finance electric distribution, transmission, and generation facilities, including construction, system improvements, and replacements required to furnish and improve electric service in rural areas. RUS's predecessor, REA, was a cooperating agency on DOE's FEIS, because it had administrative actions related to its lien interests in GVEA holdings.

GVEA is a not-for-profit cooperative formed in 1946 with financing from REA to provide electric service to rural communities in interior Alaska. Because GVEA is an RUS borrower, RUS holds liens on GVEA assets, and GVEA is eligible for RUS financing to construct or improve its distribution, transmission, and generation facilities. AIDEA provides support for the Alaska Energy Authority whose mission is to reduce the cost of energy in Alaska. AIDEA partially funded construction of Unit #2, and currently owns this power generation facility that is built adjacent to and interconnected with GVEA's Unit #1 at the Healy Power Plant.

Unit #2 has been costly for both AIDEA and GVEA to maintain without income from commercial generation to offset the costs of keeping the facility in warm layup. AIDEA wishes to sell Unit #2 to GVEA, and GVEA wishes to purchase the facility and bring it into commercial production to reduce GVEA's reliance on oil-fired generation by providing a lower cost option for meeting power demand within its service territory.

As part of the restart of Unit #2, GVEA proposes to install additional emission controls to both Unit #1 and Unit #2 and to operate Unit #2 for the remainder of the plant's operational life. GVEA plans to request administrative and financial assistance from RUS to facilitate its purchase of Unit #2 and improvements to the Healy Power Plant, which include the installation of additional emission control equipment.

The SFEIS updated the DOE FEIS by documenting changes in the affected environment, regulatory requirements, and environmental consequences related to the commercial operation of Unit #2, which have occurred since the FEIS was published in 1993. RUS's SFEIS incorporates the DOE FEIS by reference. Both the FEIS and the SFEIS are available at *http://www.rurdev.usda.gov/UWP-eis4.htm*.

Dated: April 25, 2013.

Nivin Elgohary,

Assistant Administrator, Electric Programs, USDA, Rural Utilities Service.

[FR Doc. 2013–13694 Filed 6–7–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–57–2013]

Foreign-Trade Zone (FTZ) 21—Dorchester County, South Carolina; Notification of Proposed Production Activity; AGFA Materials Corporation (Photographic Film Cutting); Goose Creek, South Carolina

The South Carolina State Ports Authority, grantee of FTZ 21, submitted a notification of proposed production activity to the FTZ Board on behalf of AGFA Materials Corporation (AGFA), located in Goose Creek, South Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 17, 2013.

The AGFA facility is located within Site 16 of FTZ 21. The facility is used for the cutting of photographic film to specific sizes or master rolls for medical images, aerial photography, and non-destructive testing. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products listed in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt AGFA from customs duty payments on the foreign status film used in export production. On its domestic sales, AGFA would be able to choose the duty rates during customs entry procedures that apply to its finished cut film (3.7%) and associated scrap and waste (free) for the foreign-status film (3.7%). Customs duties also could

possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 22, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: June 4, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–13705 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain lined paper products (''CLPP'') from the People's Republic of China (''PRC''). The period of review (''POR'') is September 1, 2011, through August 31, 2012. Of the three companies requested for review, the Department has preliminarily determined that Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory (''Leo's/Denmax'') did not cooperate and will be treated as part of the PRC-wide entity; Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li'') made no shipments of subject merchandise during the POR and will retain its separate rate status; and Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd. (''Hwa Fuh/Li Teng'') could not be contacted so review of this company will be rescinded.

DATES: *Effective Date:* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or Eric B. Greynolds, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–3797 or (202) 482–6071, respectively.

Scope of the Order

The merchandise subject by the *CLPP Order* is certain lined paper products.[1] The products are currently classified under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description in the *CLPP Order*[2] remains dispositive.[3]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). In making our findings, we have relied, in part, on facts available, and because Leo's/Denmax did not act to the best of its ability to respond to the Department's requests for information, we have drawn an adverse inference in selecting from among the facts otherwise available. In addition, we assigned a dumping margin to the separate rate recipients based on Departmental practice which is described in the ''Separate Rates'' section below.

For a full description of the methodology underlying our conclusions, *see* ''Preliminary Decision Memorandum,'' dated concurrently with these preliminary results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and it is available to all parties in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Finding of No Sales Made During the POR

Due to Lian Li's timely certification of non-shipment of subject merchandise to the United States during the POR, and our analysis of U.S. Customs and Border Protection (''CBP'') information, the Department preliminarily determines that Lian Li had no sales of subject merchandise during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in non-market economy (''NME'') cases,[4] it is not appropriate to rescind the review with respect to Lian Li, but, rather, to complete the review with respect to Lian Li and issue appropriate instructions to CBP based on the final results of the review.

Intent To Rescind the Review, in Part

With respect to Hwa Fuh/Li Teng, the Department was unable to deliver the initial questionnaire to Hwa Fu/Li Teng using the address provided by petitioner[5] in its 2011–2012 administrative review request letter.[6] Therefore, the Department intends to rescind the review with respect to Hwa Fuh/Li Teng, in accordance with our practice, from which we see no reason to deviate here.[7]

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (''*CLPP Order*'').

[2] *Id.*

[3] For a complete description of the scope of the order, *see* ''Decision Memorandum for Preliminary Results of 2011–2012 Antidumping Duty Administrative Review: Certain Lined Paper Products from the People's Republic of China'' (''Preliminary Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these preliminary results.

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) and the ''Assessment Rates'' section below.

[5] Petitioner is the Association of American School Lined Paper Suppliers (''AASPS'') and its individual members: Norcom Inc., Top Flight, Inc. and ACCO Brands USA LLC (collectively, ''petitioner'').

[6] *See* Preliminary Decision Memorandum for details.

[7] *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 26,455, 26,457 (May 5, 2006)

Separate Rates

In the *Initiation Notice,*[8] we informed parties of the opportunity to request a separate rate. In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to be considered for a separate rate in this review were required to timely file a separate rate application or a separate rate certification to demonstrate eligibility for a separate rate. Separate rate applications and separate rate certifications were due to the Department within 60 calendar days of the publication of the Initiation Notice.

In this review, Leo's/Denmax did not respond to the Department's questionnaire nor file any information with the Department's IA ACCESS system, as required by 19 CFR 351.303, to rebut the presumption that like all companies within the PRC it is subject to government control. As further discussed in the Preliminarily Decision Memo, we determine that Leo's/Denmax has not demonstrated that it operates free from government control. Thus, we find that for purposes of the preliminary results of this review, Leo's/Denmax is part of the PRC-wide entity.

Preliminary Results of the Review

The following preliminary dumping margin exists for the period September 1, 2011, through August 31, 2012:

Exporter	Weighted-average dumping margin (percent)
PRC-wide entity (which includes Leo's/Denmax)	258.21

(unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part,* 71 FR 65082 (November 7, 2006)); *see also Certain Frozen Warmwater Shrimp from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 10,658, (March 9, 2007) (unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52055 (September 12, 2007)).

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 65858 (October 31, 2012) (''*Initiation Notice*'').

Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than the later of 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A brief summary of the argument not to exceed five pages, and (2) a table of statutes, regulations and cases cited.[10] Case and rebuttal briefs should be filed using IA ACCESS.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS within 30 days after the date of publication of this notice.[12] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised by the parties in any written briefs, not later 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rate

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[13] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the PRC-wide entity, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to the weighted-average dumping margin published above.

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.303.

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.212(b)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by sections 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently completed period; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, 258.21 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: June 3, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

I. Summary
II. Background
III. Scope
IV. Discussion of the Methodology
V. Conclusion

[FR Doc. 2013–13698 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC''). The period of review (''POR'') is May 1, 2011, through April 30, 2012. We have preliminarily found that the respondent, RZBC Imp. & Exp. Co., Ltd. (''RZBC I&E''), has not made sales of subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

DATES: *Effective Date:* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate.[1] Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.[2]

Preliminary Determination of No Shipments

Yixing Union Biochemical Ltd. (''Yixing Union'') reported it made no shipments of subject merchandise to the United States during the POR.[3] On August 3, 2012, the Department requested that CBP report any contrary information. CBP has not responded to the Department's inquiry and the Department has not received any evidence that that Yixing Union had any shipments to the United States of subject merchandise during the POR. Based on Yixing Union's no shipments certification, and because CBP had no findings of reviewable transactions, we preliminarily determine that Yixing Union did not have any reviewable transactions during the POR.

In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Yixing Union and issue appropriate instructions to CBP based on the final results of the review.[4]

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market (''NME'') economy within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act. Specifically, RZBC I&E's factors of production have been valued using surrogate value data from Indonesia (where available), which is economically comparable to the PRC and is a significant producer of comparable merchandise. To determine the appropriate comparison method, the Department applied a differential pricing analysis and has preliminarily determined to use the average-to-average method in making comparisons of export price and NV for RZBC I&E.

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum, hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov.* The Preliminary Decision Memorandum is also available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

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[1] *See* ''Decision Memorandum for Preliminary Results of 2011–2012 Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from the People's Republic of China'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated June 3, 2013 (''Preliminary Decision Memorandum'') issued concurrently with this notice for a complete description of the Scope of the Order.

[2] *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009).

[3] *See* Letter from Yixing Union to the Department, regarding ''Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China—No Shipments Letter of Yixing Union Biochemical Co. Ltd.,'' dated July 13, 2012.

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment in NME Proceedings*'') and the ''Assessment Rates'' section, below.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists:

Exporter	Weighted average dumping margin (percent)
RZBC Imp. & Exp. Co., Ltd	0.00

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit a case brief no later than 30 days after the date of publication of these preliminary results of review.[5] Rebuttal briefs may be filed no later than five days after case briefs are filed and may only respond to arguments raised in the case briefs.[6] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[7] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[8] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[9]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[10] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[11]

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[12] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1).[13] Where we calculate a margin by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions, in this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review.

The Department announced a refinement to its assessment practice in NME antidumping duty cases. Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, pursuant to this refinement, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of

[5] *See* 19 CFR 351.309(c).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.310(d).

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[10] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[11] *See* 19 CFR 351.301(c)(3).

[12] *See* 19 CFR 351.212(b)(1).

[13] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average export prices with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

[14] *See Assessment in NME Proceedings,* for a full discussion of this practice.

the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For RZBC I&E the cash deposit rate will be its respective rate established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

We have adjusted the preliminary results antidumping duty margin for export subsidies because the Department found evidence of an export subsidy in the companion countervailing duty proceeding. Additionally, the Department has not adjusted the preliminary results antidumping duty margin for estimated domestic subsidy pass-through because it has concluded that concurrent application of NME antidumping and countervailing duties do not necessarily and automatically result in overlapping remedies.[15]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

[15] *See* Preliminary Decision Memorandum.

Dated: June 3, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Non-Market Economy Country
4. Separate Rate
5. Surrogate Country and Surrogate Value Data
6. Fair Value Comparisons
7. U.S. Price
8. Normal Value
9. Export Subsidy Adjustment
10. Section 777A(f) of the Act
11. Currency Conversion

[FR Doc. 2013–13707 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting the administrative review of the antidumping duty order on stainless steel plate in coils (steel plate) from Belgium, covering the period of review (POR) May 1, 2011, through April 30, 2012. This review covers one producer/exporter of the subject merchandise, Aperam Stainless Belgium N.V. (ASB). We have preliminarily determined that, during the POR, ASB and its affiliate, Aperam Stainless Services and Solutions USA (Aperam USA) made U.S. sales that were below normal value.

DATES: *Effective Date:* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Jolanta Lawska, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6071 or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled.[1] The merchandise subject to this order is currently classifiable in the harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.02, 7219.12.00.05, 7219.12.00.06, 7219.12.00.20, 7219.12.00.21, 7219.12.00.25, 7219.12.00.26, 7219.12.00.50, 7219.12.00.51, 7219.12.00.55, 7219.12.00.56, 7219.12.00.65, 7219.12.00.66, 7219.12.00.70, 7219.12.00.71, 7219.12.00.80, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, and 7220.90.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the *Antidumping Order*[2] remains dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price (CEP) is calculated in accordance with section 772 of the Act. Normal Value (NV) is calculated in accordance with section 773 of the Act. In accordance with section 773(b) of the Act, we disregarded certain sales by

[1] For a full description of the scope of the order, *see* the ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Belgium,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated concurrently with this notice (Preliminary Decision Memorandum).

[2] *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (March 11, 2003); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 16117 (April 2, 2003); *Notice of Correction to the Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 20114 (April 24, 2003) (collectively, *Antidumping Order*).

ASB in the home market which were made at below-cost prices. To determine the appropriate comparison method, the Department applied a ''differential pricing'' analysis and has preliminarily determined to use the average-to-transaction (A-to-T) alternative method in making comparisons of CEP and NV for ASB. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum dated concurrently with this notice and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a dumping margin of 0.63 percent exists for ASB for the period May 1, 2011, through April 30, 2012.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[3] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[4] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All briefs must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, using Import Administration's IA ACCESS system.[5] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[6] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Assessment Rate

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If ASB's weighted-average dumping margin is above *de minimis*, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis (i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for ASB will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 8.54 percent, the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[5] *See* 19 CFR 351.310(c).

[6] *See* 19 CFR 351.310.

[7] *Implementation of the Findings of the WTO Panel in U.S.—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Discussion of Methodology

[FR Doc. 2013–13701 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium from the People's Republic of China: Preliminary Results of 2011–2012 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC''). The period of review (''POR'') is May 1, 2011, through April 30, 2012. The review covers two exporters of subject merchandise, Tianjin Magnesium Metal Co., Ltd. (''TMM'') and Tianjin Magnesium International Co., Ltd. (''TMI''). However, the Department preliminarily finds that TMI did not have reviewable transactions during the POR. Based on an analysis of the facts of this case and the evidence on the record, the Department preliminarily finds that TMM and Company A [1] are appropriately collapsed and treated as a single entity for purposes of calculating a dumping margin in this proceeding.[2] In addition, we preliminarily determine that TMM/Company A made sales of subject merchandise at less than normal value during the POR.

DATES: *Effective Date:* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Andrew Medley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848 or (202) 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.[3] Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Preliminary Determination of No Shipments for TMI

TMI submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.[4] Consistent with its practice, the Department asked U.S. Customs and Border Protection (''CBP'') to conduct a query on potential shipments made by TMI during the POR; CBP did not provide any evidence that contradicts TMI's claim of no shipments.[5] We note that we will continue to examine TMI's no shipment certification during this review. Based on TMI's certification and our analysis of CBP information, we preliminarily determine that TMI did not have any reviewable transactions during the POR.[6]

Preliminary Determination of Affiliation and Collapsing

Based on the evidence presented in TMM's questionnaire responses, we preliminarily find that TMM and Company A are affiliated, pursuant to section 771(33)(E) of the Act.[7] In addition, based on the evidence presented in the questionnaire responses, we preliminarily find that TMM and Company A should be treated as a single entity for the purposes of this review. This finding is based on the determination that there is significant potential for manipulation of price between the parties pursuant to the criteria laid out in 19 CFR 351.401(f),[8] due to the high level of common ownership, interlocking boards and managers, and intertwined operations. For further discussion of the

[1] The identity of ''Company A'' is proprietary. *See* Memorandum from Andrew Medley, International Trade Compliance Analyst, through Melissa Skinner, Director, Antidumping and Countervailaing Duty Operations, Office 8, to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, entitled, ''2011–2012 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Preliminary Affiliation and Collapsing Memorandum,'' dated concurrently with this memorandum (''Affiliation and Collapsing Memorandum'').

[2] *See* Affiliation and Collapsing Memorandum.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Pure Magnesium from the People's Republic of China,'' dated concurrently with this notice (''Preliminary Decision Memorandum'') for a full description of the Scope of the Order.

[4] *See* letter from TMI, entitled, ''Pure Magnesium from the People's Republic of China; A–570–832; Certification of No Sales by Tianjin Magnesium International, Co., Ltd.,'' dated July 13, 2012.

[5] *See* CBP Message Number 2261308, dated September 17, 2012.

[6] In addition, the Department finds that, consistent with its recently announced refinement to its assessment practice in non-market economy (''NME'') cases, it is typically appropriate not to rescind the review in part in this circumstance, but rather to complete the review with respect to TMI. *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below.

[7] The fact that TMM and Company A are affiliated through common ownership is uncontested on the record.

[8] While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review,* 65 FR 20948 (April 19, 2000), and accompanying IDM at Section C; and *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review,* 69 FR 54635 (September 9, 2004), and accompanying IDM at Comment 1; *see also Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review,* 77 FR 1458 (January 10, 2012), where the Department stated that: ''The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a ''reasonable interpretation of the {antidumping duty} statute.'' *See Hontex Enterprises, Inc.* v. *United States, 248 F. Supp. 2d. 1323, 1338 (CIT 2003) (Hontex).* The CIT further noted that ''to the extent that Commerce has followed its market economy collapsing regulations the {non-market economy (NME)} exporter collapsing methodology is necessarily permissible.'' *See id.* at 1342. Unchanged in *Honey From Argentina: Final Results of Antidumping Duty Administrative Review,* 77 FR 36253 (June 18, 2012).

Department's affiliation and collapsing decision, *see* the Affiliation and Collapsing Memorandum.

Furthermore, the Department requests that TMM disclose the name of its affiliate, Company A, as public information for the remainder of this proceeding. Otherwise we will be unable to assign the collapsed entity a joint cash deposit rate under both company names, and may determine the cash deposit rate for TMM by relying upon adverse facts available.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the ''Act''). Export prices were calculated in accordance with section 772 of the Act. Because the PRC is a NME within the meaning of section 771(18) of the Act, normal value (''NV'') has been calculated in accordance with section 773(c) of the Act. Specifically, the respondents' factors of production have been valued using import data from the Philippines, which is economically comparable to the PRC and is a significant producer of comparable merchandise. To determine the appropriate comparison method, the Department typically conducts a ''differential pricing'' analysis and has preliminarily determined to use the average-to average method in making comparisons of export price and normal value. However, in this review, because there is only one sale, there are not two observations with which to test for whether a pattern of prices that differ significantly exists. Accordingly, the Department is not conducting a differential pricing analysis and is calculating TMM's dumping margin using its standard method by comparing the weighted-average normal value to the weighted-average export price.[9]

For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department has determined that the following preliminary dumping margin exists:

Exporter	Weighted-average dumping margin
Tianjin Magnesium Metal Co., Ltd. (''TMM'') and Company A	339.60

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[10] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[11]

Any interested party may request a hearing within 30 days of publication of this notice.[12] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[13]

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3)(ii), the deadline for submission of publicly available information to value factors of production under 19 CFR 351.408(c) is 20 days after the date of publication of the preliminary results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline) the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department generally will not accept in the rebuttal submission additional or alternative surrogate value information not previously on the record, if the deadline for submission of surrogate value information has passed.[14] Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.[15]

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[16]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the

[9] *See* Preliminary Decision Memorandum.

[10] *See* 19 CFR 351.309(c).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[15] See 19 CFR 351.301(c)(3).

[16] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

appropriate entries without regard to antidumping duties. The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[17]

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For TMM/Company A, which have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent[18]; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

[17] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[18] *See Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 31, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Summary

1. Background
2. Scope

Discussion of the Methodology

1. Affiliation and Collapsing
2. Bona Fides Inquiry
3. Nonmarket Economy Country
4. Separate Rates
a. Absence of De Jure Control
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5. Surrogate Country and Surrogate-Value Data
6. Surrogate Country
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[FR Doc. 2013–13702 Filed 6–7–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on citric acid and citrate salts from the People's Republic of China for the period January 1, 2011, through December 31, 2011. These preliminary results cover RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Juxian Co., Ltd., and RZBC Imp. & Exp. Co., Ltd. (collectively, RZBC or the RZBC Companies). We preliminary determine that the RZBC Companies received countervailable subsidies during the POR.

DATES: *Effective Date:* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Patricia M. Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1503.

Scope of the Order

The merchandise subject to the order is citric acid and certain citrate salts. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2918.14.0000, 2918.15.1000, 2918.15.5000, 3824.90.9290, and 3824.90.9290. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in *Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Countervailing Duty Order,* 74 FR 25705 (May 29, 2009), remains dispositive.

A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review: Citric Acid and Certain Citrate Salts; 2011'' (Preliminary Decision Memorandum), dated concurrently with this notice, and hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/*

ia/. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

In making these findings, we have relied, in part, on facts available and, because the Government of the PRC did not act to the best of its ability to respond to the Department's requests for information, we have drawn an adverse inference in selecting from among the facts otherwise available. *See* sections 776(a) and (b) of the Act. For further information, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Determination Memorandum.

For a full description of the methodology underlying the Department's conclusions, *see* Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine a net countervailable subsidy rate of 13.67 percent *ad valorem* for the RZBC Companies, for the period January 1, 2011, through December 31, 2011.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[1] Due to the anticipated timing of the release of post-preliminary analysis memoranda, interested parties may submit written comments (case briefs) for this administrative review no later than one week after the issuance of the last post-preliminary analysis memorandum, and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[2] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) Statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce within 30 days after the date of publication of this notice.[3] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[4] Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using IA ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after issuance of these preliminary results.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: June 3, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Summary
2. Background
3. Scope of the Order
4. Use of Facts Otherwise Available and Adverse Inferences
5. Subsidy Valuation Information
6. Benchmark and Discount Rates
7. Analysis of Programs
8. Conclusion

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[1] *See* 19 CFR 351.224(b).

[2] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[3] *See* 19 CFR 351.310(c).

[4] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2010 and 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (PRC). The period of review (POR) is September 7, 2010, through December 31, 2011. We preliminary determine that the Alnan Companies [1] and Changzhou Changzheng Evaporator Co., Ltd. received countervailable subsidies during the POR.

DATES: *Effective Date:* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Copyak and Kristen Johnson, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2209 and (202) 482–4793, respectively.

[1] The Alnan Companies are Alnan Aluminum Co., Ltd. (Alnan Aluminum), Alnan Aluminum Foil Co., Ltd. (Alnan Foil), Alnan (Shanglin) Industry Co., Ltd. (Shanglin Industry), and Shanglin Alnan Alunimun Comprehensive Utilization Power Co., Ltd. (Shanglin Power). Kromet International Inc., one of the mandatory respondents in this administrative review, reported in that it is a Canada-based company that sold subject merchandise produced by the Alnan Companies.

Scope of the Order

The merchandise covered by the *Order*[2] is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[3]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8516.90.50.00, 8516.90.80.50, 8708.80.65.90, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.30, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.[4]

The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

In making these preliminary findings, we are relying, in part, on facts available because the Government of the PRC did not act to the best of its ability to respond to the Department's requests for information. Further, we are drawing an adverse inference in selecting from among the facts otherwise available. *See* sections 776(a) and (b) of the Act. For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Additionally, we are relying on facts available for three companies[5] because they withheld requested information did not act to the best of their ability to respond to the Department's quantity and value questionnaire. To calculate the *ad valorem* rate for these companies, we have drawn an adverse inference in selecting from among the facts otherwise available.[6] For derivation of the adverse facts available rate, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

For a full description of the methodology underlying all of the Department's conclusions, *see* Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

There are 49 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents. We are assigning to those companies an average of the subsidy rates calculated for the mandatory respondents for 2010 and 2011, respectively. For further information on the calculation of the non-selected rate, *see* ''Preliminary *Ad Valorem* Rate for Non-Selected Companies under Review'' in the Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the listed net subsidy rates for 2010 and 2011:

[2] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (*Order*).

[3] *See* ''Decision Memorandum for Preliminary Results of the Countervailing Duty Administrative Review: Aluminum Extrusions from the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice (Preliminary Decision Memorandum) for a complete description of the scope of the *Order.*

[4] *See Order.*

[5] Foshan Yong Li Jian Alu. Ltd., North China Aluminum Co., Ltd., and Taishan City Kam Kiu Aluminum Extrusion Co., Ltd.

[6] *See* sections 776(a) and (b) of the Act.

Company	2010 *Ad Valorem* rate percent	2011 *Ad Valorem* rate percent
Alnan Aluminum Co., Ltd. (Alnan Aluminum), Alnan Aluminum Foil Co., Ltd. (Alnan Foil), Alnan (Shanglin) Industry Co., Ltd. (Shanglin Industry), and Shanglin Alnan Alunimun Comprehensive Utilization Power Co., Ltd. (Shanglin Power) (collectively, the Alnan Companies)	24.12	39.98
Changzhou Changzheng Evaporator Co., Ltd. and its cross-owned affiliate Liaoning Changzheng Aluminum Company (Changzheng Evaporator)	1.02	1.51
Acro Import and Export Corp	12.57	20.75
Changsha Hengjia Aluminum Co., Ltd	12.57	20.75
Changshu Changsheng Aluminum Products Co., Ltd. (Changsheng)	12.57	20.75
Changzhou Changfa Power Machinery Co., Ltd	12.57	20.75
Changzhou Tenglong Auto Parts Co., Ltd	12.57	20.75
Dongguan Aoda Aluminum Co., Ltd	12.57	20.75
Dongguan Golden Tiger Hardware Industrial Co., Ltd. No 96 (Golden Tiger)	12.57	20.75
Dynamic Technologies China Ltd	12.57	20.75
Foreign Trade Co. of Suzhou New & Hi-Tech Industrial Development Zone (Suzhou New Hi Tech)	12.57	20.75
Foshan Shunde Aoneng Electrical Appliances Co., Ltd	12.57	20.75
Global PMS (Dongguan) Co., Ltd. (Global PMX)	12.57	20.75
Golden Dragon Precise Copper Tube Group Inc	12.57	20.75
Gree Electric Appliances, Inc. of Zhuhai	12.57	20.75
Guandong Nanhai Foodstuffs Imp & Exp Co., Ltd. (Nanhai)	12.57	20.75
Guangdong Grand Shine Construction Material, Co., Ltd.	12.57	20.75
Guangdong Whirlpool Electrical Appliances Co., Ltd. (Guangdong Whirlpool)	12.57	20.75
Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd	12.57	20.75
Hangzhou Xingyi Metal Products Co., Ltd	12.57	20.75
Hanyung Alcobis Co., Ltd	12.57	20.75
Henan New Kelong Electrical Appliances, Co., Ltd	12.57	20.75
Huimeigao Aluminum Foshan Co., Ltd. (Huimeigao)	12.57	20.75
IDEX Dinglee Technology (Tianjin) Co., Ltd. (IDEX Dinglee)	12.57	20.75
Isource Asia Limited (Isource)	12.57	20.75
Jiangsu Changfa Refrigeration Co., Ltd	12.57	20.75
Jiaxing Jackson Travel Products Co., Ltd	12.57	20.75
Jiaxing Taixin Metal Products Co., Ltd	12.57	20.75
Justhere Co., Ltd	12.57	20.75
Kunshan Giant Light Metal Technology Co., Ltd. (Giant)	12.57	20.75
Metaltek Group Co., Ltd	12.57	20.75
Metaltek Metal Industry Co., Ltd	12.57	20.75
Midea International Trading Co., Ltd	12.57	20.75
Pingguo Asia Aluminium Co., Ltd. (Pingguo)	12.57	20.75
Shandong Huasheng Pesticide Machinery Co	12.57	20.75
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd. (Tongtai)	12.57	20.75
Shanxi Guanly Changzhou Hongfeng Metal Processing Co., Ltd	12.57	20.75
Shenzhen Hudson Technology Development Co., Ltd. (Shenzhen Hudson)	12.57	20.75
Shenzhen Jiuyuan Co., Ltd. (aka, Jiuyuan Co., Ltd. and Shenzhen Jiuyuan Import and Export Co., Ltd. (collectively, Jiuyuan))	12.57	20.75
Sincere Profit Limited	12.57	20.75
Skyline Exhibit Systems (Shanghai) Co., Ltd	12.57	20.75
Suzhou JRP Import & Export Co., Ltd. (JRP)	12.57	20.75
Suzhou NewHongji Precision Part Co., Ltd. (Suzhou NewHongji)	12.57	20.75
Taizhou Lifeng Manufacturing Corporation	12.57	20.75
Tianjin Jinmao Import & Export Corp., Ltd	12.57	20.75
Union Industry (Asia) Co., Ltd	12.57	20.75
Xin Wei Aluminum Company Limited, Guang Dong Xin Wei Aluminum Products Co., Ltd., and Xin Wei Aluminum Co., Ltd. (collectively, Xin Wei)	12.57	20.75
Zhaoqing Asia Aluminum Factory Company Limited (ZAA)	12.57	20.75
Zhejiang Xinlong Industry Co., Ltd	12.57	20.75
Zhongshan Gold Mountain Aluminium Factory Ltd., Gold Mountain International Development, Limited (collectively, Zhongshan Gold Mountain)	12.57	20.75
Zhuhai Runxingtai Electrical Equipment Co., Ltd. (Zhuhai Runxingtai)	12.57	20.75
Foshan Yong Li Jian Alu. Ltd	170.66	170.66
North China Aluminum Co., Ltd	170.66	170.66
Taishan City Kam Kiu Aluminum Extrusion Co., LTD	170.66	170.66

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[7] Interested parties may submit written arguments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing the case briefs.[8] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

requested to submit with the argument: (1) Statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce within 30 days after the date of publication of this notice.[9] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[10] Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using IA ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after issuance of these preliminary results.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated for year 2011. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: June 3, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Summary
2. Background
3. Scope of the Order
4. Use of Facts Otherwise Available and Adverse Inferences
5. Subsidy Valuation Information
6. Loan Benchmark Rates
7. Analysis of Programs
8. Preliminary Ad Valorem Rate for Non-Selected Companies Under Review
9. Preliminary Ad Valorem Rate for Non-Cooperative Companies Under Review
10. Conclusion

[FR Doc. 2013–13720 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting Requirements for Sea Otter Interactions With the Pacific Sardine Fishery; Coastal Pelagic Species Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 9, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joshua Lindsay, (562) 980–4034 or *joshua.lindsay@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

On May 30, 2007, NMFS published a final rule (72 FR 29891) implementing a requirement under the CPS FMP to report any interactions that may occur between a CPS vessel and/or fishing gear and sea otters.

Specifically, these reporting requirements are:

1. If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, such an occurrence must be reported within 24 hours to the Regional Administrator, NMFS Southwest Region.

2. While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which will be initially reported as described in No. 1 above, all other observations must be reported within 20 days to the Regional Administrator.

When contacting NMFS after an interaction, fishermen are required to provide information regarding the location, specifically latitude and longitude, of the interaction and a description of the interaction itself. Descriptive information of the interaction should include: Whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; did contact occur with net or vessel; the number of otters present; duration of interaction; otter's behavior during interaction; and, measures taken to avoid interaction.

II. Method of Collection

The information will be collected on forms submitted by mail, phone, facsimile or email.

III. Data

OMB Control Number: 0648–0566.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost to Public: $10.00 in reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 5, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–13678 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Multispecies Days-at-Sea Leasing Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 9, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brett Alger, (978) 675–2153 or *Brett.Alger@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of this information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the Northeast Multispecies fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Northeast Multispecies Fishery Management Plan (FMP). The New England Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulations implementing the FMP are specified at 50 CFR part 648 Subpart F. The NE Multispecies Days-at-Sea (DAS) leasing requirements at § 648.82(k) form the basis for this collection of information.

The NE multispecies DAS leasing program was implemented in 2004 as a result of Amendment 13 (69 FR 22906) which substantially reduced the number of DAS available for the NE multispecies vessels. To mitigate some of the adverse impact associated with the reduction in DAS, the NE Multispecies Leasing Program was developed to enable vessels to increase their revenue by either leasing additional DAS from another vessel to increase their participation on the fishery, or by leasing their unused allocated DAS to another vessel.

NMFS requests Days-at-Sea (DAS) leasing application information in order to process and track requests from allocation holders to transfer DAS to another vessel. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ. The DAS leasing downgrade information is collected to allow vessel owners that are eligible to lease Northeast multispecies DAS a one-time downgrade in their baseline specifications to their current vessel specifications. This one-time downgrade provides greater flexibility for vessels to lease their DAS.

II. Method of Collection

Applicants can submit a DAS leasing request either through mail or electronically. Fillable applications may be completed online, but must be printed and signed to complete and the originals must be mailed. Applicants may choose to submit a lease electronically by logging into their personal fish-on-line accounts at *https://www.nero.noaa.gov/NMFSlogin/login/login* and clicking on the Days At Sea Leasing section.

III. Data

OMB Control Number: 0648–0475.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 505.

Estimated Time per Response: DAS Leasing Application, 5 minutes; Request to Downgrade, 1 hour.

Estimated Total Annual Burden Hours: 88.

Estimated Total Annual Cost to Public: $495.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 5, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–13681 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC717

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of decision and availability of decision documents on

the issuance of two ESA research/enhancement permits for take of threatened species.

SUMMARY: This notice advises the public that two direct take permits have been issued pursuant to the Endangered Species Act of 1973 (ESA) for continued operation, monitoring, and evaluation of hatchery programs rearing and releasing fall Chinook salmon in the Snake River basin of Idaho, and that the decision documents are available upon request.

DATES: Permits 16607 and 16615 were issued on October 9, 2012, subject to certain conditions set forth therein. Subsequent to issuance, the necessary countersignatures by the applicants were received. The permits expire on December 31, 2017.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Salmon Management Division, NOAA's National Marine Fisheries Service, 1201 NE. Lloyd Blvd., Suite 1100, Portland, Oregon 97232. The documents are also available on the Internet at *www.nwr.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Craig Busack, Portland, OR at phone number: (503) 230–5412, email: *craig.busack@noaa.gov*

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs):

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Snake River fall-run.

Dated: June 4, 2013.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–13642 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC718

New England Fishery Management Council (NEFMC); Public Meeting

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

ACTION: Notice; Public Meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ad hoc Sturgeon Committee (SSC) to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, June 26, 2013 at 9:30 a.m.

ADDRESSES:

Meeting Address: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600; fax: (978) 535–8238.

Council Address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The NEFMC's Ad hoc Sturgeon Committee will meet to review the Draft Endangered Species Act Section 7 Consultation Biological Opinion on the Continued Implementation of Management Measures for the Northeast Multispecies, Monkfish, Spiny Dogfish, Atlantic Bluefish, Northeast Skate Complex, Mackerel/Squid/Butterfish and Summer Flounder/Scup/Black Sea Bass Fisheries [Consultation No. F/NER/2012/01956]. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: June 4, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–13605 Filed 6–7–13; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for June 20, 2013, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *CFAStaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: May 28, 2013, in Washington, DC.

Thomas Luebke,

AIA, Secretary.

[FR Doc. 2013–13475 Filed 6–7–13; 8:45 am]

BILLING CODE 6331–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–OS–0100]

Proposed Collection; Comment Request

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of Defense Education Activity announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 9, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, East Tower, 2nd Floor, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Department of Defense Education Activity (Assessment and Accountability), ATTN: Leesa Rompre, 4800 Mark Center Drive, Alexandria, Virginia 22350 or at *Leesa.Rompre@hq.dodea.edu* or at (571) 372–1878.

Title; Associated Form; and OMB Control Number: Department of Defense Education Activity (DoDEA) Parent Survey and Student Survey, OMB Control Number 0704–0462.

Needs And Uses: This information collection requirement is necessary for schools to maintain their accreditation status from the accreditation agency AdvancED□. Accreditation through AdvancED□ is based on adherence to the five AdvancED□ standards, verifiable student and organizational performance, and stakeholder responses. DoDEA is seeking renewal for the Parent Survey and Student Survey.

Affected Public: Individuals or Households.

Annual Burden Hours: 193.

Number of Respondents: 580.

Responses per Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The primary objective of the information collection is to allow the primary stakeholders (students and parents or legal guardians) the opportunity to provide meaningful input to guide the school in improvement efforts in a systemic method.

The information provided through this information collection is anonymous and is compiled and distributed to the school through the outside accreditation agency AdvancED. The information collection process is voluntary.

Dated: June 4, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–13634 Filed 6–7–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of Navy, Office of Naval Research (ONR); Proposed Amendment and Corrections

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice of proposed amendments and administrative corrections to the ONR Demonstration Project (75 FR 77380–77447, December 10, 2010).

SUMMARY: On December 10, 2010 (75 FR 77380–77447), DoD published a notice of approval of a personnel management demonstration project for eligible ONR employees. Within that notice, there were several typographical errors discovered. Additionally, after the publication of the notice and implementation of the demonstration project, ONR determined that for effective personnel management practices, amendments need to be made to provide better consistency in the use of the extended probationary periods for newly hired employees, and to more thoroughly cite the waivers to regulations required to apply these extended probationary periods. Amendments must also be made to better define minimally successful performance for assignments involving displacement, and to remove the requirement that advancements in certain Pay Bands need Executive Director's approval. This notice makes the required corrections and amendments.

DATES: This amendment may not be implemented until a 30-day comment period is provided, comments addressed, and a final **Federal Register** notice published. To be considered, written comments must be submitted on or before July 10, 2013 Authorities impacted by this **Federal Register** notice may not be applied retroactively and will be applied only to those personnel hired on/after the publication date of this **Federal Register** notice.

ADDRESSES: Send comments on or before the comment due date by mail to Mr. William T. Cole, Defense Civilian Personnel Advisory Services, Non-Traditional Personnel Programs (DCPAS–NTPP), Suite 05F16, 4800 Mark Center, Alexandria, VA 22350–1100; by email to *william.cole@cpms.osd.mil;* or by fax to 571–372–1704.

FOR FURTHER INFORMATION CONTACT: Office of Naval Research: Ms. Margaret J. Mitchell, Director, Human Resources Office, Office of Naval Research, 875 North Randolph Street, Code 01HR, Arlington, VA 22203; *Margaret.J.Mitchell@navy.mil.*

DoD: Mr. Todd Cole, Defense Civilian Personnel Advisory Services, Non-Traditional Personnel Programs (DCPAS–NTPP), Suite 05F16, 4800 Mark Center Drive, Alexandria, VA 22350–1100; *william.cole@cpms.osd.mil.*

Corrections

1. On page 77390, section III.F. Extended Probationary Period, replace the section with: All current laws and regulations for the current probationary period are retained with the exception of new employees hired under the demonstration. Candidates hired into the Administrative Support (NC) career track will serve a one year probationary period; candidates hired into the Administrative Specialist and Professional (NO) career track will serve a two year probationary period; and candidates hired into the Science and Engineering Professional (NP) career track will serve a three year probationary period. Employees with veterans' preference will maintain their rights under current law and regulation.

Reason for amendment: This change allows consistent application of the extended probationary period, and better aligns the probationary period with the time needed to demonstrate satisfactory performance within each individual career track.

2. On page 77402, figure number in footer on bottom of ''Eligibility Chart for Pay Increases'': Replace ''Figure 10. Eligibility Chart for Pay Increases'' with ''Figure 9. Eligibility Chart for Pay Increases.''

Reason for change: To correct typographical errors in the figure number.

3. On page 77403, Section IV.C.8.b. Advancements in Pay Band Which Must be Approved by the Executive Director, replace the section with:

Advancement to (1) pay bands outside target pay bands or established position management criteria, and (2) Pay Band V of the S&E Professional Career Track require approval by the Executive Director without further delegation. Details regarding the process for nomination and consideration, format, selection criteria, and other aspects of this process will be addressed in the standard operating procedures and/or related instruction.

Reason for amendment: Removing the requirement of Executive Director approval for advancements in Pay Bands IV and V of the Administrative Specialist and Professional Career Track, and Pay Band IV of the S&E Career Track provides department heads and senior leadership a path to advance employees appropriately through the pay pool panel process. Since the determination of suitability for advancement rests with the department heads and other senior leadership (including the pay pool managers), this change simply places the authority to approve such decisions with those determining their appropriateness, while retaining the Pay Pool Review Authority's full authority and responsibility through the Pay Pool Panel review process.

4. On page 77416, right hand column, third block Part 351, subpart G, section 351.701—Assignment Involving Displacement, replace paragraph (a) with: Waive to allow minimally successful or equivalent to be defined as an employee who does not have a current written notice of unacceptable performance.

Reason for amendment: This change is to prevent any possible categorization of an employee as ''unacceptable'' in terms of RIF, when that employee is overcompensated as a result of coming off of maintained pay and does not receive any increase during the CCS payout, but whose performance was acceptable.

5. On page 77416, right hand column, third block, last line: Replace ''(e)(I)'' with ''(e)(1)''.

Reason for change: To correct typographical errors.

6. On page 77418, left hand column, second block: Replace ''Chapter 52, subpart I, section 5301—Pay Policy. Waive in entirety.'' with ''Chapter 53, subchapter I, section 5301—Pay Policy. Waive in entirety.''

Reason for change: To correct typographical errors.

7. On page 77418, left hand column, second block: Replace ''Chapter 53, subpart I, section 5303—Special Pay Authority. Waive in entirety.'' with ''Chapter 53, subchapter I, section 5305—Special Pay Authority. Waive in entirety.''

Reason for change: To correct typographical errors.

8. On page 77419, left hand column, third block: Replace ''Chapter 55, section 5455(d)—Hazardous Duty Differential'' with ''Chapter 55, section 5545(d)—Hazardous Duty Differential''

Reason for change: To correct typographical errors.

9. On page 77419, left hand column, last block (continues on top of page 77420) Appendix B: Required Waivers to Laws and Regulations chart replace all of the material in that block with: ''Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii); Adverse Actions—Definitions. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except for those with veterans' preference.''

Reason for amendment: This amendment allows ONR to fully utilize its flexibility of extended probationary periods by permitting terminations during these extended probationary periods.

10. On page 77420, right hand column, first block Appendix B: Required Waivers to Laws and Regulations chart, add this paragraph to the block (currently blank): ''Part 752, sections, 752.201 and 752.401: Principal statutory requirements and coverage. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except those with veterans' preference.''

Reason for amendment: This amendment allows ONR to fully utilize its flexibility of extended probationary periods by permitting terminations during these extended probationary periods.

11. On page 77420, right hand column, second block: Delete the three references to ''Part 572'' and replace with ''Part 752.''

Reason for change: To correct typographical errors.

12. On page 77420, right hand column, second block: Replace ''subpart A'' with ''subpart D''

Reason for change: To correct typographical errors.

13. On page 77420, right hand column, third block, first paragraph, delete ''subpart B'' and replace with ''subpart D.''

Reason for change: To correct typographical errors.

14. On page 77429, title (header data): Replace ''ELEMENT 2. PROGRAM EXECUTION AND LIASION'' with ''ELEMENT 2. PROGRAM EXECUTION AND LIAISON.''

Reason for change: To correct a typo.

Dated: June 5, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–13660 Filed 6–7–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the F–15 Aircraft Conversion, 144th Fighter Wing, California Air National Guard, Fresno-Yosemite International Airport Final Environmental Impact Statement

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On May 31, 2013, the United States Air Force signed the ROD for the F–15 Aircraft Conversion for the 144th Fighter Wing, California Air National Guard at Fresno-Yosemite International Airport. The ROD states the Air Force decision to implement the preferred alternative analyzed in the Environmental Impact Statement. The Preferred Alternative will convert the 144 FW from 21 F–16 aircraft [18 F–16 Primary Assigned Aircraft (PAA) and 3 Back-up Inventory Aircraft (BAI)] to 21 F–15 aircraft (18 F–15 PAA and 3 F–15 BAI aircraft).

The decision was based on matters discussed in the Final Environmental Impact Statement (EIS), inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available to the public on March 1, 2013 through a NOA in the **Federal Register** (Volume 78, Number 41, Page 13874) with a wait period that ended on April 1, 2013. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

Authority: This NOA is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of

the NEPA of 1969 (42 U.S.C. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR parts 989.21(b) and 989.24(b)(7))

FOR FURTHER INFORMATION CONTACT: Robert Dogan, NGB/A7AM, 3501 Fetchet Avenue, Joint Base Andrews Maryland, 20762–5157, (240) 612–8859.

Henry Williams, Jr.,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2013–13710 Filed 6–7–13; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2013–0019]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of Naval Research announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 9, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Naval Research (ONR), ATTN: Will Brown, Talent Manager, 875 North Randolph Street, Arlington, VA 22203; or *will.brown@navy.mil.*

Title; Associated Form; and OMB Number: Office of Naval Research (ONR) As One Survey; OMB Control Number 0703–TBD.

Needs and Uses: The Chief of Naval Research requires a method to better understand how the total ONR workforce is aligned and executes the Command's mission and strategic initiatives. A survey will allow ONR to collect data around the workforce's affinity within organizational groups, commitment to strategic initiatives, and understanding of how they work together to achieve ONR's mission.

Non-government personnel (Contractors and Intergovernmental Personnel Act (IPAs) staff) comprise approximately half of ONR's total workforce population. As such, surveying these non-government personnel is required to capture a holistic view of the total ONR workforce and provide leaders with information to make informed workforce decisions. These ''contingent'' workforce members perform a wide-range of functions and are uniquely qualified individuals brought in to support science and technology management. These individuals move across the organization adapting quickly to new issues and projects. They must understand customers and the interworking of ONR. They represent the core of the cross-functional matrix team concept and act as facilitators and nodes among specialist and government professionals. The combination of these contingent workers and government personnel comprise the ONR workforce of the future. Truly understanding the concerns and motivation of this segment of the workforce will facilitate increased creativity and discretionary effort across the enterprise.

The information collected in the survey will be used by ONR executives to measure performance of the organization, proactively inform workforce engagement strategies for greater resonance and impact, and prepare for and implement organizational changes in the near- and long-term.

Affected Public: Individuals and Households: Non-government employees at ONR.

Annual Burden Hours: 139.

Number of Respondents: 555.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: One Time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

ONR continues to experience significant organizational and operational changes. In order to successfully and efficiently implement these changes, the Chief of Naval Research must understand information related to the following: (1) The degree of organizational coherence behind executing strategic goals and priorities; (2) data to measure performance of the organization and proactively inform workforce engagement strategies to optimize resonance and impact; and (3) how to prepare for and implement organizational changes in the near- and long-term. Currently, no databases or surveys exist to provide information on these areas as it relates to the total ONR workforce. The ONR As One survey is designed to provide the three information needs described above by surveying the ONR workforce. As an online survey, it is the most cost- and time-effective means for collecting the required information. Because non-government employees comprise approximately half of ONR's total workforce, it is imperative that these workforce member types are included in the survey population. The feedback from these workforce member types is critical to the goal of capturing an accurate representation of the ONR total workforce on the measures that are of interest to the organization's leadership: The information collected in the survey will be used to measure performance of the organization, proactively inform workforce engagement strategies for greater resonance and impact, and prepare for and implement organizational changes in the near- and long-term. All information will be collected by an online survey and all data will be reported in the aggregate.

Dated: June 4, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–13635 Filed 6–7–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–113–000.
Applicants: NV Energy, Inc., Sierra Pacific Power Company, Nevada Power Company.
Description: Application for Approval of Internal Reorganization Under Section 203 of the Federal Power Act of NV Energy, Inc., et al.
Filed Date: 5/31/13.
Accession Number: 20130531–5304.
Comments Due: 5 p.m. ET 7/30/13.

Docket Numbers: EC13–114–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company Application—West of Devers.
Filed Date: 5/31/13.
Accession Number: 20130531–5390.
Comments Due: 5 p.m. ET 6/21/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1440–001.
Applicants: Electricity MASS, LLC.
Description: Electricity MASS, LLC FERC Tariff to be effective 5/9/2013.
Filed Date: 6/3/13.
Accession Number: 20130603–5070.
Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1624–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position V1–024/V1–025; Original Service Agreement No. 3566 to be effective 5/3/2013.
Filed Date: 6/3/13.
Accession Number: 20130603–5046.
Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1625–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position Y2–098; Original Service Agreement No. 3568 to be effective 5/3/2013.
Filed Date: 6/3/13.
Accession Number: 20130603–5054.
Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1626–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of SA No. 3256 in Docket No. ER12–1288–000 to be effective 5/3/2013.
Filed Date: 6/3/13.
Accession Number: 20130603–5057.
Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1627–000.
Applicants: Portland General Electric Company.
Description: GTA Agreement PGE and BPA Update to be effective 7/1/2013.
Filed Date: 6/3/13.
Accession Number: 20130603–5069.
Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1628–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position #Y2–074—Original Service Agreement No. 3567 to be effective 5/3/2013.
Filed Date: 6/3/13.
Accession Number: 20130603–5071.
Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1629–000.
Applicants: Southwest Power Pool, Inc.
Description: Submission of Notice of Cancellation of Rock Creek Wind Project Large Generator Interconnection Agreement of Southwest Power Pool, Inc.
Filed Date: 6/3/13.
Accession Number: 20130603–5095.
Comments Due: 5 p.m. ET 6/24/13.

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: June 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–13646 Filed 6–7–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1107–003.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Non-Material Change in Status of Pacific Gas and Electric Company.
Filed Date: 5/31/13.
Accession Number: 20130531–5389.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1552–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2013–05–31 Name Change Errata Filing to be effective 6/1/2013.
Filed Date: 5/31/13.
Accession Number: 20130531–5276.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1610–000.
Applicants: Arlington Valley, LLC.
Description: Clarification of Category 1 Status in Regions Outside the Southwest Region to be effective 6/1/2013.
Filed Date: 5/31/13.
Accession Number: 20130531–5332.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1611–000.
Applicants: Griffith Energy LLC.
Description: Clarification of Category 1 Status in Regions Outside the Southwest Region to be effective 6/1/2013.
Filed Date: 5/31/13.
Accession Number: 20130531–5333.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1612–000.
Applicants: Arizona Public Service Company.
Description: PacifiCorp Reciprocal Transmission Service Agreement, Rate Schedule No. 183 to be effective 8/1/2013.
Filed Date: 5/31/13.
Accession Number: 20130531–5335.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1613–000.
Applicants: Brookfield White Pine Hydro LLC.
Description: White Pine Notice of Succession to be effective 5/31/2013.
Filed Date: 5/31/13.
Accession Number: 20130531–5342.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1614–000.
Applicants: Black Hills Power, Inc.
Description: WestConnect Regional Transmission Tariff to be effective 7/1/2013.
Filed Date: 5/31/13.
Accession Number: 20130531–5343.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1615–000.
Applicants: Black Hills/Colorado Electric Utility Company, LP.
Description: WestConnect Regional Transmission Tariff to be effective 7/1/2013.
Filed Date: 5/31/13.
Accession Number: 20130531–5350.

Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1616–000.

Applicants: New England Power Pool Participants Committee.

Description: June 2013 Membership Filing to be effective 5/1/2013.

Filed Date: 5/31/13.

Accession Number: 20130531–5351.

Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1617–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of SA Nos. 3313 and 1410 to be effective 5/31/2013.

Filed Date: 5/31/13.

Accession Number: 20130531–5352.

Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1618–000.

Applicants: The Narragansett Electric Company.

Description: Interconnection Agreement Between Narragansett Electric Co. and Thundermist to be effective 7/31/2013.

Filed Date: 5/31/13.

Accession Number: 20130531–5354.

Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1619–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position No. U2–077 & W1–001? Original Service Agreement No. 3579 to be effective 5/31/2013.

Filed Date: 5/31/13.

Accession Number: 20130531–5355.

Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1620–000.

Applicants: Entergy Arkansas, Inc.

Description: LaGen NITSA to be effective 6/1/2013.

Filed Date: 6/3/13.

Accession Number: 20130603–5000.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1621–000.

Applicants: Entergy Arkansas, Inc.

Description: EWOM Fifth Rev. NITSA to be effective 5/1/2013.

Filed Date: 6/3/13.

Accession Number: 20130603–5001.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1622–000.

Applicants: Southwestern Electric Power Company.

Description: Accounting updates re CWIP expenditures and projection of Southwestern Electric Power Company.

Filed Date: 5/31/13.

Accession Number: 20130531–5356.

Comments Due: 5 p.m. ET 6/21/13.

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: June 3, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–13645 Filed 6–7–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped chronologically, in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	Filed date	Presenter or requester
Prohibited:		
1. CP13–83–000	05–3–13	Susan Thornton, Ph.D.[1]
2. CP11–515–000	05–14–13	Janice & Kevin OKeeffe
Exempt:		
1. CP13–73–000, CP13–74–000	05–6–13	FERC Staff[2]
2. P–2216–000	05–16–13	Hon. Brian Higgins
3. CP07–52–000	05–20–13	Ambassador Gary Doer
4. P–12790–000	05–23–13	FERC Staff[3]
5. CP13–8–000	05–28–13	Hon. Barry Glassman

[1] Susan Thornton, Ph.D. submitted two letters on two different dates, to the Commission uner this docket: May 3, and May 13, 2013.

[2] FERC staff attended a meeting in Tucson, Arizona.
[3] Email record.

Dated: May 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–13640 Filed 6–7–13; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $99 million comprehensive loan guarantee to support the export of approximately $110.4 million worth of aluminum beverage cans and ends manufacturing equipment to China. The U.S. exports will enable the Chinese company to produce approximately 2.8 billion aluminum cans per year. In addition, the foreign buyer will expand its existing annual ends production capacities by 2.6 billion ends for 2-piece cans, and by 1.3 billion ends for 3-piece cans.

Available information indicates that this new foreign aluminum cans and ends production will be entirely sold and consumed in China. Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 442, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2013–13674 Filed 6–7–13; 8:45 am]

BILLING CODE 6690–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: *Date and Time:* The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 13, 2013, from 1:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Session

- FCSIC Report on System Performance

Open Session

A. Approval of Minutes

- April 11, 2013

B. Business Reports

- FCSIC Financial Report
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Mid-Year Review of Insurance Premium Rates

Dated: June 4, 2013.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2013–13637 Filed 6–7–13; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 13–1300]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Thursday, June 20, 2013, 10:00 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW., Room 5–C162, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmell Weathers at (202) 418–2325 or *Carmell.Weathers@fcc.gov*. The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 13–1300 released May 31, 2013. The complete text in this document is available for public 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. The document my also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com*. It is available on the Commission's Web site at *http://www.fcc.gov*.

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, June 20, 2013, from 10:00 a.m. until 2:00 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with

disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Thursday, June 20, 2013, 10:00 a.m.*

1. Announcements and Recent News
2. Approval of Transcript—Meeting of February 21, 2013
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the Numbering Oversight Working Group (NOWG)
6. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
7. Report of the Billing and Collection Working Group (B&C WG)
8. Report of the North American Portability Management LLC (NAPM LLC)
9. Report of the LNPA Selection Working Group (SWG)
10. Report of the Local Number Portability Administration (LNPA) Working Group
11. Status of the Industry Numbering Committee (INC) activities
12. Report of the Future of Numbering Working Group (FoN WG)
13. Summary of Action Items
14. Public Comments and Participation (5 minutes per speaker)
15. Other Business

Adjourn no later than 2:00 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Wireline Competition Bureau.

[FR Doc. 2013–13677 Filed 6–7–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Project LAUNCH Cross-Site Evaluation.

OMB No.: 0970–0373.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is collecting data as part of a cross-site evaluation of a Substance Abuse and Mental Health Services Administration (SAMHSA) initiative called Project LAUNCH (Linking Actions for Unmet Needs in Children's Health). Project LAUNCH promotes the healthy development and wellness of children ages birth to eight years. A total of 35 Project LAUNCH grantees are funded to improve coordination among child-serving systems, build infrastructure, and improve methods for providing services. Grantees implement a range of public health strategies to support young child wellness in a designated locality.

Grants were awarded in four cohorts. Three of these cohorts will end on a rolling basis over the next three years and one cohort of grantees was recently awarded and will end in five years.

Data for the cross-site evaluation of Project LAUNCH will be collected through: (1) Interviews conducted either via telephone or during site-visits to Project LAUNCH grantees, (2) semi-annual reports that will be submitted electronically on a web-based data reporting system, and (3) outcome data tables included in grantee specific end-of-year evaluation reports.

During either telephone interviews or the site visits, researchers will conduct interviews with Project LAUNCH service providers and collaborators in states/tribes and local communities of focus. Interviewers will ask program administrators questions about all Project LAUNCH activities, including: Infrastructure development; collaboration and coordination among partner agencies, organizations, and service providers; and development, implementation, and refinement of service strategies.

As part of the proposed data collection, Project LAUNCH staff will be asked to submit semi-annual electronic reports on state/tribal and local systems development and on services that children and families receive. The electronic data reports also will collect data about other Project LAUNCH-funded service enhancements, such as trainings, Project LAUNCH systems change activities, and changes in provider settings and practice. Information provided in these reports will be aggregated on a quarterly basis, and reported semi-annually.

As a final part of the proposed data collection, the cross-site evaluation will utilize outcome data provided by grantee evaluators as part of their end-of-year evaluation reports to the SAMHSA. Information provided in these reports is aggregated.

Respondents: State/Tribal Child Wellness Coordinator, Local Child Wellness Coordinator, Chair of the State/Tribal Child Wellness Council (during site visit only), Chair of the Community Child Wellness Council, and Local Service Providers/Stakeholders.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Child Wellness Coordinator Interview Guide	81	1	1.5	121.5	40.5
Chair of Local Child Wellness Council Interview Guide	57	1	1	57	19
Local Stakeholder Interview Guide	171	1	.75	128.25	42.75
State Child Wellness Coordinator Interview Guide	48	1	1.25	60	20
Chair of State Child Wellness Council Interview Guide[1]	30	1	1.25	37.5	12.5
Electronic Data Reporting: Systems Measures	81	2	4	648	216
Electronic Data Reporting: Services Measures	81	2	8	1296	432
Outcomes Data Tables in End of Year Reports	81	1	8	648	216

[1] There is no State Coordinator for Cohort 3 grantees. The total number of respondents is based on one response by one respondent for Cohorts 1, 2, and 4.

Estimated Total Annual Burden Hours: 998.75.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of

Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2013–13664 Filed 6–7–13; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Advisory Committee to the Director, National Institutes of Health, was renewed for an additional two-year period on May 31, 2013.

It is determined that the Advisory Committee to the Director, National Institutes of Health, is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov*.

Dated: June 4, 2013

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13624 Filed 6–7–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of 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: National Institute of Mental Health Special Emphasis Panel Fellowships and Dissertations.

Date: June 28, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel K99 Pathway to Independence Awards.

Date: June 28, 2013.

Time: 12:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Megan Kinnane, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel NIMH R34 and T32 HIV/AIDS Applications.

Date: July 9, 2013.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca C Steiner, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center. 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel NIMH EUREKA.

Date: July 18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel SERV Conflicts.

Date: July 18, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina Broitman, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@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: June 4, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13623 Filed 6–7–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PAR–12–265 Ancillary Studies: The Microbiome in Child Health, Development and Obesity.

Date: June 21, 2013.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Type 1 Diabetes Living Biobank.

Date: July 23, 2013.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13622 Filed 6–7–13; 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; Member Conflict: Motor Function, Speech and Rehabilitation.

Date: July 8–9, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

Date: July 9, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Hilary D. Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 357–9236, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oral Dental and Craniofacial Small Business.

Date: July 9–10, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology and Bioengineering.

Date: July 9, 2013.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–1789, *kenneth.ryan@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Nephrology.

Date: July 9–10, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Place: July 9–10, 2013.

Time: 8:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@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: June 4, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13618 Filed 6–7–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Opportunities for Collaborative Research at the NIH Clinical Center (U01).

Date: July 1–2, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: B. Duane Price, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Room 3139, Bethesda, MD 20892, (301) 451–2592, *pricebd@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 4, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13621 Filed 6–7–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Grants.

Date: July 9, 2013.

Time: 2:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Hungyi Shau, Ph.D., Scientific Review Officer, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, 301–402–1030, *Hungyi.Shau@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: June 4, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13619 Filed 6–7–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-up Exclusive Evaluation License: Portable Device and Method for Detecting Hematomas

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a worldwide exclusive evaluation option license to practice the inventions embodied in: HHS Ref. No. E–010–2010/0, U.S. Provisional Patent Application No. 61/286,626, filed December 15, 2009, International Patent Application PCT/US2010/060506 filed December 15, 2010 (published as WO2011084480), European Patent Application 10798422.1 filed December 15, 2010, and U.S. Patent Application 13/516,480 filed June 15, 2012, to ArcheOptix, having its principle place of business in Kingston, Ontario (Canada).

The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to devices for the detection of hematomas. Upon the expiration or termination of the start-up exclusive evaluation license, ArcheOptix will have the right to execute a start-up exclusive patent commercialization license with no greater field of use and territory than granted in the evaluation license.

DATES: Only written comments and/or applications for a license that are received by the NIH Office of Technology Transfer on or before June 25, 2013 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael Shmilovich, Esq., Senior Licensing and Patent Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; Email: *shmilovm@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The invention is a device and method for detecting hematomas based on near infrared light emitted perpendicularly into a tissue from a non-stationary emitter and on continuous detection of the reflected light with a non-stationary probe. The device is designed as a handheld detector that can be used either in an ER or at the scene of an accident, which will allow the Doctor or EMT to diagnose hematoma for patients with a traumatic brain injury at the scene. Furthermore, this device can be utilized to discriminate between subdural, epidural and bi-lateral hematomas. The specific combination and sequences of data analysis are performed to discriminate healthy tissue from tissue perfused with blood. This invention will result in a better triage and treatment for patients with traumatic brain injury (TBI) and fills a must filled gap in TBI health care.

The prospective exclusive evaluation option license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive evaluation option license, and a subsequent exclusive patent commercialization license, may

be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 4, 2013.

Richard Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–13628 Filed 6–7–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[DHS–2013–0037]

Homeland Security Information Network Advisory Committee (HSINAC); Meeting

AGENCY: OPS/OCIO, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Information Network Advisory Committee (HSINAC) will meet on Tuesday, June 25th, 2013 from 1 p.m.–3 p.m. EST by teleconference. The HSINAC provides advice and recommendations to the U.S. Department of Homeland Security (DHS) on matters relating to the HSIN Program. These matters include system requirements, operating policies, community organization, knowledge management, interoperability and federation with other systems, and any other aspect of HSIN that supports the operations of DHS and its federal, state, territorial, local, tribal, international, and private sector mission partners. The purpose of this next meeting is for the committee to receive an interim status update on the HSIN Program and progress made since the last meeting in February 2013. Specifically, the HSIN Program would like to request advice and recommendations on the user experience regarding the identity proofing process, HSIN Legacy to HSIN Release 3 migration process, and discuss communication tactics regarding the HSIN value proposition. The meeting will be conducted virtually through a teleconference line provided below. The meeting will be open to the public.

DATES: HSINAC will meet Tuesday, June 25th, 2013 from 1 p.m.–3 p.m. EST via teleconference. Please note that the meeting may end early if the committee has completed its business.

ADDRESSES: Members of the public may monitor the meeting by calling: 1–800–320–4330 Conference Pin: 673978. The teleconference lines will be open for the public and the meeting brief will be posted beforehand at this link: *http://www.dhs.gov/homeland-security-information-network-advisory-committee*. There is a meeting room reserved at 131 M St. NE., Washington, DC, Floor 3, Room 03Q15, whereas members of the public may come to participate. The building is a Federal facility and all guests will need to show official government-issued photo identification to the security guards upon entrance. Guests will also be required to process through a metal detector and have their bags scanned. If the Federal government is closed, the meeting will be rescheduled.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Michael Brody, *michael.brody@hq.dhs.gov,* 202–357–7661, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Summary'' section below. Comments must be submitted in writing no later than June 20th and must be identified by DHS–2013–0037 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email:* Michael Brody, *michael.brody@hq.dhs.gov*. Please also include the docket number in the subject line of the message.
- *Fax:* 202–357–7678
- *Mail:* Michael Brody, Department of Homeland Security, OPS CIO–D Stop 0426, 245 Murray Lane SW., BLDG 410, Washington, DC 20528–0426.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the HSINAC go to *http://www.regulations.gov*.

A public comment period will be held during the meeting on Tuesday, June 25th from 2:15 p.m. to 2:30 p.m., and speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael Brody, *Michael.brody@hq.dhs.gov,* Phone: 202–357–7661, Fax: 202–357–7678, or Alternate Designated Federal Officer, Sarah Schwettman, *sarah.schwettman@hq.dhs.gov,* Phone: 202–357–7882.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 United States Code Appendix. (Pub. L. 92–463).

The HSINAC will meet to review, discuss and make recommendations on key messaging to stakeholder community showcasing the vision of HSIN and its progressive development efforts.

Agenda

- Review the HSINAC members' HSIN Release 3 (R3) registration experiences
  - ○ Discuss the results of the HSIN Policy/HSIN Development informal analysis and capture feedback from the HSINAC members
- Update On HSIN R3 Migration Status, Latest advances in system development, and the HSIN Communications Implementation Strategy
- Obtain recommendations from the HSINAC on key messaging and delivery tactics regarding the following communication topics:
  - ○ Identity Proofing (IDP) Process
- An electronic based process whereas HSIN Release 3 applicants are required to answer knowledge-based questions pertaining to their personal financial history, credit history, etc. in order to successfully verify their identity before gaining access into HSIN Release 3. This new requirement advances overall system security. The HSIN Program would like to obtain advice on how to best communicate this IDP process to the user communities.
  - ○ HSIN Legacy to HSIN Release 3 Migration Process
- HSIN Legacy users are being migrated to the HSIN Release 3 platform. The objective for this discussion topic is for the HSIN Program to identify how well the user experience transition was implemented and ways that the process can be

enhanced going forward. Additionally, the HSIN Program will obtain advice from the HSINAC on the current communication efforts regarding migration and how these efforts could be more effective.

○ HSIN Release 3 Value Proposition

• The HSIN Release 3 platform has advanced features and functionalities associated with the upgrade. The HSIN Program is seeking advice from the HSINAC on how to best communicate the value proposition—including its advanced features/functionalities, enhanced security measures, and advanced information sharing capabilities—to the enterprise-wide user community.

○ 15 minute public comment period

○ HSINAC deliberation session and vote on recommendations

Dated: June 3, 2013.

James Lanoue,

HSIN Acting Program Manager.

[FR Doc. 2013–13617 Filed 6–7–13; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5718–N–01]

Section 8 Housing Assistance Payments Program—Fiscal Year (FY) 2013 Inflation Factors for Public Housing Agency (PHA) Renewal Funding

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The FY 2013 HUD Appropriations Act requires that HUD apply ''an inflation factor as established by the Secretary, by notice published in the **Federal Register**'' to adjust FY 2013 renewal funding for the Tenant-based Rental Assistance Program or Housing Choice Voucher (HCV) Program of each PHA. For FY 2011 and FY 2010, renewal funding was based on annual adjustment factors (AAFs) and HUD published separate Renewal Funding AAFs for this purpose. These Renewal Funding AAFs, based only on Consumer Price Index (CPI) data for rents and utilities, were replaced for FY 2012 by inflation factors that incorporate additional economic indices to measure the expected change in the per unit cost (PUC) for the HCV program. The methodology for FY 2013 remains unchanged from that used in FY 2012.

DATES: *Effective Date:* June 10, 2013.

FOR FURTHER INFORMATION CONTACT: Michael S. Dennis, Director, Housing Voucher Programs, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, telephone number 202–708–1380; or Peter B. Kahn, Director, Economic and Market Analysis Division, Office of Policy Development and Research, telephone number 202–402–2409, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the inflation factors, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

Tables showing Renewal Funding Inflation Factors will be available electronically from the HUD data information page at: *http://www.huduser.org/portal/datasets/rfif/FY2013/FY2013_IF_Table.pdf.*

In prior years, the Department of Housing and Urban Development has been using Renewal Funding AAFs based on Consumer Price Index data published by the Bureau of Labor Statistics on ''rent of primary residence'' and ''fuels and utilities'' as the inflation factor to calculate the renewal funding for each PHA. During this period, HUD undertook several projects to better understand the drivers of the annual change in housing subsidy costs for the tenant-based voucher program. Division F, Title VIII, Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113–6, approved March 26, 2013) requires that the HUD Secretary, for the calendar year 2013 funding cycle, provide renewal funding for each public housing agency (PHA) based on validated voucher management system (VMS) leasing and cost data for the prior calendar year and by applying an inflation factor as established by the Secretary, by notice published in the **Federal Register**. This notice provides the FY 2013 inflation factors and describes the methodology for calculating them.

II. Methodology

The Department has focused on measuring the change in average PUC as captured in HUD's administrative data in VMS. In order to predict the likely path of PUC over time, HUD has implemented a model that uses several economic indices that capture key components of the economic climate and assist in explaining the changes in PUC. These economic components are the seasonally-adjusted unemployment rate (lagged twelve months) and the Consumer Price Index from the Bureau of Labor Statistics, and the ''wages and salaries'' component of personal income from the National Income and Product Accounts from the Bureau of Economic Analysis. This model subsequently forecasts the expected annual change in average PUC from Calendar Year (CY) 2012 to CY 2013 for the voucher program on a national basis by incorporating comparable economic variables from the Administration's economic assumptions. For reference, these economic assumptions are described in the FY 2014 Budget.

The inflation factor for an individual geographic area is based on the change in the area's Fair Market Rent (FMR) between FY 2012 and FY 2013. These changes in FMR are then scaled such that the voucher-weighted average of all individual area inflation factors is equal to the expected annual change in national PUC from FY 2012 to FY 2013, and also such that no area has a negative factor. HUD subsequently applies these calculated individual area inflation factors to eligible renewal funding for each PHA based on VMS leasing and cost data for the prior calendar year. For the CY 2013 PHA HCV allocation uses 0.41 percent as the annual change in PUC. This figure was calculated by using VMS data through December of 2012 and actual performance of economic indices through the December of 2012.

III. The Use of Inflation Factors

The inflation factors have been developed to account for relative differences in the PUC of vouchers so that HCV funds can be allocated among PHAs. HUD will continue to update the current model with available data in order to assess the expected annual change in PUC and intends to update the methodology for future funding estimates. HUD is also continuing to review and refine the methodology, especially for area differences in the factors, which will be described in future inflation factor notices.

IV. Geographic Areas

Inflation factors based on PUC forecasts are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the inflation factor that is based

on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called ''HUD Metro FMR Area'' (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors. For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

The tables showing the Renewal Funding Inflation Factors available electronically from the HUD data information page list the inflation factors for the four Census Regions first, followed by an alphabetical listing of each metropolitan area, beginning with Akron, OH, MSA. The inflation factors use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2013 FMRs.

V. Area Definitions

To make certain that they are referencing the correct inflation factors, PHAs should refer to the Area Definitions Table on the following Web page: *http://www.huduser.org/portal/datasets/rfif/FY2013/FY2013_AreaDef.pdf*. The Area Definitions Table lists areas in alphabetical order by state, and the associated Census Region is shown next to each state name. If the area where a unit is located is not separately listed, the inflation factor for the Census Region that includes that area is used. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. Any location in these states that are not specifically listed should use the Northeast Census Region inflation factor.

Puerto Rico and the Virgin Islands use the South Region inflation factors. All areas in Hawaii use the Renewal Funding inflation factors listed next ''Hawaii,'' in Appendix A which is based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region Renewal Funding inflation factor.

VI. Environmental Impact

This notice involves a statutorily required establishment of a rate or cost determination which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: May 31, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–13555 Filed 6–7–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5699–N–02]

Notice of Single Family Loan Sales (SFLS 2013–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of mortgage loans.

SUMMARY: This notice announces HUD's intention to competitively sell certain unsubsidized single family mortgage loans, in a sealed bid sale offering called SFLS 2013–2, without Federal Housing Administration (FHA) mortgage insurance. This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid. This is the second sale of Fiscal Year (FY) 2013 and the offerings will be held on June 26 and July 10, 2013.

DATES: For this sale action, the Bidder's Information Package (BIP) will be made available to qualified bidders on or about May 22, 2013. Bids for the 2013–2 sale will be accepted on two Bid Dates and must be submitted on those dates, which are currently scheduled for June 26th and July 10th. (Bid Dates) HUD anticipates that award(s) will be made on or about June 27th, 2013 for the first offering and July 11th for the second (the Award Dates).

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available via the HUD Web site at: *http://www.hud.gov/sfloansales* or via: *http://www.DebtX.com.* Please mail and fax executed documents to SEBA Professional Services: SEBA Professional Services, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, Attention: HUD SFLS Loan Sale Coordinator, Fax: 1–617–531–3499.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in SFLS 2013–2 certain unsubsidized non-performing mortgage loans (Mortgage Loans) secured by single family properties located throughout the United States. A listing of the Mortgage Loans is included in the due diligence materials made available to qualified bidders. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Loans will be offered on two sale dates. On June 26th, the Department will offer national loan pools for bid. On July 10th, the Department will offer regionally-based pools, with additional purchaser requirements, that are called the Neighborhood Stabilization Outcome pools.

The Bidding Process

The BIP describes in detail the procedure for bidding in SFLS 2013–2. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement (CAA Agreement). Qualified bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each qualified bidder's aggregate bid price. HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a qualified bidder is successful, the qualified bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. For the 2013–2 sale actions, settlements are expected to take place on or about August 8, 2013, and September 19, 2013.

This notice provides some of the basic terms of sale. The CAA Agreement, which is included in the BIP, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA Agreement are not subject to negotiation.

Due Diligence Review

The BIP describes how qualified bidders may access the due diligence materials remotely via a high-speed Internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove Mortgage Loans from SFLS 2013–2 at

any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, and include any Mortgage Loans in a later sale. Deliveries of Mortgage Loans will occur in at least two monthly settlements and the number of Mortgage Loans delivered will vary depending upon the number of Mortgage Loans the Participating Servicers have submitted for the payment of an FHA insurance claim. The Participating Servicers will not be able to submit claims on loans that are not included in the Mortgage Loan Portfolio set forth in the BIP.

There can be no assurance that any Participating Servicer will deliver a minimum number of Mortgage Loans to HUD or that a minimum number of Mortgage Loans will be delivered to the Purchaser.

The 2013–2 sale of Mortgage Loans are assigned to HUD pursuant to section 204(a)(1)(A) of the National Housing Act as amended under Title VI of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999. The sale of the Mortgage Loans is pursuant to section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the Mortgage Loans for this specific sale transaction. For the SFLS 2013–2, HUD has determined that this method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Ineligibility

Note: Related Entities, as used in this Notice, are defined as (a) two entities that have (i) significant common purposes and substantial common membership or (ii) directly or indirectly substantial common direction or control; or (b) either entity owns (directly or through one or more entities) a 50 percent or greater interest in the capital or profits of the other. For this purpose, entities treated as related entities under this definition shall be treated as one entity.

In order to bid in the 2013–2 sale as a qualified bidder, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD and applicable to the loan pool being purchased. If any of the following apply to (i) a prospective bidder, (ii) the prospective bidder's significant (>10%) owners and persons with authority or control over the prospective bidder; (iii) any individuals/entities related to the prospective bidder (''Related Entities'' as defined below) or (iv) significant (>10%) owners and person with authority or control of such Related Entities, then the prospective bidder is ineligible to bid on any of the Mortgage Loans included in SFLS:

1. The prospective bidder is an employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

2. The prospective bidder is an individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at title 2 of the Code of Federal Regulations, parts 180 and 2424;

3. The prospective bidder is an individual or entity that has been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;

4. The prospective bidder is an individual or entity that has been debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state or local government agency, division or department;

5. The prospective bidder is an individual or entity that knowingly acquired or will acquire prior to the Sale Date material non-public information, other than the information which is made available to the prospective bidder by HUD pursuant to the terms of the Qualification Statement, about Mortgage Loans offered in the sale;

6. The prospective bidder is a contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with single family asset sales;

7. The prospective bidder is an individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 3 above to assist in preparing any of its bids on the Mortgage Loans;

8. The prospective bidder is an individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in single family asset sales;

9. The prospective bidder is an entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to the Award Date;

10. The prospective bidder is an entity or individual that is: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (sub-paragraph 8); (b) any employee or subcontractor of such entity or individual during that 2-year period prior to Award Date; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan; or

12. The prospective bidder is an entity that has had its right to act as a Government National Mortgage Association (Ginnie Mae) issuer and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished and terminated by Ginnie Mae.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding SFLS 2013–2, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2013–2, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to SFLS 2013–2 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: June 3, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. 2013–13697 Filed 6–7–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2013–N117; 40120–1112–0000–F2]

Incidental Take Permit and Environmental Assessment for Forest Management Activities, Southern Arkansas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under the Endangered Species Act (Act), we, the U.S. Fish and Wildlife Service, announce the receipt and availability of a proposed habitat conservation plan (HCP) and accompanying documents for proposed forest management activities by Potlatch Forest Holdings, Inc. (Applicant) that would take the endangered red-cockaded Woodpecker (*Picoides borealis*) on the Applicant's lands in south Arkansas. We invite public comments on these documents.

DATES: We must receive any written comments at our Regional Office (see **ADDRESSES**) on or before August 9, 2013.

ADDRESSES: Documents are available for public inspection by appointment during normal business hours at the Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345; or the Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES**), telephone: 404–679–7313; or Ms. Erin Leone, Field Office Project Manager, at the Arkansas Ecological Services Field Office (see **ADDRESSES**), telephone: 501–513–4472.

SUPPLEMENTARY INFORMATION: We announce the availability of the proposed HCP, accompanying incidental take permit (ITP) application, and an environmental assessment (EA), which analyze the take of the red-cockaded woodpecker incidental to activities conducted by the Applicant. The Applicant requests a 30-year ITP under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 et seq.), as amended. The Applicant's HCP describes the mitigation and minimization measures proposed to address the impacts to the species.

We specifically request information, views, and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the EA pursuant to National Environmental Policy Act (NEPA) regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the HCP per 50 CFR parts 13 and 17.

The EA assesses the likely environmental impacts associated with the implementation of the activities, including the environmental consequences of the no-action alternative and the proposed action. The proposed action alternative is issuance of the ITP and implementation of the HCP as submitted by the Applicant. The HCP covers activities associated with the translocation of the red-cockaded woodpecker into a proposed conservation area on the Applicant's lands in Calhoun County, Arkansas; timber harvesting activities on Potlatch lands in Arkansas; and provisioning and maintenance activities associated with red-cockaded woodpecker groups within the conservation area. Avoidance, minimization, and mitigation measures include consolidation of red-cockaded woodpecker groups into the conservation area, land management to maintain habitat, and management of additional red-cockaded woodpecker groups that may be available to use for mitigation by landowners besides the Applicant.

Public 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.

If you wish to comment, you may submit comments by any one of several methods. Please reference TE85629A–0 in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov.* Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**.

Covered Area

The HCP and ITP application covers 419,278 acres of timberland in south Arkansas containing 21 red-cockaded woodpecker groups, 17 potential breeding groups and four single bird groups. Six of these groups are currently located outside the proposed conservation area, which will encompass 13,122 acres of timberland and be the focus of red-cockaded woodpecker conservation activities. The red-cockaded woodpecker historically ranged throughout south Arkansas, but is now restricted to Felsenthal National Wildlife Refuge (NWR), Ouachita National Forest, Warren Prairie Natural Area, one privately-owned conservation area managed under a separate HCP adjacent to Felsenthal NWR, Potlatch lands, and up to eight isolated groups on other private lands.

Next Steps

We will evaluate the ITP application, including the HCP and any comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If we determine that the requirements are met, we will issue the ITP for the incidental take of red-cockaded woodpecker.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Dated: May 20, 2013.

Mike Oetker,

Acting Regional Director.

[FR Doc. 2013–13714 Filed 6–7–13; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–794]

Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers; Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a limited exclusion order prohibiting respondent Apple Inc. of Cupertino, California (''Apple''), from importing wireless communication devices, portable music and data processing devices, and tablet computers that infringe claims 75–76 and 82–84 of U.S. Patent No. 7,706,348 (''the '348 patent''). The Commission has also issued a cease and desist order against Apple prohibiting the sale and distribution within the United States of articles that infringe claims 75–76 and 82–84 of the '348 patent. The Commission has found no violation based on U.S. Patent Nos. 7,486,644 (''the '644 patent''), 7,450,114 (''the '114 patent''), and 6,771,980 (''the '980 patent''). The Commission's determination is final, and the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 1, 2011, based on a complaint filed by Samsung Electronics Co., Ltd. of Korea and Samsung Telecommunications America, LLC of Richardson, Texas (collectively, ''Samsung''). 76 FR 45860 (Aug. 1, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including wireless communication devices, portable music and data processing devices, and tablet computers, by reason of infringement of various U.S. patents. The notice of investigation names Apple as the only respondent. The patents remaining in the investigation are the '348, '644, '114, and '980 patents. The complaint also alleged infringement of U.S. Patent No. 6,879,843, but the investigation with respect to that patent was previously terminated based on withdrawn allegations.

On September 14, 2012, the presiding administrative law judge (''ALJ'') issued his final initial determination (''ID'') finding no violation of section 337 based on the four patents remaining at issue. The ALJ determined that the '348, '644, and '980 patents are valid but not infringed and that the '114 patent is both invalid and not infringed. The ALJ further determined that the economic prong of the domestic industry requirement was satisfied with respect to the remaining asserted patents, but that the technical prong was not satisfied for any of those patents.

On October 1, 2012, complainant Samsung and the Commission investigative attorney (''IA'') filed petitions for review of the ID, while Apple filed a contingent petition for review.

On November 19, 2012, the Commission determined to review the ID in its entirety. 77 FR 70464 (Nov. 26, 2012). The Commission issued a public notice requesting written submissions from the parties and the public on various topics, many of which concerned the Commission's authority to issue a remedy for the importation of articles that infringe patents that the patent owner has stated it will license on fair, reasonable, and non-discriminatory (''FRAND'') terms. Other topics concerned patent issues specific to this investigation. The Commission received written submissions from Samsung, Apple, and the IA addressing all of the Commission's questions. In response to the FRAND-related topics posed to the public, the Commission received responses from the following: Association for Competitive Technology; Business Software Alliance; Ericsson Inc.; GTW Associates; Hewlett Packard Company; Innovation Alliance; Intel Corporation; Motorola Mobility LLC; Qualcomm Incorporated; Research In Motion Corporation; and Sprint Spectrum, L.P.

On March 13, 2013, the Commission issued another public notice requesting written submissions from the parties and the public on various additional topics, including some FRAND-related topics. 78 FR 16865 (March 19, 2013). The Commission received written submissions from Samsung, Apple, and the IA addressing all of the Commission's questions. In response to the FRAND-related topics posed to the public, the Commission received responses from the following: Association for Competitive Technology; Business Software Alliance; Cisco Systems, Inc.; Hewlett Packard Company; Innovation Alliance; Micron Technology, Inc.; and Retail Industry Leaders Association.

Having examined the record of this investigation, including the ALJ's final ID and submissions from the parties and from the public, the Commission has determined that Samsung has proven a violation of section 337 based on articles that infringe claims 75–76 and 82–84 of the '348 patent. The Commission has determined to modify the ALJ's construction of certain terms in the asserted claims of the '348 patent, including ''controller,'' ''10 bit TFCI information,'' and ''puncturing.'' Under the modified constructions, the Commission has determined that Samsung has proven that the accused iPhone 4 (AT&T models); iPhone 3GS (AT&T models); iPhone 3 (AT&T models); iPad 3G (AT&T models); and iPad 2 3G (AT&T models) infringe the asserted claims of the '348 patent. The Commission has further determined that the properly construed claims have not been proven by Apple to be invalid and that Samsung has proven that a domestic industry exists in the United States with respect to the '348 patent. The Commission has determined that Apple failed to prove an affirmative defense based on Samsung's FRAND declarations.

The Commission has determined that Samsung has not proven a violation based on alleged infringement of the '644, '980, and '114 patents. With some modifications to the ALJ's analysis, the Commission has determined that the asserted claims of the '644 and '980 patents are valid but not infringed and that the asserted claims of the '114 patent are not infringed and are invalid. The Commission has further determined that Samsung did not prove a domestic industry exists in the United States relating to articles protected by the '644, '980, and '114 patents.

The Commission has determined that the appropriate remedy is a limited exclusion order and a cease and desist order prohibiting Apple from importing into the United States or selling or distributing within the United States wireless communication devices, portable music and data processing devices, and tablet computers that infringe claims 75–76 and 82–84 of the '348 patent. The Commission has

determined that the public interest factors enumerated in section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order and cease and desist order. The Commission has determined that Samsung's FRAND declarations do not preclude that remedy.

Finally, the Commission has determined that a bond in the amount of zero percent of the entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of wireless communication devices, portable music and data processing devices, and tablet computers that are subject to the order. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

Commissioner Pinkert dissents on public interest grounds from the determination to issue an exclusion order and cease and desist order.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

Issued: June 4, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–13641 Filed 6–7–13; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employee Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established the Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The current Advisory Committee members' terms expire on August 31, 2013. This notice describes the Advisory Committee and invites applications from those interested in serving on the Advisory Committee for the September 1, 2013–February 28, 2015, term.

DATES: Applications for membership on the Advisory Committee must be received by the Executive Director of the Joint Board, by no later than July 31, 2013.

ADDRESSES: Mail or deliver applications to: Patrick W. McDonough; Executive Director, Joint Board for the Enrollment of Actuaries; Return Preparer Office SE:RPO; Internal Revenue Service; 1111 Constitution Avenue NW.; REFM, Park 4, Floor 4; Washington, DC 20224. Send applications electronically to: *Patrick.Mcdonough@irs.gov.*

See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director, at (703) 414–2173.

SUPPLEMENTARY INFORMATION:

1. Background

To qualify for enrollment to perform actuarial services under ERISA, an applicant must satisfy certain experience and knowledge requirements, which are set forth in the Joint Board's regulations. An applicant may satisfy the knowledge requirement by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Professionals & Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to the other two actuarial organizations as part of their respective examination programs

2. Scope of Advisory Committee Duties

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The Advisory Committee's duties, which are strictly advisory, include (1) Recommending topics for inclusion on the Joint Board examinations, (2) reviewing and drafting examination questions, (3) recommending examinations, (4) reviewing examination results and recommending passing scores, and (5) providing other recommendations and advice relative to the examinations, as requested by the Joint Board.

3. Member Terms and Responsibilities

Generally, members are appointed for a 2-year term. However, the upcoming term will be 18 months in duration, beginning on September 1, 2013, and ending on February 28, 2015. Members may seek reappointment for additional consecutive terms.

Members are expected to attend approximately 4 meetings each calendar year and are reimbursed for travel expenses in accordance with applicable government regulations. In general, members are expected to devote 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year.

4. Member Selection

The Joint Board seeks to appoint an Advisory Committee that is fairly balanced in terms of points of view represented and functions to be performed. Every effort is made to ensure that most points of view extant in the enrolled actuary profession are represented on the Advisory Committee. To that end, the Joint Board seeks to appoint several members from each of the main practice areas of the enrolled actuary profession, including small employer plans, large employer plans, and multiemployer plans. In addition, to ensure diversity of points of view, the Joint Board limits the number of members affiliated with any one actuarial organization or employed with any one firm.

Membership normally will be limited to actuaries currently enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. Federally-registered lobbyists and individuals affiliated with Joint Board enrollment examination preparation courses are not eligible to serve on the Advisory Committee.

5. Member Designation

It is expected that Advisory Committee members will be appointed as Special Government Employees (SGEs). As such, members will be subject to certain ethical standards applicable to SGEs. Upon appointment, each member will be required to provide written confirmation that he/she does not have a financial interest in a Joint Board examination preparation course. In addition, each member will be required to attend annual ethics training.

6. Application Requirements

To receive consideration, an individual interested in serving on the

Advisory Committee must submit (1) a signed, cover letter expressing interest in serving on the Advisory Committee and describing his/her professional qualifications, and (2) a resume and/or curriculum vitae. Applications may be submitted by regular mail, overnight and express delivery services, and email. In all cases, the cover letter must contain an original signature. Applications must be received by July 31, 2013.

Dated: June 3, 2013.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2013–13608 Filed 6–7–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of May 20, 2013 through May 24, 2013.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,474	Ames True Temper, Inc., Griffon Corporation, Adecco, Express Employment Professionals and Spherion.	Lewistown, PA	February 15, 2012.
82,562	General Motors Components Holdings, LLC, General Motors, Development Dimensions.	Kokomo, IN	August 5, 2012.
82,564	Stefanini, Human Capital Staffing	Southfield, MI	March 13, 2012.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,374	Catholic Health Initiatives, Information Technology, St. Elizabeth Regional Medical Center, Teksystems.	Lincoln, NE	January 28, 2012.
82,374A	Catholic Health Initiatives, Information Technology, ITS Technical, The Physician Network, Teksystems.	Lincoln, NE	January 28, 2012.
82,374B	Catholic Health Initiatives, Information Technology, ITS Technical, NE Heart Institute, Teksystems, etc.	Lincoln, NE	January 28, 2012.
82,374C	Catholic Health Initiatives, Information Technology, ITS Technical, Nebraska Heart Hospital, Teksystems.	Lincoln, NE	January 28, 2012.
82,517	Johnson Controls Interior Manufacturing, LLC, Automotive Electronics and Interiors, Johnson Controls, Kelly Services etc.	Louisville, KY	March 1, 2012.
82,609	Tesoro Hawaii, LLC, Tesoro Corporation, Staffing Partners	Kapolei, HI	March 27, 2012.
82,650	Parker Hannifin Corporation, Hydraulic Group, Gear Pump Division, Foundry Operating Unit.	Youngstown, OH	April 11, 2012.
82,707	Delphi Corporation, Electronics and Safety Division, Securitas, Bartech, Flint Janitorial.	Flint, MI	May 6, 2012.
82,708	RBC Manufacturing Corporation, Regal Beloit Corporation, West Plains Division.	West Plains, MO	February 26, 2013.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,645	Amcor Tobacco Packaging Americas, Amcor Ltd, Workers (UI) Wages Were Reported Through Shorewood Packaging.	Danville, VA	November 11, 2012.
82,721	EZO Copper Products, LLC, EZO Industries Corporation, Snelling Staffing.	Jacksonville, TX	May 9, 2012.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,647	Republic Special Metals, Inc., Patriot Morgan, Inc.	Canton, OH	August 20, 2012.
82,647A	Select Staffing and Employ-Temps, Working On-Site at Republic Special Metals, Inc.	Canton, OH	April 10, 2012.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,623	Advanced Solar Photonics LLC (ASP)	Lake Mary, FL	December 6, 2011.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
82,121	Goodyear Tire & Rubber Company, North American Tire-NAT, HRLyons	Gadsden, AL.	
82,670	Cynsational Hair Care Services	Lake City, SC.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,227	Berk-Tek, A Division of Nexans, Inc., Aerotek, Adecco, Accounttemps and Modis.	New Holland, PA	
82,597	BTI Coopermatics, Inc., Aerotek Commercial Staffing	Northampton, PA	
82,612	Biomass Energy, LLC, Ensign-Bickford Renewable Energies, Inc.	Bumpass, VA	
82,659	Harsco Metals N.A., Temps Plus	Blytheville, AR	
82,673	Komatsu America Corporation, Adecco, Advanced Cad-Cam, Dean Vessling, Dell, Infotech, etc.	Peoria, IL	
82,684	Exide Technologies, Inc.	Hermon, ME	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the Department issued a negative determination on petitions related to the relevant investigation period applicable to the same worker group. The duplicative petitions did not present new information or a change in circumstances that would result in a reversal of the Department's previous negative determination, and therefore, further investigation would duplicate efforts and serve no purpose.

TA–W No.	Subject firm	Location	Impact date
82,628	Archetype Design, LLC	Huntington Park, CA	

I hereby certify that the aforementioned determinations were issued during the period of May 20, 2013 through May 24, 2013. These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: May 29, 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–13658 Filed 6–7–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 20, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 20, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of May 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[14 TAA petitions instituted between 5/20/13 and 5/24/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82750	Boise Inc. (State/One-Stop)	International Falls, MN	05/20/13	05/17/13
82751	Hewlett Packard (State/One-Stop)	Fort Collins, CO	05/20/13	05/17/13
82752	Prudential (Workers)	Iselin, NJ	05/20/13	05/17/13
82753	Agilent Technologies Inc. (Workers)	Cary, NC	05/21/13	05/20/13
82754	Jostens (Company)	Laurens, SC	05/21/13	05/20/13
82755	Perkin Elmer, Inc. (State/One-Stop)	Downers Grove, IL	05/21/13	05/20/13
82756	McKella280, Inc. (State/One-Stop)	Pennsauken, NJ	05/21/13	05/10/13
82757	Bernard Chaus, Inc. (State/One-Stop)	New York, NY	05/22/13	05/21/13
82758	Republic Steel (Union)	Massillon, OH	05/22/13	05/21/13
82759	Perpetua Forests Company (Company)	Grants Pass, OR	05/22/13	05/21/13
82760	Hartford Financial Services—Business Enablement & Analytics (State/One-Stop).	Hartford, CT	05/23/13	05/22/13
82761	Hutchinson Leader (Workers)	Hutchinson, MN	05/23/13	05/10/13
82762	CenturyLink (Workers)	Hood River, OR	05/23/13	05/22/13
82763	Axle Tech International (Company)	Oshkosh, WI	05/24/13	05/23/13

[FR Doc. 2013–13659 Filed 6–7–13; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (13–064).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Frances Teel, JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Method of Collection

The current, paper-based reporting system ensures the protection of a submitters anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.
OMB Number: 2700–0063.
Type of review: Extension of a currently approved collection.
Affected Public: Business or other for-profit.
Number of Respondents: 75.
Responses per Respondent: 1.
Annual Responses: 75.
Hours per Request: 15 min.
Annual Burden Hours: 19.
Frequency of Report: As needed.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,
NASA PRA Clearance Officer.

[FR Doc. 2013–13599 Filed 6–7–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts 179th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

DATES: June 27, 2013 from 12:00 p.m. to 2:00 p.m. in Room 527. This portion of the meeting will be closed for National Medal of Arts review and recommendations. June 28, 2013 from 9:00 a.m. to 11:30 a.m. (ending times are approximate). This portion of the meeting will be open.

FOR FURTHER INFORMATION CONTACT: Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: The meeting on Friday, June 28th will be open to the public on a space available basis. The meeting will begin with opening remarks and voting on recommendations for funding and rejection and guidelines, followed by

updates by the Chairman. There also will be the following presentations: From 9:45 a.m. to 10:30 a.m.—presentation on HUD arts-focused grantees; and from 10:30 a.m. to 11:00 a.m.—presentation on Smithsonian NEA Jazz Masters Oral History Project. There will be concluding remarks and voting results from 11:00 a.m. to 11:15 a.m. The meeting will adjourn at 11:30 a.m.

For information about possible webcasting of the open session of this meeting, go to the Podcasts, Webcasts, & Webinars tab at *www.arts.gov.*

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the February 15, 2012 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Dated: June 5, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2013–13654 Filed 6–7–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning renewal of the Application for Indemnification. A copy of this collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before August 10, 2013. The National Endowment for the Arts 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting the electronic submissions of responses.

ADDRESSES: Patricia Loiko, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 729, Washington, DC 20506–0001, telephone (202) 682–5541 (this is not a toll-free number), fax (202) 682–5721.

Dated: June 5, 2013.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 2013–13647 Filed 6–7–13; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Nominations for the NSB Class of 2014–2020, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

DATE AND TIME: Thursday, June 13, 2013 at 11:00 a.m. EDT

SUBJECT MATTER: Discussion of nomination process regarding the 2014–2020 class of National Science Board members.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for information or schedule updates, or contact: Brandon Powell, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

NSB Senior Legal Counsel.

[FR Doc. 2013–13819 Filed 6–6–13; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 18, 2013

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

8431B Railroad Accident Report—*Head-On Collision of Two Union Pacific Railroad Company Freight Trains Near Goodwell, Oklahoma, June 24, 2012* (DCA–12–MR–005)

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting reasonable accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Friday, June 14, 2013.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Terry Williams, at (202) 314–6100 or by email at *williat@ntsb.gov.*

Dated: May 31, 2013.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2013–13625 Filed 6–6–13; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0018]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 8, 2013 (78 FR 15054).

1. *Type of submission, new, revision, or extension:* New.
2. *The title of the information collection:* Reactor Oversight Process External Survey.
3. *Current OMB approval number:* 3150–XXXX.
4. *The form number if applicable:* N/A.
5. *How often the collection is required:* Once every 2 years.
6. *Who will be required or asked to report:* Members of the public, licensees, and other interested stakeholders.
7. *An estimate of the number of annual responses:* 13.3.
8. *The estimated number of annual respondents:* 13.3.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 13.3.
10. *Abstract:* The mission of the NRC is to regulate the nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. One way to support this mission is through the implementation of the Reactor Oversight Process (ROP), which is the agency's program to inspect, measure, and assess the safety performance of commercial nuclear power plants and to respond to any decline in performance.

The NRC seeks to achieve continuous improvement of the ROP through the ROP self-assessment process. The CY 2013 and 2015 ROP self-assessments will rely, in part, on direct feedback from external stakeholders. The information collected through the voluntary survey will support this purpose, and a summary of the survey results will be included in the annual ROP self-assessment report to the Commission.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 10, 2013. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 15th day of May 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–13627 Filed 6–7–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS); Meeting of the Acrs Subcommittee on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on June 17, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Monday, June 17, 2013–1:00 p.m. until 5:00 p.m.

The Subcommittee will review and discuss possible pellet-cladding interaction during anticipated operational occurrences for Pressurized Water Reactors (PWRs). The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Zena Abdullahi (Telephone 301–415–8716 or Email: *Zena.Abdullahi@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed,

changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, 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 these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: May 30, 2013.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–13683 Filed 6–7–13; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974, as Amended; Notice of Computer Matching Program (Railroad Retirement Board and Social Security Administration, Match Number 1007)

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of a renewal of an existing computer-matching program that expires on July 6, 2013.

SUMMARY: As required by the Privacy Act of 1974, as amended, the RRB is issuing public notice of its renewal of an ongoing computer-matching program with the Social Security Administration (SSA). The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from SSA by means of a computer match. The RRB is also issuing public notice, on behalf of the SSA, of their intent to conduct a computer-matching program based on information provided to them by the RRB.

DATES: This matching program becomes effective as proposed without further notice on July 22, 2013. We will file a report of this computer-matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Martha P. Rico, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Grant, Chief Privacy Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone 312–751–4869 or email at *tim.grant@rrb.gov.*

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988, (Pub. L. 100–503), amended by the Privacy Act of 1974, (5 U.S.C. 552a) as amended, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** for all matching programs.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records contained in a Privacy Act System of Records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments. The last notice for this matching program was published at 73 FR 31516–31517 (June 2, 2008).

B. RRB Computer Matches Subject to the Privacy Act

We have taken appropriate action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Notice of Computer Matching Program, RRB With the SSA, Match 1007

A. Name of Participating Agencies

Railroad Retirement Board (RRB) and the Social Security Administration (SSA), Match #1007.

B. Purpose of the Matching Program

The RRB will, on a daily basis, obtain from SSA a record of the wages reported to SSA for persons who have applied for benefits under the Railroad Retirement Act and a record of the amount of benefits paid by that agency to persons who are receiving or have applied for benefits under the Railroad Retirement Act. The wage information is needed to compute the amount of the tier I annuity component provided by sections 3(a), 4(a) and 4(f) of the Railroad Retirement Act (45 U.S.C. 231b(a), 45 U.S.C. 231c(a) and 45 U.S.C. 231c(f)). The benefit information is needed to adjust the tier I annuity component for the receipt of the Social Security benefit. This information is available from no other source.

Second, the RRB will receive from SSA the amount of certain social security benefits which the RRB pays on behalf of SSA. Section 7(b)(2) of the Railroad Retirement Act (45 U.S.C. 231f(b)(2)) provides that the RRB shall make the payment of certain social security benefits. The RRB also requires this information in order to adjust the amount of any annuity due to the receipt of a social security benefit. Section 10(a) of the Railroad Retirement Act (45 U.S.C. 231i(a)) permits the RRB to recover any overpayment from the accrual of social security benefits. This information is not available from any other source.

Third, once a year the RRB will receive from SSA a copy of SSA's Master Benefit Record for earmarked RRB annuitants. Section 7(b)(7)) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) requires that SSA provide the requested information. The RRB needs this information to make the necessary cost-of-living computation adjustments quickly and accurately for those RRB annuitants who are also SSA beneficiaries.

SSA will receive weekly from RRB earnings information for all railroad employees. SSA will match the identifying information of the records furnished by the RRB against the identifying information contained in its Master Benefit Record and its Master Earnings File. If there is a match, SSA will use the RRB earnings to adjust the amount of Social Security benefits in its Annual Earnings Reappraisal Operation.

This information is available from no other source.

SSA will also receive daily from RRB earnings information on selected individuals. The transfer of information may be initiated either by RRB or by SSA. SSA needs this information to determine eligibility to Social Security benefits and, if eligibility is met, to determine the benefit amount payable. Section 18 of the Railroad Retirement Act (45 U.S.C. 231q(2)) requires that earnings considered as compensation under the Railroad Retirement Act be considered as wages under the Social Security Act for the purposes of determining entitlement under the Social Security Act if the person has less than 10 years of railroad service or has 10 or more years of service but does not have a current connection with the railroad industry at the time of his/her death.

C. Authority for Conducting the Match

Section 7(b)(7) of the Railroad Retirement Act (45 U.S.C. 231f(b)(7)) provides that the Social Security Administration shall supply information necessary to administer the Railroad Retirement Act. Sections 202, 205(o) and 215(f) of the Social Security Act (42 U.S.C. 402, 405(o) and 415(f)) relate to benefit provisions, inclusion of railroad compensation together with wages for payment of benefits under certain circumstances, and the re-computation of benefits.

D. Categories of Records and Individuals Covered

All applicants for benefits under the Railroad Retirement Act and current beneficiaries will have a record of any social security wages and the amount of any social security benefits furnished to the RRB by SSA. In addition, all persons who ever worked in the railroad industry after 1936 will have a record of their service and compensation furnished to SSA by RRB.

The applicable RRB Privacy Act Systems of Records and their **Federal Register** citation used in the matching program are:

1. RRB–5, Master File of Railroad Employees' Creditable Compensation; FR 75 43715 (July 26, 2010);
2. RRB–22, Railroad Retirement, Survivor, Pensioner Benefit System; FR 75 43727 (July 26, 2010).

The applicable SSA Privacy Act Systems of Records used and their **Federal Register** citation used in the matching program are:

1. SSA 60–0058, Master Files of Social Security Number (SSN) Holders and SSN Applications (the Enumeration System); 75 FR 82121 (December 29, 2010);
2. SSA/OS, 60–0059, Earnings Recording and Self-Employment Income System (MEF); 71 FR 1819 (January 11, 2006);
3. SSA/ORSIS 60–0090, Master Beneficiary Record (MBR); 71 FR 1826 (January 11, 2006);
4. SSA/ODISSIS 60–103, Supplemental Security Income Record and Special Veteran Benefits; 71 FR 1830 (January 11, 2006);
5. SSA/OPB 60–0269, Prisoner Update Processing System (PUPS); 64 FR 11076 (March 8, 1999).

E. Inclusive Dates of the Matching Program

This matching program will become effective July 7, 2013 or 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is latest. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

Dated: June 3, 2013.

By authority of the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2013–13614 Filed 6–7–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69691; File No. SR–NYSEArca–2013–57]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending Its Program That Allows Transactions To Take Place At A Price That Is Below $1 per Option Contract Until January 5, 2014

June 4, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 24, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its program that allows transactions to take place at a price that is below $1 per option contract until January 5, 2014. The text of the proposed rule change is available on the Exchange's website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Pilot Program [4] under Rule 6.80 to allow accommodation transactions (''Cabinet Trades'') to take place at a price that is below $1 per option contract to January 5, 2014. The Exchange proposes to extend the program for 7 months.

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.80 Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 6.80 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading in the Exchange, except that the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 63476 (December 8, 2010), 75 FR 77930 (December 14, 2010)(SR–NYSE Arca–2010–109).

Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange has temporarily amended the procedures through May 31, 2013 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. These lower priced transactions are permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in option classes participating in the Penny Pilot Program.[5] The Exchange believes that allowing a price of at least $0 but less than $1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $1 cabinet price (e.g., the series might be quoted no bid).

As with other accommodation liquidations under Rule 6.80, transactions that occur for less than $1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.80, the transactions will be exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 6.67 Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'')[6], in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is to extend an established pilot program for 7 months and continue to facilitate OTP Holders ability to close positions in worthless or not actively traded series.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the operative delay so that the pilot program can continue without interruption. The Commission notes that the proposed rule change does not present any new, unique or substantive issues, but rather is merely extending an existing pilot program and that waiver of the 30-day operative delay will prevent confusion about whether the pilot program continues to be available. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative effective June 1, 2013.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[5] Currently the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca-2013–57 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NYSEArca-2013–57. This file number should be included on the subject line if e-mail 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 website (*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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. 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–NYSEArca–2013–57 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. ONeill,

Deputy Secretary.

[FR Doc. 2013–13652 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69690; File No. SR–NYSEArca–2013–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule to Change the Monthly Fees for Option Trading Permits and Raise the Fee Cap that Applies to Certain Firm and Broker Dealer Open Outcry Executions

June 4, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 21, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amending [sic] the NYSE Arca Options Fee Schedule (''Fee Schedule'') to change the monthly fees for Option Trading Permits (''OTPs'') and raise the fee cap that applies to certain Firm and Broker Dealer open outcry executions. The Exchange proposes to make the fee changes operative on June 1, 2013 [sic] The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to change the monthly fees for OTPs and raise the fee cap that applies to certain Firm and Broker Dealer open outcry executions. The Exchange proposes to make the fee changes operative on June 1, 2013.

The Exchange requires that a Market Maker have an OTP in order to operate on the Exchange. For electronic Market Making, a Market Maker must have four OTPs in order to submit electronic quotations in every class on the Exchange. These four Market Maker OTPs also permit the firm to have at least one trader on the Floor of the Exchange as a Floor-based open outcry Market Maker. However, the manner in which those OTPs are assigned to individual traders may reduce the permissible number of issues in which electronic quotes are assigned. For instance, two associated Market Makers may assign OTP 1, 2, and 3 to trader A, while the fourth is assigned to trader B. Trader A may now only stream quotes electronically in 750 issues, while trader B may submit quotes electronically in 100 issues. To retain the appointment in more than 750 issues, all four OTPs must be in the same name, and to have an additional individual Market Maker on the Floor, a fifth OTP must be acquired.

To tailor the recovery of costs more closely to the basic costs for administration of an OTP Holder or OTP Firm, the Exchange is proposing to introduce a new tiered pricing model for Market Maker OTPs. The Exchange currently charges $4,000 per OTP per month for a Market Maker firm that has between one and four Market Maker OTPs and $1,000 per month for each additional Market Maker OTP. The Exchange proposes to charge $6,000 per month for the first Market Maker OTP, $5,000 per month for the second Market Maker OTP, $4,000 per month for the third Market Maker OTP, and $3,000 per month for the fourth Market Maker OTP. The Exchange would continue to charge

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

$1,000 per month for each additional Market Maker OTP. Thus, under the proposed change, a firm would pay $2,000 more for the first OTP, $1,000 more for the second OTP, the same for the third OTP, $1,000 less for the fourth OTP, and the same for each additional OTP thereafter. In order to have the ability to make electronic markets in every class on the Exchange, a Market Maker firm would pay $18,000 per month for four Market Maker OTPs and $1,000 per month for each additional trader on the Floor of the Exchange operating as an open outcry Market Maker. This would be an increase of $2,000 over the current Fee Schedule. The Exchange is proposing the tiered pricing model because the level of support the Exchange must provide each Market Maker firm per Market Maker OTP decreases as the number of Market Maker OTPs increases (i.e., the first Market Maker OTP requires the most support from the Exchange), and the tiered model is consistent with the pricing practices of other exchanges, as described below.

The Exchange also proposes to raise the fee cap that applies to certain Firm and Broker Dealer open outcry executions. Currently, the Exchange imposes a $75,000 cap per month on Firm Proprietary fees and Broker Dealer fees for transactions in standard option contracts cleared in the customer range for open outcry executions, exclusive of strategy executions, royalty fees and Firm trades executed via a joint back office agreement. The Exchange has made recent changes to its Fee Schedule to encourage Customer order flow.[4] As a result, Firm and Broker Dealer open outcry executions subject to this fee cap have increased, and the Exchange believes that the current fee cap is too low. As such, the Exchange proposes to raise the fee cap to $100,000, which the Exchange believes is in line with current market activity and would continue to encourage Firms and Broker Dealers to engage in a high level of open outcry executions. The Exchange notes that it has not raised the fee cap since it was introduced in 2010.[5] The Exchange also proposes to make a conforming change to endnote 9.

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Market Maker OTP pricing tiers are reasonable because the level of support the Exchange must provide each Market Maker firm per Market Maker OTP decreases as the number of Market Maker OTPs increases. The Exchange's administrative costs are higher to set up and maintain a Market Maker Firm, such as the paperwork relating to having a Market Maker operation. There is a marginal decrease in administrative costs as the number of Market Maker OTPs increases. The Exchange also believes that a decreasing price structure for successive OTPs may encourage Market Maker firms to purchase additional OTPs and quote more issues, thereby enhancing liquidity on the Exchange. At least two other exchanges also offer similar tiered pricing models for their trading permits where the price decreases with each successive permit. For example, the Exchange's affiliate, NYSE Amex Options, has a sliding scale for market maker Amex Trading Permits (''ATPs''). NYSE Amex Options charges $8,000 per month for the first ATP, $6,000 per month for the second ATP, $5,000 per month for the third ATP, $4,000 for the fourth ATP, $3,000 per month for the fifth ATP, and $2,000 per month for each additional ATP.[8] A market maker must have five ATPs in order to trade all issues on NYSE Amex Options, which cost $26,000. Chicago Board Options Exchange, Inc. (''CBOE'') also has a sliding scale for Trading Permit Holders (''TPHs'') who are acting as market makers. The sliding scale is $5,500 per month for permits one to 10, $4,000 per month for permits 11 to 20, and $2,500 per month for permits 21 and higher.[9] The Exchange has estimated that a CBOE market maker would need 34 permits to trade all issues on CBOE, which cost $130,000, assuming the market maker qualifies for the sliding scale permit rates. The Exchange notes that its proposed fees of $18,000 for four Market Maker OTPs to cover all issues on the Exchange will still be less than these other two exchanges.

As stated above, it is equitable and not unfairly discriminatory for the Exchange to charge more for the first two OTPs and the same or less for the successive OTPs because the level of support the Exchange must provide for the initial OTPs decreases as the number of Market Maker OTPs increases. The Exchange believes that it is equitable and not unfairly discriminatory to offer favorable pricing to Market Maker firms that quote more issues on the Exchange because that activity promotes liquidity on the Exchange, which benefits all market participants.

The Exchange believes that raising the fee cap for Firm and Broker Dealer open outcry executions is reasonable because it will strike a more appropriate balance between encouraging such executions and generating adequate revenues in light of the Exchange's costs associated with such trading activity. As noted above, the Exchange has not increased the fee cap since it was introduced in 2010. In addition, the proposed fee cap is similar to the fee cap imposed on at least one other exchange.[10] The Exchange further believes that the proposed $100,000 fee cap is equitable and not unfairly discriminatory because even at such increased level, it would continue to encourage Firms and Broker Dealers to engage in a high level of open outcry executions, which would increase liquidity on the Exchange and benefit all market participants. The Exchange believes that it is equitable and not unfairly discriminatory to continue to offer the fee cap to Firms and Broker Dealers, and not other market participants, because its purpose is to attract large block order flow to the floor of the Exchange, where such orders can be better handled in

[4] *See e.g.,* Securities Exchange Act Release No. 68898 (Feb. 11, 2013), 78 FR 11261 (Feb. 15, 2013) (SR–NYSEArca–2013–11).

[5] *See* Securities Exchange Act Release Nos. 63471 (Dec. 8, 2010), 75 FR 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–108) (adopting $75,000 fee cap); 67419 (July 12, 2012), 77 FR 42343 (July 18, 2012) (SR–NYSEArca–2012–71) (extending fee cap to Broker Dealers).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* NYSE Amex Options Fee Schedule, dated as of May 1, 2013, *available at https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_050113.pdf.*

[9] The discounted permit rates of $4,000 and $2,500 are only available to TPHs who commit to a full year of that number of permits. *See* CBOE Fee Schedule, dated as of May 8, 2013, *available at http://www.cboe.com/framed/PDFframed.aspx?content=/publish/feeschedule/CBOEFeeSchedule.pdf&section=SEC_RESOURCES&title=CBOE%20-%20CBOE.*

[10] Under the NYSE Amex Options Fee Schedule, fees for Firm Proprietary manual trades are aggregated and capped at $100,000 per month for member firms, with certain exceptions. *See* n.6 of the NYSE Amex Options Fee Schedule, *supra* n.8.

comparison with electronic orders that are not negotiable.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed Market Maker OTP fees will allow the Exchange to remain competitive with other exchanges by offering a sliding scale of OTP fees while keeping its fees less than certain of its competitors. The Exchange believes that raising the fee cap for Firm and Broker Dealers will promote competition because [sic] would continue to encourage liquidity on the Exchange via open outcry executions, which would benefit all market participants. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change promotes a competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2013–55 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13638 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69684; File No. SR–BX–2013–016]

Self-Regulatory Organizations; NASDAQ OMX BX Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change To Adopt a Directed Order Process

June 3, 2013.

I. Introduction

On February 21, 2013, NASDAQ OMX BX Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a directed order process. The proposed rule change was published for comment in the **Federal Register** on March 11, 2013.[3] The Commission received a comment letter from one commenter on the proposal,[4] a letter responding to the comment,[5] and a follow up comment letter from the same commenter.[6] In addition, on April 17, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On April 22, 2013, the

[1] 15 U.S.C. 78a.

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69040 (March 5, 2013), 78 FR 15385 (March 11, 2013) (''Notice'').

[4] *See* Letter, dated April 2, 2013, to the Commission from Janet McGuiness, Executive Vice President, Secretary and General Counsel, NYSE Euronext (''NYSE Letter'').

[5] *See* Letter, April 17, 2013, to the Commission from Edith Hallahan, Principal Associate General Counsel, BX (''BX Response Letter'').

[6] *See* Letter, dated May 10, 2013, to the Commission from Janet McGuiness, Executive Vice President, Secretary and General Counsel, NYSE Euronext (''NYSE Response Letter'').

[7] Amendment No. 1, which the Commission believes is technical in nature and not subject to notice and comment, clarifies that, when a Directed Order (as defined below) is submitted in an options class that is subject to the price/time priority on the Exchange, the Directed Market Maker's Directed Allocation (as defined below) would be capped at 40%, unless the Directed Market Maker's size at the first position in time priority at that price exceeds

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Exchange extended to June 6, 2013, the time period within which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to establish a directed order process that would permit members of the Exchange (''BX Participants'') to direct orders (''Directed Orders'') to a particular market maker on the Exchange (''Directed Market Maker'').[8] Under the proposed rule change, a Directed Order that could not be executed upon receipt would be placed on the BX book and would retain its status as a Directed Order.[9] Further, a Directed Market Maker would remain eligible to be allocated a percentage of the Directed Order at all price levels at which the Directed Market Maker has a quote or order (a ''Directed Allocation'').[10] To receive a Directed Allocation, the Directed Market Maker would be required to have quotes or orders at the National Best Bid or National Best Offer (''NBBO'') at the time of the execution of the Directed Order; the Directed Market Maker would not be required to be quoting at the NBBO at the time the Directed Order is received.[11]

The calculation of a Directed Market Maker's Directed Allocation would depend on whether the Directed Order is submitted in an options class that is subject to price/time priority or in an options class that is subject to the size pro-rata execution algorithm on the Exchange. Specifically, if a Directed Order is submitted in an options class that is subject to price/time priority, a Directed Market Maker who has time priority at a particular price would receive the amount of the Directed Order equal to the Directed Market Maker's quotes or orders with time priority at that price.[12] However, if the Directed Market Maker does not have time priority for a size equal to or greater than 40% of the Directed Allocation, the Directed Market Maker would be eligible to receive 40% of the Directed Order at each price level at which there is an execution and at which the Directed Market Maker has quotes or orders.[13] The Exchange further proposes to allocate the remainder of the Directed Order to the other participants in price/time priority sequence, including any remaining contracts of the Directed Market Maker and multiple quotes or orders from the same firm.[14]

If a Directed Order is submitted in an options class that is subject to the size pro-rata execution algorithm, any Public Customer limit orders resting on the limit order book at the execution price would first be executed against the Directed Order.[15] Once all Public Customer limit orders are executed, the Directed Market Maker would receive the greater of: (1) The pro-rata allocation to which such Directed Market Maker would be entitled or (2) the 40% of the Directed Order at that particular price.[16] Once the Directed Allocation is determined, the Exchange proposes to allocate all remaining contracts of the Directed Order on a size pro-rata basis among all remaining participants (except for the Directed Market Maker).

The Directed Market Maker would not be entitled to receive a number of contracts that is greater than the size associated with its quote or order at a particular price.[17] In addition, if the calculation of the 40% Directed Allocation results in a fractional remainder, the Exchange proposes to round up the Directed Market Maker's Directed Allocation to the next whole number whether the Directed Order is submitted in an options class subject to price/time priority or in an options class that is subject to the size pro-rata execution algorithm.[18]

The Exchange also proposes to reduce the quoting obligations applicable to its Market Makers but subject Directed Market Makers to heightened quoting requirements. Currently, BX Market Makers are required to quote during regular market hours on a continuous basis (*i.e.,* 90% of the trading day) in at least 60% of the series in options in which the Market Maker is registered. The proposed rule would reduce this requirement such that Market Makers would be required to quote 60% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as BX may announce in advance, in all options in which the Market Maker is registered. Compliance with the obligation that a Market Maker quote 60% of each trading day in all options in which it is registered would be determined on a monthly basis.[19]

Directed Market Makers, however, would be required to quote such options 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as BX announces in advance, applied collectively to all series in all of the options in which the Directed Market Maker receives Directed Orders (rather than on an option-by-option basis). The Directed Market Maker would be required to comply with the heightened quoting requirements only upon receiving a Directed Order and the heightened quoting requirements would be applicable until the end of the calendar month. Compliance with the obligation that a Directed Market Maker quote options in which they have received a Directed Order 90% of each trading day would be determined on a monthly basis.[20]

III. Summary of Comments

In its comment letter on the proposed rule change, NYSE Euronext (''NYSE'') raises two primary concerns regarding the Exchange's proposal.[21] First, NYSE argues that a provision in the proposed rule that applies to options classes with price/time priority is vague and that, accordingly, could be interpreted to imply that as long as a Directed Market Maker establishes time priority for at least one contract, all of the Directed Market Maker's interest at that price

40%, in which case the Directed Market Maker would have priority for that size.

[8] Specifically, BX proposes to add Chapter VI, Section 1(e)(1) to Chapter VI to define a Directed Order as ''an order to buy or sell which has been directed (pursuant to the Exchange's instructions on how to direct an order) to a particular Market Maker (''Directed Market Maker'') after the opening.'' BX's also proposes to amend Chapter VI, Section 6(a)(2) to include Directed Order to the list of orders handled within the BX System.

[9] Chapter VI, Section 10(3)(iv)(C). For example, as shown in Example 6 in the Notice, if a non-routable Directed Order to buy is received on BX and BX is not quoting at the NBO, the order would be posted on the BX Book. If the market moves such that BX and Directed Market Maker are quoting at the NBO, the Directed Order would be executed against the BX Book and the Directed Market Maker would receive a 40% allocation of the Directed Order.

[10] Chapter VI, Section 10(3)(iv)(C).

[11] For example, as shown in Example 4 in the Notice, a Directed Market Maker that was not at the NBO when the Directed Order was received on the Exchange, would receive a Directed Allocation at the next price level below the NBO if the quotes or orders at the NBO were exhausted.

[12] Chapter VI, Section 10(3)(i)(A). *See* Amendment No. 1, *supra* note 7.

[13] If there are multiple resting quotes or orders from the same Directed Market Maker, the Directed Market Maker would receive the Directed Allocation (up to 40% of the Directed Order) distributed among those quotes or orders on a time priority basis. Chapter VI, Section 10(3)(i)(A).

[14] Chapter VI, Section 10(3)(i)(A).

[15] Chapter VI, Section 10(3)(i)(B).

[16] If there are multiple quotes or orders for the same Directed Market Maker, the Exchange would distribute the Directed Allocation among those quotes or orders on a size pro-rata basis. Chapter VI, Section 10(3)(i)(B).

[17] Chapter VI, Section 10(3)(iv)(A).

[18] Chapter VI, Section 10(3)(iv)(B).

[19] Chapter VII, Section 6(d)(i)(4).

[20] Chapter VII, Section 6(d)(i)(4).

[21] *See* NYSE Letter, *supra* note 4.

will be accorded time priority over all other interest in the book at that price. NYSE believes that providing Directed Market Makers with this time priority could result in the Directed Market Maker receiving a 100% Directed Allocation. NYSE suggests a modification of BX's proposal to clarify that ''the Directed Market Maker will receive only the size he/she has *at the first position in time priority,* plus up to 40% of the *remainder* of the Directed Order'' (emphasis in original).[22]

In response to NYSE's concerns, the Exchange submitted a letter and an amendment to its proposal.[23] In its response, the Exchange explains that the language related to Directed Market Makers receiving 100% of a Directed Allocation when the Directed Market Maker is first in time was intended to address the scenario when a Directed Market Maker already has time priority and a Directed Allocation is not needed. Therefore, BX explains that ''a Directed Market Maker cannot use a small quote/order to 'jump the queue' by later submitting a larger quote/order at the same price, because priority afforded via Directed Allocation is limited to the 40% calculation.'' [24] BX submitted Amendment 1 to clarify this point in its proposed rule text and discussion of its proposed rule change.[25]

NYSE also expressed concern with the Exchange's proposed rule to allow a Market Maker to receive a Directed Allocation when the Market Maker does not have a quote at the NBBO at the time the Directed Order is received by the Exchange. NYSE believes that the proposal enables a Market Maker to ''lay in wait outside the NBBO, allowing other participants to participate in the order at less attractive prices.'' [26] The Market Maker would then receive a 40% guarantee for that portion of the Directed Order that trades beyond the initial NBBO. NYSE argues that this rule would be unprecedented and recommends that the Exchange stipulate that a preferential Directed Order allocation of any kind is only available to Market Makers who have a quote or order at the NBBO at the time the Directed Order is received by the Exchange.

In response to this concern, the Exchange recognizes that its proposal does break new ground, but stresses that in order to receive an execution of a Directed Order, a Directed Market Maker must be quoting at the NBBO at the time of execution, and that there would never be an allocation to a quote outside the NBBO.[27] The Exchange argues that its proposal addresses the reality of multiple prices and creates an ability to efficiently execute a larger volume of an order. The Exchange further maintains that it ''recognizes the new NBBO and *preserves* the requirement that the Directed Market Maker be at the NBBO'' (emphasis in original).[28] The Exchange believes that availability of a certain depth of a quote beyond the current NBBO is an important aspect of price discovery, particularly with respect to execution of larger orders when the NBBO is for a small size. Therefore, the Exchange argues that its proposal provides preferential allocation to Market Makers who are fostering price discovery and transparency by taking the commensurate risk of quoting at the NBBO at the time of execution of the Directed Order. Accordingly, the Exchange maintains that Directed Market Makers will continue to have the incentive to quote aggressively to maximize their participation.

In its second letter, NYSE states that the Exchange's response was inadequate and the concerns regarding allowing Directed Market Makers to receive a Directed Allocation when the Directed Market Maker's quote is not at the NBBO persist. NYSE argues that the proposed rule change, by rewarding market makers whose quotes are not the most aggressive, will encourage market makers to quote away from the inside market.[29] In addition, NYSE asserts that the proposed rule change raises concerns ''that are even more troubling than those held by the Commission and staff for more than a decade about the tendency of passive price matching behavior to degrade price competition in options markets.'' [30] As a result, NYSE believes that allowing the Exchange's proposal would deteriorate market makers' incentives to compete for incoming orders based on price.

NYSE also raises a concern with the Exchange permitting Directed Allocations to a Directed Market Maker before a Public Customer when the Directed Market Maker is not first-in-time. NYSE notes that, under the Exchange's proposal, a Directed Market Maker that arrives after a Public Customer who has aggressively improved the NBBO would receive a Directed Allocation of an order that the earlier-arriving Public Customer could potentially have completely filled. According to the NYSE, public customers would not be fully rewarded for providing an aggressive quote and thus the incentives to improve the NBBO would decrease, resulting in fewer displayed public customer orders and fewer public customers willing to improve the NBBO. NYSE describes the longstanding history of distinguishing public customers from professionals and allowing advantages to public customer orders.[31] NYSE provides NYSE Arca Inc. and NYSE Amex Options LLC as examples of exchanges that use the ''appropriate approach'' of maintaining incentives for public customers willing to aggressively quote, especially when public customer orders are ranked ahead of a Directed Market Maker's order. Specifically, NYSE Arca Inc. does not award the Lead Market Maker the 40% participation entitlement they would otherwise receive, but instead grants strict time priority to the customer, thus ensuring that customers aggressively improving the NBBO are fully rewarded.[32] Under the rules of NYSE Amex Options LLC, customer orders have priority for incoming Directed Orders, even if the market maker has time priority.[33]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–BX–2013–016 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the

[22] *See* NYSE Letter, *supra* note 4, at 3.

[23] *See* BX Response Letter, *supra* note 5 and Amendment 1, *supra* note 7.

[24] *See* BX Response Letter, *supra* note 5, at 1.

[25] In its comment letter, NYSE raises additional concerns about BX's proposal based on the interpretation that the Exchange's proposed rule could permit 100% internalization. These concerns relate to opportunities for selective quoting and use of price improving orders, as well as concerns relating to information barriers that govern permissible communication between the market making function of a broker-dealer and other divisions within a broker-dealer, such as an order sending affiliate. *Id.* at 3–5. The Exchange notes that these additional concerns are based on NYSE's interpretation of the proposed rule and that, given that the Directed Allocation will not function the way NYSE understood, NYSE's additional concerns are not applicable. *See* BX Response Letter, *supra* note 5, at 2.

[26] *See* NYSE Letter, *supra* note 4, at 5.

[27] *See* BX Response Letter, *supra* note 5, at 2.

[28] *Id.* at 3.

[29] *See* NYSE Response Letter, *supra* note 6, at 1.

[30] *Id.* (citing Special Study: Payment for Order Flow and Internalization in the Options Markets, Office of Compliance Inspections and Examinations and Office of Economic Analysis (Dec. 2000). Indeed, the NYSE notes that BX would not even require a Directed Market Maker to passively price match—*i.e.,* promising to match the price of the NBBO—to receive a Directed Allocation.

[31] *See* NYSE Response Letter, *supra* note 6, at 2.

[32] *See* NYSE Response Letter, *supra* note 6, at 4 (citing NYSE Arca Options Rule 6.76A).

[33] *See* NYSE Response Letter, *supra* note 6, at 4 (citing NYSE MKT Rule 964NY).

proposed rule change. Institution of these proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail in Section V below, the Commission seeks and encourages interested persons to provide additional comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

As described above, the Exchange's proposed Directed Order process would enable a Directed Market Maker to be eligible to receive a Directed Allocation regardless of whether the Market Maker is quoting at the NBBO at the time the Directed Order is received. The Directed Allocation would be available for the life of the Directed Order. If the Directed Market Maker does not have time priority for a size equal to or greater than the Directed Allocation at a particular price that is the NBBO, the Directed Market Maker would be entitled to a Directed Allocation, regardless of time priority. Further, the Directed Market Maker would be entitled to a Directed Allocation at all price levels at which the Directed Market Maker has a quote or order. In addition, when a Directed Order is submitted in an options class that is subject to the price/time priority on the Exchange, the Exchange would provide Directed Market Makers with priority for the Directed Allocation ahead of any Public Customer limit orders, including those that arrived prior to the Directed Market Maker's quotes or orders at that price. In addition, if the calculation of the 40% Directed Allocation results in a fractional remainder, the Exchange further proposes to round up to the next whole number. Further, the Directed Market Maker would be subject to heightened quoting requirements only upon receiving a Directed Order, it would not be required to meet those requirements beforehand. The Exchange also proposes to reduce the quoting obligations applicable to its Market Makers.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. The section of the Act applicable to the proposed rule change that provide the grounds for approval or disapproval under consideration are Section 6(b)(5) [34] and Section 6(b)(8).[35] Section 6(b)(5) of the Act requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

The Commission believes that the Exchange's proposal raises questions as to whether the proposed rule change is consistent with these standards. Specifically, the Commission questions whether, and if so how, the proposed rules could impact quote competition on the Exchange. The Commission also questions whether, and if so, how, any impact on quote competition on the Exchange could impact execution quality on the Exchange. In addition, the Commission questions whether BX's proposal is designed to protect investors in that the proposal would provide Directed Market Makers with priority for Directed Allocations ahead of Public Customer limit orders that arrived first in time.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [36] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[37]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by July 1, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by July 15, 2013.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. Unlike the Directed Order rules of other options exchanges, the Exchange's proposed rule would not require that a Directed Market Maker be quoting at the NBBO at the time a Directed Order is received. The Commission seeks comment on whether this aspect of the proposed rule change would impact market makers' incentives to quote competitively on the Exchange. If so, how? If not, why not? If the Commission were to approve this aspect of the proposed rule change and if other options exchanges also eliminated the requirement that Directed Market Makers quote at the NBBO to receive Directed Orders as part of their Directed Order process, what, if any, impact could there be more generally on the quality of quotations in the options markets?

2. In support of not including an NBBO quoting requirement, the Exchange argues that availability of quotes beyond the current NBBO is an important aspect of price discovery, particularly with respect to execution of larger orders when the NBBO is for a small size. The Exchange further argues that its proposal ''acknowledges and addresses the reality of executions at multiple prices'' and creates an ability to efficiently execute a larger volume of an order. Therefore, the Exchange argues that its proposal provides preferential allocation to Market Makers who are fostering price discovery and transparency by ''taking the commensurate risk of quoting at the NBBO at the time of execution of the Directed Order.'' Do commenters have any views regarding the Exchange's arguments? If so, please explain.

3. NYSE argues that, because of the lack of an NBBO quoting requirement, ''BX Market Makers will be able to lay in wait outside the NBBO, allowing other participants to participate in the order at less attractive prices and then receiving a 40% guarantee for that portion of the Directed Order that trades at more attractive prices (from the Market Maker's standpoint) beyond the

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78f(b)(8).

[36] 15 U.S.C. 78f(b)(5).

[37] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

initial NBBO,'' and this will destroy incentives for Market Makers to quote aggressively at the NBBO. However, the Exchange argues that Market Makers will continue to have the incentive to quote aggressively to maximize their participation and that quoting outside of the NBBO contributes to the market by providing depth and the ability to execute more of an order, especially where the NBBO size is small. Do commenters have any views regarding the NYSE's or the Exchange's arguments? If so, please explain.

4. Under the proposed rule, a Directed Market Maker to whom an order is directed in an option subject to price/time priority would receive a 40% allocation ahead of orders of other market participants, including customer orders that had time priority over the Directed Market Maker's quotation. What are commenters' views on this aspect of the proposal? Does this aspect of the proposed rule change impact the protection of investors? If so, how? If not, why not? Does this aspect of the proposed rule change have any impact on the options markets as a whole? If so, please explain.

5. NYSE notes that, under the Exchange's proposal, a Directed Market Maker that arrives after a Public Customer who has aggressively improved the NBBO would receive a Directed Allocation of an order that the earlier-arriving Public Customer could potentially have completely filled. NYSE argues that this provision would reduce the incentives of public customers to improve the NBBO, resulting in fewer displayed public customer orders and fewer public customers willing to improve the NBBO. Do commenters have any views regarding the NYSE's arguments? If so, please explain.

6. Under the proposed rule change, a Directed Order would remain as such as long as it exists on the Exchange and the Directed Market Maker would be eligible for a Directed Allocation at all price levels at which the Directed Market Maker has a quote or order. Do commenters have any views on whether this aspect of the proposed rule change would have an impact on quote competition on the Exchange? Is so, how so? If not, why not?

7. Unlike the Directed Order rules of other options exchanges that subject Directed Market Makers to heightened quoting obligations prior to receiving Directed Orders, the Exchange's proposed rules would only subject a Directed Market Maker to heightened quoting obligations after receipt of the first Directed Order in a given month. Do commenters have any views on whether this provision would balance the benefits of receiving enhanced allocations with heightened quoting obligations, consistent with the Exchange Act? Is so, please explain.

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 No. SR–BX–2013–016 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 No. SR–BX–2013–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BX. 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 No. SR–BX–2013–016, and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13630 Filed 6–7–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69696; File No. SR–NYSEMKT–2013–46]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1000—Equities To Revise the Manner by Which the Exchange Will Phase Out the Functionality Associated With Liquidity Replenishment Points in Connection With the Implementation of the Limit Up-Limit Down Plan

June 4, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 31, 2013 NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1000—Equities to revise the manner by which the Exchange will phase out the functionality associated with liquidity replenishment points (''LRPs'') in connection with the implementation of the Limit Up-Limit Down Plan (the ''Plan''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[38] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 2, 2013, the Exchange filed to amend Rule 1000—Equities to provide that it would phase out the functionality associated with LRPs to coincide with the implementation of the Plan by specifying that, beginning on April 8, 2013, LRPs will no longer be in effect for Tier 1 NMS Stocks, and beginning on the earlier of August 1, 2013 or such date as Phase II of the Plan is implemented, LRPs will no longer be in effect for all NMS stocks.[4] The operative date of the LRP Filing was April 8, 2013.

The Exchange noted in the LRP Filing that it would phase out the LRP functionality for securities as they are covered by the Plan in coordination with the Plan's Phase I and Phase II implementation timelines and that LRPs would remain in place for any securities not covered by the Plan. Because Phase I of the Plan is in effect only from 9:45 a.m. to 3:30 p.m. Eastern, under the current rule, between 9:30 and 9:45 a.m. Eastern and 3:30 and 4:00 p.m. Eastern, Tier 1 NMS Stocks are neither covered by the Plan nor have available LRP functionality.

The Exchange therefore proposes to amend Rule 1000—Equities to specify that LRPs will no longer be in effect for Tier 1 NMS Stocks from the time the first Price Band under the Plan is published for a Tier 1 NMS Stock until 3:30 p.m. Eastern (or 30 minutes before the close on any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m. Eastern). As proposed, LRPs would be available for Tier 1 NMS Stocks from opening until such time the Exchange receives a Price Band under the Plan for such stock, at which point LRP functionality would end. The Exchange would re-engage LRP functionality for such Tier 1 NMS Stocks at 3:30 p.m. Eastern, or, 30 minutes before the close on any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m. Eastern.[5]

The Exchange further proposes to amend how it would phase out LRP functionality in connection with Phase II of the Plan. Rule 1000—Equities currently provides that LRPs will be discontinued for all NMS Stocks on the earlier of August 1, 2013 or such date as Phase II of the Limit Up-Limit Down Plan is implemented. Because the implementation of Phase II is currently scheduled to begin on August 5, 2013, and will be a roll-out implementation that will take several weeks, the Exchange believes that the ''earlier of'' language would require the Exchange to disable all LRP functionality on August 1, 2013, regardless of whether an NMS Stock is subject to Phase II of the Plan.

Because the intent of the LRP Filing was to ensure that stocks not covered by the Plan would have LRP functionality, the Exchange proposes to amend Rule 1000—Equities to provide that LRPs will be discontinued in their entirety on such date as Phase II of the Plan is implemented for an NMS Stock. As amended, LRP functionality would remain available for an NMS Stock (either full day or only for the post-open/pre-close periods for Tier 1 NMS Stocks) until such time it is covered by Phase II of the Plan, regardless of when Phase II is implemented for such NMS Stock.

Because of the technology changes associated with this rule proposal, the Exchange will implement this proposed change over a short roll-out period and will announce by Trader Update when the LRP functionality will be available for specific Tier 1 NMS Stocks.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by ensuring that an NMS Stock will be covered either by LRP functionality or the Plan during the duration of Phase I of the Plan and implementation of Phase II of the Plan, and therefore an NMS Stock listed on the Exchange will be protected from significant price dislocation at all times.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition because the proposed rule change would reinstate LRPs only during such period when an NMS Stock is not covered by the Plan, and therefore is consistent with Exchange operations prior to implementation of Phase I of the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon

[4] *See* Securities Exchange Act Release No. 69294 (April 4, 2013), 78 FR 21441 (April 10, 2013) (SR–NYSEMKT–2013–33) (''LRP Filing'').

[5] The Exchange is scheduled to close at 1:00 p.m. Eastern on July 3, 2013.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

filing. The Exchange stated that it anticipates that the technology changes associated with this rule proposal would be available on or about June 6, 2013 and the Exchange anticipates that it would be able to complete the technology roll out before June 21, 2013, which is an Expiration Friday. The Exchange stated that it believes that the waiver of the operative delay is consistent with investor protection and the public interest because it will enable LRP functionality for those periods when Tier 1 and Tier 2 NMS Stocks are not covered by the Plan. Based on the Exchange's statements, the Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby grants the Exchange's request and waives the 30-day operative delay.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEMKT–2013–46 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–NYSEMKT–2013–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2013–46 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13657 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69692; File No. SR–NYSEMKT–2013–45]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending Its Program That Allows Transactions To Take Place at a Price That Is Below $1 Per Option Contract Until January 5, 2014

June 4, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 24, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its program that allows transactions to take place at a price that is below $1 per option contract until January 5, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Pilot Program[4] under Rule 968NY to allow accommodation transactions (''Cabinet Trades'') to take place at a price that is below $1 per option contract to January 5, 2014. The Exchange proposes to extend the program for 7 months.

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 968NY Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 968NY currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 63475 (December 8, 2010), 75 FR 77932 (December 14, 2010)(SR–NYSE Amex–2010–114).

Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange has temporarily amended the procedures through May 31, 2013 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. These lower priced transactions are permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in option classes participating in the Penny Pilot Program.[5] The Exchange believes that allowing a price of at least $0 but less than $1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $1 cabinet price (e.g., the series might be quoted no bid).

As with other accommodation liquidations under Rule 968NY, transactions that occur for less than $1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 968NY the transactions will be exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 955NY Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is to extend an established pilot program for 7 months and continue to facilitate ATP Holders ability to close positions in worthless or not actively traded series.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the operative delay so that the pilot program can continue without interruption. The Commission notes that the proposed rule change does not present any new, unique or substantive issues, but rather is merely extending an existing pilot program and that waiver of the 30-day operative delay will prevent confusion about whether the pilot program continues to be available. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative effective June 1, 2013.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[5] Currently the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2013–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–45. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–45 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13653 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69686; File No. SR–MIAX–2013–24]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 605 Regarding Orders in a Market Maker's Appointed Classes

June 3, 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 22, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 605 to delete the provision that includes executions resulting from orders in a Market Maker's appointed classes as part of the limitation on executions in a Market Maker's non-appointed classes.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate an unnecessary provision in Rule 605 that places a limitation on orders that can be submitted by a Market Maker in its appointed classes. Rule 605 governs the submission of orders by Market Makers; differentiating between orders submitted in classes to which the Market Maker is appointed and orders submitted in classes to which the Market Maker is not appointed. Paragraph (a) governs option classes to which the Market Maker is appointed and limits the types of orders that can be submitted by a Market Maker in its appointed classes. Paragraph (b) governs option classes other than those to which the Market Maker was appointed. Market Makers can submit all types of orders in non-appointed classes, but subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed classes. Specifically, subparagraph (b)(2) limits a Registered Market Maker's total number of contracts executed in non-appointed option classes to 25% of the Registered Market Maker's total number of contracts executed in its appointed option classes and subparagraph (b)(3) limits a Lead Market Maker's total number of contracts executed in non-appointed option classes to 10% of the Lead Market Maker's total number of contracts executed in its appointed option classes. The Exchange places further limitations in subparagraphs (b)(2) and (b)(3) by including in the 25% limitation for Registered Market Makers and in the 10% limitation for Lead Market Makers, contracts resulting from the execution of *orders in appointed* classes.

Traditionally, the purpose of limiting the number of contracts executed in non-appointed classes to a small percentage of contracts executed in appointed classes was to encourage Market Makers to provide liquidity in their appointed classes. Such a limitation was important at ''floor-based'' exchanges, since market makers were limited in the number of classes in which they could physically make markets and it was in the floor-based

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

exchange's interest that market makers focus their market making abilities on their appointed classes. Although, limitations on trading in non-appointed classes is less important on a fully electronic exchange, since electronic quoting and trading systems allow market makers to make markets and provide liquidity in many more option classes than on a floor-based exchange, MIAX still believes focusing its Registered Market Makers and its Lead Market Makers on trading in their appointed classes is important for providing the greatest amount of liquidity in those classes and intends to keep that part of the limitation intact.

The second provision in subparagraphs (b)(2) and (b)(3) includes contracts resulting from the execution of *orders in appointed* classes as part of the 25% limitation for Registered Market Makers and the 10% limitation for Lead Market Makers. By including orders in appointed classes, MIAX sought to encourage the use of quotes by Market Makers in their appointed classes by limiting the use of orders in their appointed classes.

The Exchange is now proposing to eliminate the provisions in subparagraphs (b)(2) and (b)(3) of Rule 605 that includes contracts resulting from the execution of orders in appointed classes in the 25% limitation for Registered Market Makers and in the 10% limitation for Lead Market Makers. The Exchange believes that the elimination of these provisions is appropriate since they are unnecessary given the restrictions on the use of orders in appointed classes set forth elsewhere in Rule 605. Specifically, Rule 605(a) limits the types of orders a Market Maker can enter in an appointed class; and Rule 605(c) accords a lower priority to executions resulting from Market Maker orders (*i.e.,* allocated with all other Professional Interest [3]) than to executions resulting from Market Maker priority quotes, which have precedence over other Professional Interest. These provisions provide a significant incentive for Market Makers to use quotes rather than orders in their appointed classes, which renders the further limitation on Market Maker orders in subparagraphs (b)(2) and (b)(3) unnecessary. In addition, a Market Maker's affirmative obligations to continuously quote in appointed classes for a significant part of the trading day as set forth in Rule 604 provides an additional incentive for Market Makers to use quotes and provides the Exchange with means for enforcing use of quotes by Market Makers in their appointed classes.

It should be noted that while some of the other options exchanges place limitations on market maker trading in non-appointed classes,[4] none of those exchanges include orders in appointed classes in those limitations. The Exchange does not believe the proposed rule change will adversely impact the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes that eliminating an unnecessary obligation on Market Makers, one that is not in place at other options exchanges, may increase the level of market making activity across all of a Market Makers appointed and non-appointed classes.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on Market Makers. The Exchange still imposes many obligations on all Market Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. While executions resulting from orders in appointed classes will no longer be used to calculate a Registered Market Maker's or a Lead Market Maker's percentage of contracts executed in non-appointed classes; MIAX still has in place rules that limit the use of orders in appointed classes and rules that both encourage and require the use of quotes by Market Makers. Accordingly, the proposal supports the quality of MIAX's markets by helping to ensure that Market Makers will continue to be obligated to and have incentives to use quotes rather than orders in their appointed classes. The benefit provided to the Market Maker from the proposed elimination of orders in appointed classes from the calculation of a Market Maker's trading activity in non-appointed classes is offset by the continued limitations on the use of orders and the affirmative obligations of Market Makers to provide continuous quotes. Ultimately, the benefit the proposed rule change confers upon Market Makers is offset by the continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

In addition, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on Market Makers. The Exchange believes the proposal removes a Market Maker limitation that is unnecessary, as evidenced by the fact that it does not exist on other competitive markets.

Finally, in determining to revise requirements for its Market Makers, MIAX is mindful of the balance between the obligations and the benefits bestowed on its Market Makers. The proposal will change obligations currently in place for Market Makers; however, the Exchange does not believe that these changes reduce the overall obligations applicable to Market Makers. In this respect, the Exchange notes that its Market Makers are subject to many limitations and obligations, such as the types of orders that can be submitted in appointed classes, the fact that executions resulting from orders in appointed classes confer a lower level of priority on Market Makers, and the Market Maker's affirmative obligations to continuously quote in appointed classes for a significant part of the trading day provides an additional incentive for Market Makers to use quotes and provides the Exchange with means for enforcing use of quotes by Market Makers in their appointed classes.

[3] Exchange Rule 100 defines ''Professional Interest'' as (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker.

[4] CBOE Rule 8.7, Interpretations and Policies .03 provides that 75% of a market maker's total contract volume must be in classes to which the market maker is appointed, thus, only 25% of a market maker's contract volume can be in non-appointed classes. ISE Rule 805(b)(2) provides the total number of contracts executed during a quarter by a Competitive Market Maker (''CMM'') in classes to which he is not appointed may not exceed 25% of the total number of contracts traded by such CMM in its appointed classes, and ISE Rule 805(b)(3) provides the total number of contracts executed during a quarter by a Primary Market Maker (''PMM'') in classes to which he is not appointed may not exceed 10% of the total number of contracts traded by such PMM in its appointed classes. PHLX Rule 1014, Commentary .03 provides that 50% of Registered Options Trader's trading activity in any quarter (measured in terms of contract volume) shall ordinarily be in assigned classes. None of these exchanges includes executions resulting from orders in appointed classes when calculating the contract volume resulting from executions in non-appointed classes.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposed rule change allows the Exchange to eliminate a limitation on the use of orders in appointed classes that is not in place at other option exchanges, thus allowing MIAX to attract more Market Makers to its developing options marketplace. By providing Market Maker limitations and obligations that are more consistent with market maker limitations and obligations in place at other option exchanges, competition for the liquidity providing services of market makers is enhanced. MIAX is better able to compete for the services of market makers when its requirements for market makers are consistent with the other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [9] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2013–24 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–MIAX–2013–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–MIAX–2013–24 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13607 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69695; File No. SR–NYSE–2013–36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1000 To Revise the Manner by Which the Exchange Will Phase Out the Functionality Associated With Liquidity Replenishment Points in Connection With the Implementation of the Limit Up—Limit Down Plan

June 4, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that May 31, 2013 New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1000 to revise the manner by which the Exchange will phase out the functionality associated with liquidity

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

replenishment points (''LRPs'') in connection with the implementation of the Limit Up—Limit Down Plan (the ''Plan''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 2, 2013, the Exchange filed to amend Rule 1000 to provide that it would phase out the functionality associated with LRPs to coincide with the implementation of the Plan by specifying that, beginning on April 8, 2013, LRPs will no longer be in effect for Tier 1 NMS Stocks, and beginning on the earlier of August 1, 2013 or such date as Phase II of the Plan is implemented, LRPs will no longer be in effect for all NMS stocks.[4] The operative date of the LRP Filing was April 8, 2013. The Exchange noted in the LRP Filing that it would phase out the LRP functionality for securities as they are covered by the Plan in coordination with the Plan's Phase I and Phase II implementation timelines and that LRPs would remain in place for any securities not covered by the Plan. Because Phase I of the Plan is in effect only from 9:45 a.m. to 3:30 p.m. Eastern, under the current rule, between 9:30 and 9:45 a.m. Eastern and 3:30 and 4:00 p.m. Eastern, Tier 1 NMS Stocks are neither covered by the Plan nor have available LRP functionality.

The Exchange therefore proposes to amend Rule 1000 to specify that LRPs will no longer be in effect for Tier 1 NMS Stocks from the time the first Price Band under the Plan is published for a Tier 1 NMS Stock until 3:30 p.m. Eastern (or 30 minutes before the close on any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m. Eastern). As proposed, LRPs would be available for Tier 1 NMS Stocks from opening until such time the Exchange receives a Price Band under the Plan for such stock, at which point LRP functionality would end. The Exchange would re-engage LRP functionality for such Tier 1 NMS Stocks at 3:30 p.m. Eastern, or, 30 minutes before the close on any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m. Eastern.[5]

The Exchange further proposes to amend how it would phase out LRP functionality in connection with Phase II of the Plan. Rule 1000 currently provides that LRPs will be discontinued for all NMS Stocks on the earlier of August 1, 2013 or such date as Phase II of the Limit Up-Limit Down Plan is implemented. Because the implementation of Phase II is currently scheduled to begin on August 5, 2013, and will be a roll-out implementation that will take several weeks, the Exchange believes that the ''earlier of'' language would require the Exchange to disable all LRP functionality on August 1, 2013, regardless of whether an NMS Stock is subject to Phase II of the Plan.

Because the intent of the LRP Filing was to ensure that stocks not covered by the Plan would have LRP functionality, the Exchange proposes to amend Rule 1000 to provide that LRPs will be discontinued in their entirety on such date as Phase II of the Plan is implemented for an NMS Stock. As amended, LRP functionality would remain available for an NMS Stock (either full day or only for the post-open/pre-close periods for Tier 1 NMS Stocks) until such time it is covered by Phase II of the Plan, regardless of when Phase II is implemented for such NMS Stock.

Because of the technology changes associated with this rule proposal, the Exchange will implement this proposed change over a short roll-out period and will announce by Trader Update when the LRP functionality will be available for specific Tier 1 NMS Stocks.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by ensuring that an NMS Stock will be covered either by LRP functionality or the Plan during the duration of Phase I of the Plan and implementation of Phase II of the Plan, and therefore an NMS Stock listed on the Exchange will be protected from significant price dislocation at all times.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by ensuring that an NMS Stock will be covered either by LRP functionality or the Plan during the duration of Phase I of the Plan and implementation of Phase II of the Plan, and therefore an NMS Stock listed on the Exchange will be protected from significant price dislocation at all times.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the

[4] *See* Securities Exchange Act Release No. 69295 (April 4, 2013), 78 FR 21457 (April 10, 2013) (SR–NYSE–2013–27) (''LRP Filing'').

[5] The Exchange is scheduled to close at 1:00 p.m. Eastern on July 3, 2013.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief

proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it anticipates that the technology changes associated with this rule proposal would be available on or about June 6, 2013 and the Exchange anticipates that it would be able to complete the technology roll out before June 21, 2013, which is an Expiration Friday. The Exchange stated that it believes that the waiver of the operative delay is consistent with investor protection and the public interest because it will enable LRP functionality for those periods when Tier 1 and Tier 2 NMS Stocks are not covered by the Plan. Based on the Exchange's statements, the Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby grants the Exchange's request and waives the 30-day operative delay.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2013–36 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–NYSE–2013–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2013–36 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13656 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69694; File No. SR–NSCC–2013–07]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change That Consists of Technical Corrections To Reflect the Availability of Certain Functionality in the Obligation Warehouse Service

June 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 22, 2013, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(i) [2] of the Act and Rule 19b–4(f)(4)(i) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of technical corrections to reflect the availability of certain functionality in the Obligation Warehouse (''OW'') service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(4)(i).

summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Proposal Overview

The purpose of this filing is to make technical corrections to Procedure IIA (Obligation Warehouse) to reflect that certain functionalities that are described in that procedure have become available through the OW service. On December 29, 2010, the Commission approved proposed rule change filing SR–NSCC–2010–11,[5] which modified NSCC's Reconfirmation and Pricing Service (''RECAPS'') through the creation of the OW service.

Since implementation of the OW, NSCC has continued to enhance the service through the addition of new functionalities. For example, all transactions in OW (or ''OW Obligations'') that are also eligible for NSCC's Continuous Net Settlement (''CNS'') system and that have reached the status of settlement date minus one (''SD–1'') or that have reached or passed their scheduled settlement date are now entered into the CNS Accounting Operation on a regular basis, unless otherwise excluded from CNS by an NSCC member (''Member'') that is party to that transaction. Additionally, NSCC now may automatically adjust any OW Obligations for certain mandatory reorganization events, including adjustments for forward splits, name changes, mergers (both cash and stock), and full calls with respect to bonds. However, following the implementation of the OW, it was determined that OW Obligations would not be automatically adjusted for redemptions.

Further, information regarding the settlement of transactions that settle through NSCC's Envelope Settlement Service and that include an OW Control Number on the input screens and envelope credit slip of that service will automatically be forwarded to the OW upon completion of the delivery. If verified, that OW Obligation will be systemically closed in the OW. Finally, the indicators that allow Members to exclude OW Obligations from CNS and RECAPS have been de-coupled and now will work independently from one another. Procedure IIA will also be updated to make clear that certain securities, in addition to the securities currently listed in Procedure IIA, may not be netted and allotted in RECAPS processing.

More information regarding each of these enhancements has been provided to Members through Important Notices, which are made available on NSCC's Web site at *www.dtcc.com.*

Proposed Rule Changes

In order to make clear in NSCC's Rules that these enhancements have now been implemented into production, NSCC proposes to amend Procedure IIA by removing certain footnotes that state these functionalities will be available at a later date, as announced by Important Notice, and to remove a sentence from Section D.2.(a) to make clear that the CNS and RECAPS indicators operate independently of each other. Section D.2.(b) will also be updated to clarify that certain securities, in addition to the securities mentioned in the current Procedure IIA, may not be netted and allotted in the RECAPS processing. The proposed rule changes will also remove reference to redemptions from Section C.2 of Procedure IIA. Finally the proposed rule changes will correct typographical errors in Procedure IIA. These proposed rule changes are marked on Exhibit 5 to this proposed rule change.

(b) Statutory Basis

NSCC believes the proposed rule changes are consistent with the requirements of Section 17A(b)(3)(vi) of the Act, and the rules and regulations thereunder, because they facilitate the prompt and accurate clearance and settlement of securities transactions by providing for greater efficiency and transparency with respect to obligations processed through the OW.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i)[6] of the Act and Rule 19b–4(f)(4)(i).[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2013–07 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–NSCC–2013–07. 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

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] Securities Exchange Act Release No. 34–63588 (December 21, 2010), 75 FR 82112 (December 29, 2010).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(4)(i).

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://www.dtcc.com/downloads/legal/rule_filings/2013/nscc/SR-NSCC-2013-07.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–NSCC–2013–07 and should be submitted on or before July 1, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13665 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69693; File No. SR–CBOE–2013–053]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update a Reference in Rule 8.51

June 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update a reference in Rule 8.51. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As of August 29, 2005, the Securities and Exchange Commission (the ''Commission'') adopted new rules under Regulation National Market System (''Regulation NMS''), which redesignated the national market system rules that previously existed under Rule 11Ac1–1. In SR–CBOE–2012–072, the Exchange amended its rules to update references to Rule 11Ac1–1 in the CBOE Rules.[3] However, the Exchange missed one such reference in that rule change. As such, the Exchange hereby proposes to amend two references in Interpretation and Policy .01 to Rule 8.51 that refer to Securities Exchange Act Rule 11Ac1–1(a)(21) to accurately refer to Rule 600(b)(65) of Regulation NMS under the Exchange Act.

2. *Statutory Basis*

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Updating Exchange rules to include accurate references provides clarity to the Exchange's rules. The proposed rule update eliminates confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is technical and does not have an effect on trading, and will eliminate any confusion for all market participants who operate under Exchange rules. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is technical in nature and does not affect trading on the Exchange. Further, the proposed change only affects the CBOE Rules. To the extent that the Exchange rules with more accurate references may make the Exchange a more attractive venue for market participants on other exchanges, such market participants may elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67560 (August 1, 2012), 77 FR 47147 (August 7, 2012) (SR–CBOE–2012–072).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)[7] thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the operative delay so that the proposed rule change may take effect immediately, thereby immediately preventing any confusion that could arise from the current references. The Commission notes that the proposed rule change does not present any new, unique or substantive issues, but rather is merely updating an out of date rule reference in one CBOE rule. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–CBOE–2013–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–053 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M O'Neill,

Deputy Secretary.

[FR Doc. 2013–13655 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69685; File No. SR–MIAX–2013–25]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 520 To Clarify the Description of the Operation of the Exchange's Route Timer

June 3, 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 22, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 529(b)(2)(iii) to clarify the description of the operation of the Exchange's route timer set forth in the rule text.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 529(b)(2)(iii) to clarify the description of the operation of the Exchange's route timer set forth in the rule text. Specifically, the Exchange proposes to amend the language in Rule 529(b)(2)(iii) to more clearly specify that (i) at any point during the route timer the initiating order and all joining interest on the same side of the market is either traded in full or cancelled in full, the route timer will be terminated and normal trading will resume, and (ii) if at any point during the route timer a change in the ABBO would allow all or part of the initiating order and any joining interest on the same side of the market to trade on the Exchange at the revised NBBO, the route timer will be terminated and normal trading will resume.

In accordance with the Options Order Protection and Locked/Crossed Market Plan (the ''Plan''), the Exchange provides price protection in options by routing intermarket sweep orders to other options exchanges. Intermarket sweep orders may be routed to another options exchange when trading interest is not available on MIAX, is of insufficient size, or when MIAX is not at the National Best Bid or Offer (''NBBO'') consistent with the Plan. Orders that are routable may either be eligible for immediate routing, provided the criteria for immediate routing are met, or may be subject to a route timer.

Public Customer orders not eligible for immediate routing are be subject to a route timer. The route timer allows Market Makers and other market participants an opportunity to interact with an order before it is routed to another options exchange. At the start of the route timer, the Exchange's trading system broadcasts a Route Notification message to subscribers of its market data feeds providing details about the order to be routed. During the timer, which does not exceed one second, Market Makers and other market participants may submit certain order and quote types at any price level. If during the route timer the Exchange receives a new order or quote on the opposite side of the market from the initiating order that can be executed, the System will immediately execute the remaining contracts. Conversely, if during the route timer the Exchange receives orders or quotes on the same side of the market as the initiating order, such new orders or quotes will join the initiating order in the route timer. The Exchange's trading system will disseminate an updated MIAX Best Bid or Offer (''MBBO'') that includes the new order or quote size.

If at any point during the route timer the initiating order and all joining interest on the same side of the market is either traded in full or cancelled in full, the route timer will be terminated and normal trading will resume. In addition, if at any point during the route timer a change in the Away Best Bid or Offer (''ABBO'') would allow the initiating order and any joining interest on the same side of the market to trade on the Exchange at the revised NBBO, the route timer will be terminated and normal trading will resume.

At the end of the route timer any contracts that could not be executed and are marketable at the original NBBO on another exchange are marked as an intermarket sweep order and routed to the appropriate away market.

The Exchange proposes to amend the description set forth in Rule 529(b)(2)(iii) to more clearly reflect the above description of the trading system functionality with respect to a change in the ABBO that would allow all or part of the initiating order and any same side interest to trade on the Exchange at the revised NBBO. The Exchange is now proposing to revise the last sentence in Rule 529(b)(2)(iii) by splitting the sentence into two sentences. The Exchange believes that this less complicated sentence structure clarifies that if there is a change in the ABBO at any point during the route timer that would allow all or part of [3] the initiating order and any joining interest on the same side of the market to trade on the Exchange at the revised NBBO, the route timer will be terminated and normal trading will resume. The Exchange believes the revised language will help eliminate potential confusion regarding the operation of the route timer.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The proposed clarification will protect investors and the public interest by eliminating potential confusion that could be caused by the existing language used to describe trading system functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed rule change will not impose any burden because the Exchange is merely amending its Rules so that they clearly reflect the system functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

[3] The Exchange amended its filing to add the term ''all or part of'' to this sentence; the term had been inadvertently omitted from the original filing. *See* email from Claire McGrath, Legal Consultant, MIAX, to Sara Gillis Hawkins, Special Counsel, Commission, dated May 28, 2013.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–MIAX–2013–25 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–MIAX–2013–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–MIAX–2013–25 and should be submitted on or before July 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13606 Filed 6–7–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(2)(B).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of 30 day Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 10, 2013. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: Federal Agency Comment Form.

Frequency: On Occasion.

SBA Form Number: 1993.

Description of Respondents: Small Businesses and other Small Entities.

Responses: 350.

Annual Burden: 263.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–13616 Filed 6–7–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 9, 2013

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sheila Casey, Lead HR Specialist, Denver Finance Center, Small Business Administration, 721 19th Street, 3rd Floor, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Sheila Casey, Lead HR Specialist, 303–844–7792 *sheila.casey@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

Title: ''Alternative Creditworthiness Assessment.''

Abstract: Government wide requirements in the annual appropriations act, as well as OMB Circular A 123 Appendix B require agencies to conduct an alternative credit worthiness assessment when the credit score inquiry results in no score. This information of collection will be used as a means of making that alternative.

Description of Respondents: Personnel that assist in the process of loan applications.

Form Number: 2294.

Annual Responses: 10.

Annual Burden: 2 hrs.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–13615 Filed 6–7–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13592 and #13593]

Maine Disaster #ME–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Maine dated 05/30/2013.

Incident: Apartment Complex Fire.

Incident Period: 04/29/2013.

Effective Date: 05/30/2013.

Physical Loan Application Deadline Date: 07/29/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Androscoggin.

Contiguous Counties: Maine:

Cumberland, Franklin, Kennebec, Oxford, Sagadahoc.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 13592 5 and for economic injury is 13593 0.

The State which received an EIDL Declaration # is Maine.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 30, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–13626 Filed 6–7–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13594 and #13595]

Maine Disaster #ME–00037

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Maine dated 05/30/2013.

Incident: Commercial and Residential Building Complex Fire.

Incident Period: 05/03/2013.

Effective Date: 05/30/2013.

Physical Loan Application Deadline Date: 07/29/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Androscoggin.

Contiguous Counties: Maine:

Cumberland, Franklin, Kennebec, Oxford, Sagadahoc.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.750
Homeowners Without Credit Available Elsewhere	1.875
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.875
The number assigned to this disaster for physical damage is 13594 5 and for economic injury is 13595 0.	

The State which received an EIDL Declaration # is Maine.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 30, 2013.

Karen G. Mills,

Administrator

[FR Doc. 2013–13632 Filed 6–7–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13579 and #13580]

Illinois Disaster Number IL–00041

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4116–DR), dated 05/10/2013.

Incident: Severe Storms, Straight-line Winds and Flooding.

Incident Period: 04/16/2013 through 05/05/2013.

Effective Date: 05/31/2013.

Physical Loan Application Deadline Date: 07/09/2013.

EIDL Loan Application Deadline Date: 02/10/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of ILLINOIS, dated 05/10/2013 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Brown, Calhoun, Clark, Douglas, Henry, Pike, Whiteside, Winnebago.

Contiguous Counties: (Economic Injury Loans Only):

Illinois: Carroll, Champaign, Coles, Cumberland, Edgar, Greene, Jersey, Morgan, Moultrie, Piatt, Scott, Stephenson, Vermilion.

Indiana: Vigo.

Missouri: Lincoln, Marion, Pike, Ralls, Saint Charles.

Wisconsin: Green, Rock.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–13633 Filed 6–7–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13596 and #13597]

North Dakota Disaster #ND–00037

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–4118–DR), dated 05/29/2013.

Incident: Flooding.

Incident Period: 04/22/2013 through 05/16/2013.

Effective Date: 05/29/2013.

Physical Loan Application Deadline Date: 07/29/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/29/2013, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Benson, Bottineau, Cass, Cavalier, Eddy, Foster, McHenry, Pembina, Ramsey, Renville, Richland, Rolette, Towner, Traill, Walsh, Wells, and the Spirit Lake Reservation.

The Interest Rates are:

	Percent
For Physical Damage:.	
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 135966 and for economic injury is 135976.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2013–13631 Filed 6–7–13; 8:45 am]

BILLING CODE 8025–01–P

STATE DEPARTMENT

[Public Notice 8350]

Foreign Affairs Policy Board Meeting Notice

Closed Meeting

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on July 15, 2013, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) tools and capacities of the civilian foreign affairs agencies; and (4) priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Samantha Raddatz at (202)–647–2972.

Dated: May 23, 2013.

Andrew McCracken,

Designated Federal Officer.

[FR Doc. 2013–13715 Filed 6–7–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8351]

Notice of Meeting of Advisory Committee on International Law

A meeting of the Department of State's Advisory Committee on International Law will take place on Monday, June 24, 2013, from 9:30 a.m. to approximately 5:30 p.m., at the George Washington University Law School (Frederick Lawrence Student Conference Center), 2000 H Street NW., Washington, DC.

Acting Legal Adviser Mary McLeod will chair the meeting, which will be open to the public up to the capacity of the meeting room. The agenda covers a range of current international legal topics, including the Supreme Court's recent decision in *Kiobel* v. *Royal Dutch Petroleum,* Internet governance and international law, corporate social responsibility, compliance mechanisms for international humanitarian law, and the American Law Institute's new Restatement of the Foreign Relations Law of the United States.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in this case. This advisory committee meeting must be held on June 24 because of the travel schedules of the Acting Legal Adviser and committee members.

Members of the public who wish to attend the meeting should, by Wednesday, June 19, 2013, notify the Office of the Legal Adviser (202–776–8442 or *lermanjb@state.govmailto: KillTP@state.gov*) of their name, professional affiliation, address, and phone number. A valid photo ID is required for admission to the meeting. Members of the public who require reasonable accommodations should make their requests by June 17, 2013. Requests received after that time will be considered but might not be possible to accommodate.

Dated: June 4, 2013.

Jonas Lerman,

Attorney-Adviser, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, United States Department of State.

[FR Doc. 2013–13719 Filed 6–7–13; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0004]

Pipeline Safety: Information Collection Activities, Revision to Gas Distribution Annual Report

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: On February 13, 2013, in accordance with the Paperwork Reduction Act of 1995, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice in the **Federal Register** of its intent to revise the gas distribution annual report (PHMSA F7100.1–1) to improve the granularity of the data collected. In addition to making several minor changes to the report, PHMSA will also request a new OMB Control number for this information collection.

PHMSA received two comments in response to that notice. PHMSA is publishing this notice to respond to the comments, provide the public with an additional 30 days to comment on the proposed revisions to the forms and the instructions, and announce that the revised Information Collections will be submitted to the Office of Management and Budget (OMB) for approval.

DATES: Comments on this notice must be received by July 10, 2013 to be assured of consideration.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2013–0004 by any of the following methods:

- *Fax:* 1–202–395–5806.
- *Mail:* Office of Information and Regulatory Affairs (OIRA), Records Management Center, Room 10102 NEOB, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer for the U.S. Department of Transportation\PHMSA.
- *Email:* Office of Information and Regulatory Affairs, OMB, at the following email address: *OIRA_Submission@omb.eop.gov.*

Requests for a copy of the Information Collection should be directed to Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, by email at *Angela.Dow1@dot.gov,* or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE., PHP–30, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Blaine Keener by telephone at 202–366–0970, by fax at 202–366–4566, by email at *blaine.keener@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a revised information collection request that PHMSA will submit to OMB for approval. The information collection is titled: ''Annual Report for Gas Distribution Pipeline Operators.''

Summary of Topic Comments/ Responses

During the two month response period, PHMSA received two comments from the following stakeholders:

- American Gas Association (AGA)—*Trade Association.*
- American Public Gas Association (APGA)—*Trade Association.*

This 30-day notice responds to the comments, which may be found at *http://www.regulations.gov,* at docket number PHMSA–2013–0004. The docket also contains the form and instructions as amended in response to the comments. In general, the comments made by AGA and APGA were similar in content and summarized below.

1. PHMSA proposed to add Part A, section 6 and require operators to enter information on the ''Type of Operator'' based on the structure of the reporting company. PHMSA proposed to allow these types of operators—Municipal, Privately Owned, and other (e.g., cooperatives, public utility districts). AGA and APGA had similar comments proposing that options for the operator type be consistent with those on Energy Information Agency Form EIA–176.

Response: PHMSA believes that the request for consistency is appropriate, and has revised Part A, section 7 to incorporate the following operator types: Investor-owned, municipally-owned, privately-owned, cooperative, and other.

2. PHMSA proposed to add a material type in Part B, sections 1, 2, and 3 and require operators to report data about cast iron pipes that have been reconditioned. PHMSA used the term ''reconditioned cast iron'' in Part B1 and ''rehabilitated cast iron'' in Part B2 and B3. AGA and APGA had similar comments proposing that the term ''reconditioned cast iron'' be used consistently in all three sections since that term is defined in the instructions.

Response: PHMSA concurs with the comments, and has revised the form so the term ''reconditioned cast iron'' is used consistently in the form and instructions.

3. Part C requires operators to identify the cause of leaks and hazardous leaks eliminated or repaired during the calendar year. PHMSA proposed to revise the ''Cause of Leak'' categories in Part C to align the leak causes in the gas distribution annual report with the incident causes from the gas distribution incident reporting form (PHMSA F 7100.1, Incident Report—Gas Distribution System). AGA and APGA had similar comments proposing that PHMSA adopt more substantive changes to the leak cause definitions to improve clarity and make the definitions more consistent with how incident cause is reported on the gas distribution incident reporting form.

Response: PHMSA concurs with the comments, and has expanded the instructions defining leak causes to be consistent with the gas distribution incident reporting form.

4. Part D requires operators to provide information on ''Excavation Damage,'' and PHMSA proposed to add new data collection in ''Excavation Damage'' to include the four causes from Part I of the ''Damage Information Reporting Tool (DIRT)—Field Form.'' AGA and APGA had similar comments proposing that PHMSA clarify that it is seeking information on the ''apparent root cause'' of excavation damage and adopt more substantive changes to the instructions for Part D by incorporating the definitions developed by the Common Ground Alliance's DIRT program.

Response: PHMSA concurs with the comments and has revised the form to clarify that PHMSA is seeking information on the ''apparent root cause'' of excavation damages. We have also revised the instructions to clarify the information to be reported.

5. Part E requires operators to provide information on ''Excess Flow Valves'' (EFV) installed during the calendar year and the estimated number in the system at the end of the year. AGA and APGA had similar comments proposing that PHMSA clarify language on the form and in the instructions to reduce confusion over the data PHMSA is seeking on ''Estimated Number of EFVs in System at End of Year.''

Response: PHMSA concurs with the comments and has revised the form to define that PHMSA is seeking information on the ''Estimated Total number of EFVs in the system.'' We have also revised the instructions to clarify the data to be reported.

Proposed Information Collection Revisions and Request for Comments

The following information is provided for each revised information collection:

(1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for each information collection activity. PHMSA is only focusing on the revisions detailed in this notice and will request revisions to the following information collection activities.

Title: Gas Distribution Annual Report.

OMB Control Number: N/A.

Current Expiration Date: N/A.

Type of Request: New.

Abstract: PHMSA is looking to revise the Gas Distribution Annual Report (PHMSA F 7100.1–1) to make several minor changes related to data collection.

Affected Public: Gas distribution pipeline operators.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 1,440.

Total Annual Burden Hours: 23,040.

Frequency of Collection: Annually.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on June 4, 2013.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2013–13629 Filed 6–7–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Proposed Information Collection; Comment Request: Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Real Estate Lending and Appraisals.''

DATES: Comments must be received by August 9, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0190, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: You may request additional information of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

Title: Real Estate Lending and Appraisals (12 CFR 34, 160, 164, 190).

OMB Control No.: 1557–0190.

Type of Review: Extension, without revision, of a currently approved collection.

Description: Twelve CFR parts 34 and 160 contain a number of reporting and recordkeeping requirements. Twelve CFR part 34, subpart B (Adjustable-Rate Mortgages (ARM)), subpart E (Other Real Estate Owned (OREO)), and part 160 contain reporting requirements. Twelve CFR part 34, subpart C (Appraisal Requirements), subpart D (Real Estate Lending Standards), and parts 160 and 164 contain recordkeeping requirements. Twelve CFR 190.4(h) contains a disclosure requirement concerning Federally-related residential manufactured housing loans.

Twelve CFR part 34, subpart B, § 34.22(a) requires that for ARM loans, the loan documentation must specify an index or combination of indices to which changes in the interest rate will be linked. Sections 34.22(b) and 160.35(d)(3) provide notice procedures to be used when seeking to use an alternative index.

Twelve CFR 34.44 and 164.4 provide minimum standards for the performance of real estate appraisals, including the requirement that appraisals be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction.

Twelve CFR 34.62, 160.101, and the related appendices require each

institution to adopt and maintain written policies that establish appropriate limits and standards for extensions of credit that are secured by liens on or interests in real estate, or that are made for the purpose of financing permanent improvements to real estate. Real estate lending policies must be reviewed and approved by the institution's board of directors on at least annually.

Twelve CFR 34.84 requires that, after holding any real estate acquired for future bank expansion for one year, a national bank must state, by resolution or other official action, its plans for the use of the property and make the resolution or other action available for inspection by examiners. Sections 34.85 and 160.172 require that national banks and Federal savings associations develop a prudent real estate collateral evaluation policy to monitor the value of each parcel of OREO in a manner consistent with prudent banking practice. Section 34.86 requires that national banks notify the appropriate supervisory office at least 30 days before making advances under a development or improvement plan for OREO if the total investment in the property will exceed 10 percent of the bank's capital and surplus.

Twelve CFR 190.4(h) requires that for Federally-related residential manufactured housing loans, a creditor must provide a debtor a notice of default 30 days prior to repossession, foreclosure, or acceleration.

Affected Public: Businesses or other for-profit.

Frequency of Response: On occasion.

Burden Estimates:

Estimated Number of Respondents: 1,276 national banks and 532 Federal savings associations.

Estimated Annual Burden: 120,428 burden hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–13609 Filed 6–7–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 3 Individuals and 10 Entities Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 3 individuals and 10 entities 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.''

DATES: The designations by the Director of OFAC of the 3 individuals and 10 entities in this notice, pursuant to Executive Order 13224, are effective on May 31, 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.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On May 31, 2013 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, 3 individuals and 10 entities whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals and entities on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. MERHEJ, Rodrigue Elias (a.k.a. MERKHEZH, Rodrig); DOB 1970; alt. DOB 1969; alt. DOB 1971; POB Lebanon (individual) [SDGT] [IFSR].

2. KIM, Lidia (a.k.a. KIM, Lidia Egorovna; a.k.a. KIM, Lidiia; a.k.a. KIM, Lidiya); DOB 23 Mar 1955; citizen Kyrgyzstan; Passport 02NO133036 (Russia); alt. Passport AN1912357 (individual) [SDGT] [IFSR].

3. ARABNEJAD, Hamid; DOB 16 Apr 1961; alt. DOB 03 May 1956; nationality Iran; Passport E1929795 (Iran) expires 25 May 2010; alt. Passport V08716254 (Iran) expires 15 Jul 2011; alt. Passport V11630399 (Iran) expires 20 Jun 2012; alt. Passport U8356901 (Iran) expires 09 May 2011; alt. Passport H10395121 (Iran) expires 18 Jan 2012; alt. Passport K11946257 (Iran) expires 27 Oct 2012; alt. Passport X13567677 (Iran) expires 02 Jul 2013; alt. Passport D14818825 (Iran) expires 16 Mar 2014; alt. Passport F16438158 (Iran) expires 18 Nov 2014; alt. Passport R19234531 (Iran) expires 02 Nov 2015; alt. Passport L95280222 (Iran) expires 23 Jul 2016; alt. Passport L95273714 (Iran) expires 22 Aug 2016; alt. Passport P95418009 (Iran) expires 27 Apr 2017 (individual) [SDGT] [IFSR].

Entities

1. UKRAINIAN-MEDITERRANEAN AIRLINES (a.k.a. UKRAINSKE-TSCHERMOMORSKIE AVIALINII; a.k.a. UM AIR), 7 Shulyavska Street, Kiev 03055, Ukraine; Building Negin Sai Apartment 105, Valiasr Street, Tehran, Iran; 29 Ayar Street, Julia Dumna Building, Damascus, Syria; 38 Chkalova Street, building 1, office 10, Minsk, Belarus [SDGT] [IFSR].

2. UR–CJW; Aircraft Construction Number (also called L/N or S/N or F/N) 358; Aircraft Manufacture Date 12 Sep 1999; Aircraft Model BAe–146 Avro RJ100; Aircraft Manufacturer's Serial Number (MSN) 3358 (aircraft) [SDGT] [IFSR].

3. UR–CKF; Aircraft Construction Number (also called L/N or S/N or F/N) 341; Aircraft Manufacture Date 20 Dec 1998; Aircraft Model BAe–146 Avro RJ100; Aircraft Operator Mahan Air; Aircraft Manufacturer's Serial Number (MSN) 3341 (aircraft) [SDGT] [IFSR].

4. UR–CKG; Aircraft Construction Number (also called L/N or S/N or F/N) 362; Aircraft Manufacture Date 16 Nov 1999; Aircraft Model BAe–146 Avro RJ100; Aircraft Operator Mahan Air; Aircraft Manufacturer's Serial Number (MSN) 3362 (aircraft) [SDGT] [IFSR].

5. UR–CKJ; Aircraft Construction Number (also called L/N or S/N or F/N) 343; Aircraft Manufacture Date 04 Sep 1999; Aircraft Model BAe–146 Avro RJ100; Aircraft Operator Mahan Air; Aircraft Manufacturer's Serial Number (MSN) 3343 (aircraft) [SDGT] [IFSR].

6. UR–CKX; Aircraft Construction Number (also called L/N or S/N or F/N) 131; Aircraft Manufacture Date 25 May 1989; Aircraft Model BAe–146 Avro RJ300; Aircraft Operator Ukrainian-Mediterranean Airlines; Aircraft Operator Ukrainian-Mediterranean Airlines; Aircraft Manufacturer's Serial Number (MSN) 3131 (aircraft) [SDGT] [IFSR].

7. UR–CKY; Aircraft Construction Number (also called L/N or S/N or F/N) 146; Aircraft Manufacture Date 08 Jan 1990; Aircraft Model BAe–146 Avro RJ100; Aircraft Operator Mahan Air; Aircraft Manufacturer's Serial Number (MSN) 3146 (aircraft) [SDGT] [IFSR].

8. UR–CKZ; Aircraft Construction Number (also called L/N or S/N or F/N) 159; Aircraft Manufacture Date 01 Jan 1990; Aircraft Model BAe–146 Avro RJ300; Aircraft Operator Ukrainian-Mediterranean Airlines; Aircraft Manufacturer's Serial Number (MSN) 3159 (aircraft) [SDGT] [IFSR].

9. KYRGYZ TRANS AVIA (a.k.a. KYRGYZTRANSAVIA AIRLINES), Bulvar Erkindik 35, Bishkek, Kyrgyzstan; 32 Razzakova Street, Bishkek 720040, Kyrgyzstan [SDGT] [IFSR].

10. SIRJANCO TRADING L.L.C., 17th Floor, Office 1701, Al Moosa Tower 1, Sheikh Zayed Road, Dubai, United Arab Emirates [SDGT] [IFSR].

Dated: May 31, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–13673 Filed 6–7–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Two (2) Entities Pursuant to Executive Order 13628 of October 9, 2012

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of two (2) entities designated on May 30, 2013, as entities whose property and interests in property are blocked pursuant to Executive Order 13628 of October 9, 2012, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran.''

DATES: The designations by the Director of OFAC of the two (2) entities identified in this notice, pursuant to Executive Order 13628 of October 9, 2012, are effective May 30, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, 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 October 9, 2012, the President issued Executive Order 13628, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran'' (the ''Order''), pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note), as amended, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (22 U.S.C. 8501 et seq.), as amended, the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158), Section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and

Section 301 of title 3, United States Code.

Section 3 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to satisfy certain criteria set forth in the Order.

On May 30, 2013, the Director of OFAC, in consultation with or at the recommendation of the Secretary of State, designated, pursuant to Section 3 of the Order, two (2) entities whose names have been added to the list of Specially Designated Nationals and Blocked Persons and whose property and interests in property are blocked. The listing for these entities is below.

Entities

1. OFOGH SABERIN ENGINEERING DEVELOPMENT COMPANY (a.k.a. OFOGH TOSE–EH SABERIN ENGINEERING), Shahid Malek Lu Street, No. 86, Tehran, Iran [IRAN–TRA].

2. COMMITTEE TO DETERMINE INSTANCES OF CRIMINAL CONTENT (a.k.a. COMMISSION TO DETERMINE INSTANCES OF CRIMINAL CONTENT; a.k.a. COMMITTEE FOR DETERMINING EXAMPLES OF CRIMINAL WEB CONTENT; a.k.a. COMMITTEE IN CHARGE OF DETERMINING UNAUTHORIZED WEBSITES; a.k.a. WORKING GROUP FOR DETERMINING OFFENSIVE CONTENT; a.k.a. WORKING GROUP TO DETERMINE INSTANCES OF CRIMINAL CONTENT; a.k.a. WORKING GROUP TO DETERMINE INSTANCES ON ONLINE CRIMINAL CONTENT), Sure-Esrafil St, Tehran, Iran; Web site *http://internet.ir* [IRAN–TRA].

Dated: May 30, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–13671 Filed 6–7–13; 8:45 am]

BILLING CODE 4810–AL–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 one entity and six aircraft, 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 31, 2013.

DATES: The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on May 31, 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 31, 2013, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated one entity and six aircraft whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. PRYVATNE AKTSIONERNE TOVARYSTVO AVIAKOMPANIYA BUKOVYNA (a.k.a. AVIAKOMPANIYA BUKOVYNA; a.k.a. AVIAKOMPANIYA BUKOVYNA, PRYVATNE AT; a.k.a. BUKOVYNA AE; a.k.a. BUKOVYNA AIRLINES; a.k.a. BUKOVYNA AVIATION ENTERPRISE), Bud.30 vul.Chkalova Pershotravnevy R–N, Chernivtsi 58009, Ukraine [NPWMD] [IFSR].

2. UR–BHJ; Aircraft Construction Number (also called L/N or S/N or F/N) 2088; Aircraft Manufacture Date Jul 1994; Aircraft Model MD–83; Aircraft Operator Bukovyna AE; Aircraft Manufacturer's Serial Number (MSN) 53184 (aircraft) [NPWMD] [IFSR] (Linked To: PRYVATNE AKTSIONERNE TOVARYSTVO AVIAKOMPANIYA BUKOVYNA).

3. UR–BXN; Aircraft Construction Number (also called L/N or S/N or F/N) 1405; Aircraft Manufacture Date 08 Apr 1987; Aircraft Model MD–83; Aircraft Operator Bukovyna AE; Aircraft Manufacturer's Serial Number (MSN) 49569 (aircraft) [NPWMD] [IFSR] (Linked To: PRYVATNE AKTSIONERNE TOVARYSTVO AVIAKOMPANIYA BUKOVYNA).

4. UR–CIX; Aircraft Construction Number (also called L/N or S/N or F/N) 2167; Aircraft Manufacture Date Nov 1996; Aircraft Model MD–88; Aircraft Operator Bukovyna AE; Aircraft Manufacturer's Serial Number (MSN) 53546 (aircraft) [NPWMD] [IFSR] (Linked To: PRYVATNE AKTSIONERNE TOVARYSTVO AVIAKOMPANIYA BUKOVYNA).

5. UR–CIY; Aircraft Construction Number (also called L/N or S/N or F/N) 2176; Aircraft Manufacture Date Mar 1997; Aircraft Model MD–88; Aircraft Operator Bukovyna AE; Aircraft Manufacturer's Serial Number (MSN) 53547 (aircraft) [NPWMD] [IFSR] (Linked To: PRYVATNE AKTSIONERNE TOVARYSTVO AVIAKOMPANIYA BUKOVYNA).

6. UR–CJA; Aircraft Construction Number (also called L/N or S/N or F/N) 1181; Aircraft Manufacture Date 04 Jan 1985; Aircraft Model MD–82; Aircraft Operator Bukovyna AE; Aircraft Manufacturer's Serial Number (MSN) 49277 (aircraft) [NPWMD] [IFSR] (Linked To: PRYVATNE AKTSIONERNE TOVARYSTVO AVIAKOMPANIYA BUKOVYNA).

7. UR–CJK; Aircraft Construction Number (also called L/N or S/N or F/N) 2180; Aircraft Manufacture Date Apr 1997; Aircraft Model MD–88; Aircraft Operator Bukovyna AE; Aircraft Manufacturer's Serial Number (MSN) 53548 (aircraft) [NPWMD] [IFSR] (Linked To: PRYVATNE AKTSIONERNE TOVARYSTVO AVIAKOMPANIYA BUKOVYNA).

Dated: May 31, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–13672 Filed 6–7–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—NEW]

Proposed Information Collection (Ankle Conditions Disability Benefits Questionnaire) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to a claimant's diagnosis of an ankle condition.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 9, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS), *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900—NEW (Ankle Conditions Disability Benefits Questionnaire)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Ankle Conditions Disability Benefits Questionnaire, VA Form 21–0960M–2.

OMB Control Number: 2900—NEW (Ankle Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: VA Form 21–0960M–2 will be used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. This form will gather information related to the claimants' diagnosis of an ankle condition.

Affected Public: Individuals or households.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: June 5, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Enterprise Records Service, Office of Information Security, Office of Information and Technology, U.S. Department of Veterans Affairs.

[FR Doc. 2013–13688 Filed 6–7–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection (Foot (Including Flatfeet (pes planus)) Conditions Disability Benefits Questionnaire) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to gather information related to the claimants' diagnosis of a foot condition.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 9, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS), *www.Regulations.gov;* or to

Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900—NEW (Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: (Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire), VA Form 21–0960M–6.

OMB Control Number: 2900—NEW (Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: VA Form 21–0960M–6 will be used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. This form will gather information related to the claimants' diagnosis of a foot condition.

Affected Public: Individuals or Households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,000.

Dated: June 5, 2013.

By direction of the Secretary:

Crystal Rennie,

VA Clearance Officer, Enterprise Records Service, Office of Information Security, Office of Information and Technology, U.S. Department of Veterans Affairs.

[FR Doc. 2013–13644 Filed 6–7–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0219]

Proposed Information Collection (Application for CHAMPVA Benefits); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed for Health Administration Center staff to adjudicate/pay healthcare benefit claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 9, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0219'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or Fax (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for CHAMPVA Benefits, VA Form 10–10d.

b. CHAMPVA Claim Form, VA Form 10–7959a.

c. CHAMPVA Other Health Insurance (OHI) Certification, VA Form 10–7959c.

d. CHAMPVA Potential Liability Claim, VA Form 10–7959d.

e. Claim for Miscellaneous Expenses, VA Form 10–7959e.

OMB Control Number: 2900–0219.

Type of Review: Revision of a currently approved collection.

Abstracts:

a. VA Form 10–10d is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program.

b. VA Form 10–7959a is used to adjudicate claims for CHAMPVA benefits in accordance with 30 U.S.C. Sections 501 and 1781, and 10 U.S.C. Sections 1079 and 1086.

c. VA Form 10–7959c is used to systematically obtain other health insurance information and to correctly coordinate benefits among all liable parties.

d. VA Form 10–7959d form provides basic information from which potential liability can be assessed.

e. Beneficiaries complete VA Form 10–7959e to carry out health care programs for certain children of Korea and/or Vietnam Veterans authorized under 38, U.S.C., chapter 18, as amended by section 401, Public Law 106–419 and section 102, Public Law 108–183.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 10–10d—5,294 hours.

b. VA Form 10–7959a—22,402 hours.

c. VA Form 10–7959c—6,728 hours.

d. VA Form 10–7959d—467 hours.

e. VA Form 10–7959e—1500 hours.

Estimated Average Burden per Respondent:

a. VA Form 10–10d—12 minutes.
b. VA Form 10–7959a—6 minutes.
c. VA Form 10–7959c—5 minutes.
d. VA Form 10–7959d—7 minutes.
e. VA Form 10–7959e—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 10–10d—26,468.
b. VA Form 10–7959a—224,018.
c. VA Form 10–7959c—80,733.
d. VA Form 10–7959d—4,000.
e. VA Form 10–7959e—3,000.

Dated: June 5, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Enterprise Records Service, Office of Information Security, Office of Information and Technology, U.S. Department of Veterans Affairs.

[FR Doc. 2013–13693 Filed 6–7–13; 8:45 am]

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FEDERAL REGISTER

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Part II

Federal Deposit Insurance Corporation

12 CFR Part 380

Definition of ''Predominantly Engaged in Activities That Are Financial in Nature or Incidental Thereto''; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AD73

Definition of ''Predominantly Engaged in Activities That Are Financial in Nature or Incidental Thereto''

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule that establishes criteria for determining if a company is predominantly engaged in ''activities that are financial in nature or incidental thereto'' for purposes of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or the ''Act''). A company that is predominantly engaged in such activities is a ''financial company'' for purposes of Title II of the Act (''Title II'') unless it is one of the few entities specifically excepted by the Act. A financial company, other than an insured depository institution, may be subject to Title II's orderly liquidation authority if, among other things, it is determined that the failure of the company and its resolution under otherwise applicable law would have serious adverse effects on financial stability in the United States.

DATES: This final rule is effective July 10, 2013.

FOR FURTHER INFORMATION CONTACT: Ryan K. Clougherty, Senior Attorney, (202) 898–3843; Robert C. Fick, Supervisory Counsel, (202) 898–8962; or Rachel A. Jones, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Title II establishes a process for the appointment of the FDIC as receiver of a failing financial company if, among other things, its failure would otherwise have serious adverse effects on financial stability in the United States (a ''covered financial company'').[1] Under this process, certain designated Federal regulatory authorities (herein referred to as the ''recommending agencies'') must recommend to the Secretary of the Treasury (the ''Secretary'') that the Secretary appoint the FDIC as receiver of the company. The recommending agencies are the Board of Governors of the Federal Reserve System (''Board of Governors'') and the Securities and Exchange Commission in consultation with the FDIC, if the company or its largest U.S. subsidiary is a broker or a dealer; the Board of Governors and the Director of the Federal Insurance Office in consultation with the FDIC, if the company or its largest U.S. subsidiary is an insurance company; and the Board of Governors and the FDIC, in all other cases.[2]

Title II requires that recommendations to the Secretary include, among other things, an evaluation of whether the company is a financial company in default or in danger of default, a description of the effect that such company's default would have on the financial stability of the United States, an evaluation of why a case under the Bankruptcy Code would not be appropriate, and an evaluation of whether the company satisfies the definition of ''financial company'' found in section 201(a)(11) of the Act.

Upon receipt of such recommendations, the Secretary must make certain determinations in order to implement Title II's orderly liquidation authority. The Secretary shall take action to appoint the FDIC as receiver, if the Secretary (in consultation with the President) determines generally that (a) the company is a financial company in default or in danger of default; (b) the failure of the company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States; (c) no viable private sector alternative is available to prevent the default; (d) any effect on the claims or interests of creditors, counterparties, and shareholders is appropriate; (e) any action under the liquidation authority will avoid or mitigate such adverse effects taking into consideration the effectiveness of the action in mitigating the potential adverse effects on the financial system, the cost to the general fund of the Treasury, and the potential to increase excessive risk taking; (f) a Federal regulatory agency has ordered the company to convert all of its convertible debt instruments that are subject to regulatory order; and (g) the company satisfies the definition of a financial company under Title II.[3]

If the board of directors (or similar governing body) of the financial company consents to the appointment, the FDIC's appointment as receiver becomes effective immediately. However, if the company's governing body does not consent to the appointment, the Secretary must petition the United States District Court for the District of Columbia for an order authorizing the appointment of the FDIC as receiver. The Court will determine whether the Secretary's determinations that the financial company is in default or in danger of default and that it satisfies the definition of financial company under Title II are arbitrary and capricious. If the Court finds that the Secretary's determinations are not arbitrary and capricious, it will issue an order authorizing the Secretary to appoint the FDIC as receiver.[4] If the Court does not make a determination within twenty-four hours of receiving the petition, then the appointment of the FDIC occurs by operation of law.

Section 201(a)(11) of the Act defines ''financial company'' for purposes of Title II as any company incorporated or organized under any provision of Federal law or the laws of any State that is: (i) A bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 (''BHC Act'')[5]; (ii) a nonbank financial company supervised by the Board of Governors; (iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act (''section 4(k)'');[6] or (iv) any subsidiary of any of the aforementioned companies that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k), other than a subsidiary that is an insured depository institution or an insurance company.[7]

Section 201(b) of the Act provides that, for the purposes of defining the term ''financial company'' under section 201(a)(11), ''no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the [BHC Act], if the consolidated revenues of such company

[1] *See* 12 U.S.C. 5383(b).

[2] *See* 12 U.S.C. 5383(a).

[3] *See* 12 U.S.C. 5383(b).

[4] If the Court overrules the Secretary's determination, the Secretary is provided the opportunity to amend and refile the petition immediately. Title II includes appeal provisions, but does not provide for a stay of the actions taken by the receiver after its appointment.

[5] 12 U.S.C. 1841(a).

[6] 12 U.S.C. 1843(k).

[7] Section 201(a)(11) also provides that ''financial company'' does not include Farm Credit System institutions chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*), or governmental or regulated entities as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)).

from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under [Title II], the consolidated revenues derived from the ownership or control of a depository institution shall be included.'' [8] A company that is predominantly engaged in such activities is a ''financial company'' under Title II (unless it is one of the few entities expressly excepted under section 201(a)(11) of the Act) and may be subject to the orderly liquidation provisions of Title II following certain determinations by the Secretary, as discussed above.

While section 201(b) of the Act required the FDIC to issue a rule establishing the criteria for determining whether a company is predominantly engaged in activities that are financial in nature or incidental thereto for purposes of Title II, section 102(b) of the Act required the Board of Governors to issue a regulation establishing the criteria for determining whether a company is predominantly engaged in financial activities for purposes of Title I. Both sections 102(b) and 201(b) of the Act indicate that the determination of whether an activity is financial is based upon section 4(k), and since the Board of Governors is the agency with primary responsibility for interpreting and applying section 4(k), the FDIC coordinated its rulemaking pursuant to section 201(b) of the Act with the Board of Governors' rulemaking pursuant to section 102(b) of the Act.

In accordance with the authority granted to it by section 102(b), the Board of Governors published on February 11, 2011, a notice of proposed rulemaking titled ''Definitions of 'Predominantly Engaged in Financial Activities' and 'Significant' Nonbank Financial Company and Bank Holding Company'' (''Board of Governors' first NPR'').[9] The Board of Governors' first NPR proposed criteria for determining whether a company is ''predominantly engaged in financial activities'' for purposes of determining if the company is a nonbank financial company under Title I of the Act.[10] The Board of Governors' first NPR generally defined the term ''financial activity'' by reference to 12 CFR 225.86 and section 4(k)(1)(A) of the BHC Act. 12 CFR 225.86 lists each activity that the Board of Governors has determined is financial in nature or incidental thereto. Section 4(k)(1)(A) of the BHC Act provides authority for additional activities to be designated as financial in nature or incidental thereto.

On March 23, 2011, the FDIC published a notice of proposed rulemaking in the **Federal Register** titled ''Orderly Liquidation Authority'' (''FDIC's first NPR'').[11] The FDIC's first NPR was intended to provide clarity and certainty with respect to how key components of the orderly liquidation authority would be implemented and to ensure that the liquidation process under Title II reflects the Act's mandate of transparency with respect to the liquidation of covered financial companies. The FDIC's first NPR proposed, among other things, criteria for determining if a company is predominantly engaged in activities that are financial in nature or incidental thereto for purposes of Title II.

These criteria were set forth in section 380.8 of the FDIC's first NPR (''section 380.8''). Section 380.8 generally provided that a company is predominantly engaged in financial activities for purposes of Title II if: (i) At least 85 percent of the total consolidated revenues of the company for either of its two most recent fiscal years were derived, directly or indirectly, from financial activities, or (ii) based upon all the relevant facts and circumstances, the FDIC determines that the consolidated revenues of the company from financial activities constitute 85 percent or more of the total consolidated revenues of the company. Like the Board of Governors' first NPR, the FDIC's first NPR defined the term ''financial activity'' by reference to 12 CFR 225.86 and section 4(k)(1)(A), and also included ownership or control of depository institutions. The FDIC adopted provisions of the FDIC's first NPR other than section 380.8 in a final rule published in the **Federal Register** on July 15, 2011.[12]

On April 10, 2012, the Board of Governors published a supplemental notice of proposed rulemaking (''Board of Governors' second NPR'') that amended the definition of financial activities set forth in the Board of Governors' first NPR.[13] The Board of Governors' second NPR was published in response to comments that raised questions as to whether engaging in certain financial activities in a manner that does not comply with certain conditions and limitations applicable to the conduct of such activities by bank holding companies should nevertheless be considered to be financial activities for purposes of Title I of the Act. The Board of Governors' second NPR proposed an appendix that listed the activities that it considered to be financial activities, including conditions that the Board of Governors had determined were necessary to define the activity as ''financial'' for purposes of Title I of the Act, but excluding conditions that were imposed, either by section 4(k) or the Board of Governors' regulations, on the conduct of the activity by a bank holding company for reasons such as safety and soundness or compliance with other applicable law.

On June 18, 2012, the FDIC published in the **Federal Register** and requested comment on a supplemental notice of proposed rulemaking that clarified the scope of the activities that would be considered ''financial activities'' for purposes of Title II (''FDIC's second NPR''). The FDIC's second NPR proposed to adopt the list of activities that the Board of Governors' second NPR determined are ''financial in nature'' for purposes of Title I. Similar to the Board of Governors' list, the FDIC's list of financial-in-nature activities included those conditions determined by the Board of Governors to be necessary to define the activity, but excluded those conditions that were imposed on the conduct of the activity by a bank holding company for reasons of safety and soundness or compliance with other law. The FDIC is now adopting as final the criteria proposed in the FDIC's first NPR, as amended by the FDIC's second NPR, with certain modifications. As discussed in more detail below, the FDIC received 8 comments in response to the FDIC's first NPR that addressed the proposed section 380.8 and 7 comments in response to the FDIC's second NPR.

II. Explanation of the Final Rule

In developing the final rule, the FDIC considered the comments it received in response to both the FDIC's first NPR and the FDIC's second NPR, consulted with the Secretary's staff as required by section 201(b) of the Act, and coordinated with the Board of Governors' staff. The FDIC also considered the Board of Governors' final rule defining the term ''predominantly engaged in financial activities'' for purposes of Title I that was published in the **Federal Register** on April 5, 2013

[8] 12 U.S.C. 5381(b).

[9] 76 FR 7731 (February 11, 2011).

[10] Under section 113 of the Act, the Financial Stability Oversight Council (''Council'') may designate a nonbank financial company for supervision by the Board of Governors if the Council determines that material financial distress of the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to the financial stability of the United States.

[11] 76 FR 16324 (March 23, 2011).

[12] 76 FR 41626 (July 15, 2011).

[13] 77 FR 21494 (April 10, 2012).

(''Board of Governors' final rule'').[14] The FDIC's final rule includes several modifications to the FDIC's first NPR and the FDIC's second NPR, discussed further below, that are intended to address matters raised by commenters.

A. Predominantly Engaged in Financial Activities

1. The Revenue Tests

As noted above, section 380.8 as proposed in the FDIC's first NPR provided that a company is predominantly engaged in financial activities if: (i) At least 85 percent of the total consolidated revenues of the company for either of its two most recent fiscal years were derived, directly or indirectly, from financial activities (''two-year test''), or (ii) based upon all the relevant facts and circumstances, the FDIC determines that the consolidated revenues of the company from financial activities constitute 85 percent or more of the total consolidated revenues of the company (''facts and circumstances analysis'') (collectively, the ''revenue tests''). Under the FDIC's first NPR, a company would not be considered to be predominantly engaged in financial activities if the level of such company's financial revenues was below 85 percent of its total consolidated revenues in both of its two most recent fiscal years. The FDIC's first NPR defined ''total consolidated revenues'' as the total gross revenues of a company and all entities subject to consolidation by the company for a fiscal year, as determined in accordance with applicable accounting standards.

The FDIC received three comments that discussed the revenue tests found in section 380.8(a) of the FDIC's first NPR. These commenters were generally in favor of the proposal. One comment, for example, stated that both the two-year test and the facts and circumstances analysis for FDIC determinations found in section 380.8(a) carry out the statutory mandates for Title II and are flexible enough as not to impose any unnecessary regulatory burden.

A second commenter supported the two-year test, but expressed the opinion that the facts and circumstances analysis should be removed from a final rule. This commenter suggested that a facts and circumstances analysis is inappropriate with respect to the orderly liquidation authority because of the uncertainty it would create.

The FDIC recognizes the importance of providing certainty with respect to the calculation for determining if a company meets either of the revenue tests. However, the FDIC notes that the mix of a company's revenues may change significantly and quickly as a result of various types of transactions or actions, such as a merger, consolidation, acquisition, establishment of a new business line, or the initiation of a new activity. Moreover, these transactions and actions may occur at any time during a company's fiscal year and, accordingly, the effects of the transactions or actions may not be reflected in the year-end consolidated financial statements of the company for several months. Consequently, the facts and circumstances analysis is necessary in order to promptly consider the effect of changes in the nature or mix of a company's activities as a result of such transactions or actions. For these reasons, the final rule retains a two-year test and a facts and circumstances analysis.

However, the final rule removes the reference to the FDIC as the entity that will apply the facts and circumstances analysis. This change was made in recognition of the provisions of section 203 of the Act, which provide that the Federal authorities that will apply these revenue tests are the recommending agencies, for purposes of the evaluations under section 203(a) of the Act, and the Secretary, for purposes of the determination pursuant to section 203(b) of the Act.

2. Scope of Companies That Are Predominantly Engaged in Activities That Are Financial Activities for Purposes of Title II

A number of the comments received by the FDIC addressed the scope of section 380.8 and whether certain companies should be eligible for resolution under Title II. For example, one commenter stated that the list of companies eligible for consideration as systemically important should include as many large or interconnected nonbank financial firms that pose systemic risk to the financial system as possible. This commenter suggested that such a list should include, but not be limited to, large investment banks, insurance companies, hedge funds, private equity funds, venture capital firms, mutual funds, industrial loan companies, special purpose vehicles, and nonbank mortgage origination companies.

Other commenters suggested that certain types of companies should be expressly excluded from the orderly liquidation authority. One commenter, for example, expressed concerns that section 380.8 did not exclude insurers and insurance companies. One commenter argued that money market mutual funds and similar self-liquidating entities should be excluded. Another commenter argued that excluding money market mutual funds from the definition of financial company for Title II purposes would be appropriate due to the fact that such funds are already subject to ''consolidated supervision and/or heightened reporting requirements'' established by the Securities and Exchange Commission. Two other commenters expressed the opinion that the FDIC's orderly liquidation authority should be limited to institutions that are designated as systemically important under Title I of the Act.

Similarly, two commenters sought clarification that certain entities would be excluded from the definition of financial company under Title II due to their activities being deemed nonfinancial for purposes of the FDIC's second NPR. One commenter sought clarification as to whether the activities of a Nationally Recognized Statistical Rating Organization (''NRSRO'') would constitute investment advisory activities under section 380.8(b)(2)(xi)(B) of the FDIC's second NPR and therefore, financial activities. Another commenter sought clarification with respect to the activities of credit unions.

After considering these comments, the FDIC determined it would be inappropriate to exclude specific types of entities (other than those expressly excluded by section 201(a)(11)) from the definition of ''financial company'' for purposes of Title II. Title II is clearly intended to apply not only to bank holding companies and nonbank financial companies supervised by the Board of Governors, but to other financial companies as well. With a limited exception,[15] section 201(a)(11) contains no express exclusion for insurance companies, money market mutual funds, NRSROs, credit unions, or any other companies, nor any suggestion that such exclusions were intended. Furthermore, the express exclusion of certain types of companies implies that Congress intended no other exclusions.

In addition, sections 202 and 203 of the Act provide the process for making a systemic risk determination with respect to a financial company and for determining that a financial company is

[14] 78 FR 20756 (April 5, 2013).

[15] *See* 12 U.S.C. 5381(a)(11)(B)(iv), Section 201(a)(11)(B)(iv) of the Dodd-Frank Act, excepts from the definition of ''financial company'' an insurance company that is a subsidiary of a bank holding company, a nonbank financial company supervised by the Board of Governors, or a company that meets the ''predominantly engaged'' test in section 201(a)(11)(B)(iii).

subject to orderly liquidation under Title II. As discussed in section I of this Preamble, that process includes an evaluation of several factors. The FDIC believes that systemic risk determinations are appropriately considered in the recommendation, determination, and judicial review stages of the orderly liquidation process described in sections 202 and 203 of the Act. Furthermore, the FDIC believes that the scope of the companies that would be subject to Title II should not be limited by regulation in a manner that is inconsistent with the purposes of Title II.

3. Activities That Are Financial in Nature or Incidental Thereto

Under section 201(a)(11) of the Act, the determination of whether a company (other than a bank holding company or a nonbank financial company supervised by the Board of Governors) is predominantly engaged in financial activities for purposes of Title II is based upon activities that the Board of Governors has determined are ''financial in nature or incidental thereto'' under section 4(k). As noted above, the FDIC's first NPR defined ''financial activity'' to include: (i) Any activity, wherever conducted, described in section 225.86 of the Board of Governors' Regulation Y (''Regulation Y'') or any successor regulation; [16] (ii) ownership or control of one or more depository institutions; and (iii) any other activity, wherever conducted, determined by the Board of Governors in consultation with the Secretary, under section 4(k)(1)(A) of the BHC Act,[17] to be financial in nature or incidental to a financial activity.

Two commenters discussed the definition of ''financial activity'' found in the FDIC's first NPR and expressed the opinion that the activities that should be considered ''financial'' are appropriately listed in section 225.86 of Regulation Y. The first commenter supported including those activities that have been considered by the Board of Governors as ''closely related to banking'' and that are listed in sections 225.28(b) and 225.86(a)(2) of Regulation Y.[18] The commenter also stated that the proposed rule should broadly define ''financial activities'' to include all activities that have been, or may be, determined to be financial in nature under Section 4(k), regardless of, (i) where the activity is conducted, (ii) whether a bank holding company or foreign banking organization could conduct the activity under some legal authority other than section 4(k), and (iii) whether any Federal or state law other than section 4(k) may prohibit or restrict the conduct of the activity by a bank holding company.

One commenter asserted that the FDIC's first NPR failed to define the terms used in Title II in a way that provides clarity with respect to what companies can be designated or the standards that will be considered and applied in making a designation.

One commenter noted that many of the activities that are financial in nature or incidental thereto as proposed in the FDIC's first NPR are not of obvious systemic significance to the financial system. The commenter argued that a company that derives 85 percent or more of its revenues from providing management consulting services, check-courier services, or Web site security certificate services would be a financial company, but would be an inappropriate candidate for resolution under the orderly liquation authority of Title II. This commenter suggested that the FDIC include a discussion of the importance of systemic concerns in the Title II context, similar to the emphasis placed on systemic concerns in the Title I prudential-supervision context, in order to assure financial markets of the accurate applicability of the proposed rule.

The FDIC notes that before a financial company can be resolved under Title II, section 203 of the Act requires a determination that the failure of the financial company and its resolution under otherwise applicable law would have serious adverse effects on financial stability in the United States. Moreover, this rule is limited to establishing criteria pursuant to section 201(b) for making a revenue calculation to determine whether a company is predominantly engaged in financial activities for purposes of Title II.

In response to the comments received and in an effort to provide greater clarity, the FDIC published and requested comment on the FDIC's second NPR, which proposed to amend the FDIC's first NPR to further refine the definition of financial activities for purposes of Title II. The comments that the FDIC received in response to the FDIC's second NPR are discussed below.

In the preamble to the FDIC's second NPR, the FDIC acknowledged several important reasons why the term ''financial in nature'' under Title II should have the same meaning as it does for purposes of Title I. First, any interpretation of ''financial in nature'' under section 4(k) that is inconsistent with the Board of Governors' interpretation could frustrate Congressional intent regarding Title II. Section 204 of the Dodd Frank Act states that the intent of Title II is to provide for the liquidation of failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. Based upon this expression of Congressional intent regarding Title II, and given that one of the goals of Title I is to provide the authority to require the supervision of certain nonbank financial companies that could pose a threat to the financial stability of the United States, the FDIC believes that both of these goals can be achieved in a manner consistent with Congressional goals if such a key term as ''financial in nature'' is given the same meaning in both Titles I and II. The FDIC believes that it is important that Titles I and II work together in a manner that provides a coherent framework for monitoring and supervising the operation of financial companies whose failure could have a serious adverse effect on the financial stability of the United States, and for liquidating those companies with the least disruption to the U.S. financial stability, if any should fail. Second, utilizing in Title II an interpretation of ''financial in nature'' that is inconsistent with the Title I interpretation could result in confusion on the part of companies that may be subject to either or both of Titles I and II. For example, if the interpretations are different, a company may rely on the Title I interpretation of ''financial in nature'' to incorrectly conclude that it is not subject to Title II's orderly liquidation authority. Conversely, a company may use the Title II interpretation of ''financial in nature'' to incorrectly conclude that it is not eligible under the Council's Title I authority to be supervised by the Board of Governors and subject to enhanced prudential standards.

For these reasons, the FDIC's second NPR proposed to amend the FDIC's first NPR, consistent with the Board of Governors' second NPR and the purposes of Title II, to define the term ''financial activity'' to include each activity referenced in section 4(k) that the Board of Governors has determined is financial in nature or incidental thereto but to exclude the conditions or limitations that are imposed on bank holding companies engaged in such activities that do not define the essential nature of the activity itself.[19]

[16] *See* 12 CFR 225.86.

[17] *See* 12 U.S.C. 1843(k)(1)(A).

[18] 12 CFR 225.28(b); 225.86(a)(2).

[19] As noted in the Board of Governors' second NPR, conditions that do not define the activity itself

Continued

A. Scope of Financial Activities

The FDIC received comments addressing whether the amendments contained in the FDIC's second NPR were appropriate. While most commenters supported the amended definition of financial activities contained in the FDIC's second NPR, one commenter expressed a number of concerns with the FDIC's interpretation of the Act and argued that the clarification of financial activities in the FDIC's second NPR exceeds the rulemaking authority granted to the FDIC under Title II. This commenter suggested that the FDIC's second NPR should not be based upon the Board of Governors' second NPR, which the commenter asserted is flawed and exceeds the statutory authority granted to the Board of Governors by Title I.

In contrast, another commenter supported adoption of the amendments proposed in the FDIC's second NPR as they would reduce the possibility that systemically significant financial firms would be insulated from the reach of the orderly liquidation authority under Title II. This commenter argued that the inclusion of the non-definitional conditions from section 4(k) and Regulation Y into section 380.8 would raise the possibility that a firm could be predominantly engaged in financial activities, but immune from orderly liquidation authority resolution because the company's activities may not comply with such conditions.

As noted earlier, section 201(b) of the Act authorizes the FDIC to establish, in consultation with the Secretary, standards for determining if a company is ''predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k). . . .'' The identification of the scope of activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) is a necessary requirement for determining whether a company is predominantly engaged in such activities for purposes of Title II.

Section 4(k), which was added to the BHC Act by the Gramm-Leach-Bliley Act (''GLB Act''), authorizes bank holding companies that qualify as ''financial holding companies'' to engage in a wide range of financial activities.[20] Section 4(k) defines as ''financial'' a list of activities that includes Congressionally-authorized activities added by the GLB Act as well as activities that had been previously approved by the Board of Governors for bank holding companies pursuant to sections 4(c)(8) and 4(c)(13) of the BHC Act, which are incorporated by reference. As discussed in the FDIC's second NPR, section 4(k) and the Board of Governors' Regulation Y which, in part, implements sections 4(c)(8) and 4(c)(13) also impose conditions on the conduct of some of those activities for safety and soundness reasons or to ensure compliance with other laws. Some of the Congressionally-authorized activities for financial holding companies, such as lending, overlap completely with activities that had been authorized by the Board of Governors for bank holding companies. Other Congressionally-authorized activities expanded the authorization of activities previously approved by the Board of Governors for bank holding companies, such as certain insurance activities, by removing the conditions that apply to bank holding companies engaging in the activity. Bank holding companies that are not financial holding companies may only engage in activities previously approved by the Board of Governors under sections 4(c)(8) and 4(c)(13) of the BHC Act and are subject to certain conditions.

While section 4(k) and Regulation Y are clear with respect to the type and scope of activities that are permissible for both financial holding companies and bank holding companies, section 201(b) is silent as to how the overlapping definitions of financial activities and the conditions incorporated in section 4(k) should be applied in determining whether companies that are not subject to the BHC Act are predominantly engaged in financial activities for purposes of Title II. Because sections 201(a)(11) and 201(b) of the Act do not address how to apply these overlapping and sometimes inconsistent definitions of financial activities or how to apply the conditions incorporated in section 4(k) and the Board of Governors' implementing regulations, the references in sections 201(a)(11) and 201(b) of the Act to activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) are ambiguous. This conclusion is consistent with the Board of Governors' conclusion with respect to Title I.

As discussed in the preamble to the Board of Governors' final rule, the statutory references to section 4(k) are ambiguous when applied to companies other than bank holding companies. Since sections 201(a)(11) and 201(b) also reference section 4(k) in determining whether a company is predominantly engaged in financial activities for purposes of Title II, these same ambiguities that exist in Title I also exist in Title II. The Board of Governors is the Federal agency charged with interpreting and applying section 4(k). Consequently, the Board of Governors' resolution of those ambiguities is a critical guide in applying section 4(k) to companies other than bank holding companies for purposes of Title II. Consistent with the Board of Governors' approach, this ambiguity can be resolved by reference to relevant case law. Under Supreme Court precedent, a statutory term defined by cross-reference to another statute is not alone evidence of clear Congressional intent that the implementing agency construe the term identically. In *Environmental Defense* v. *Duke Energy Corp.*[21] (''*Duke*''), the Court held that the general presumption of statutory construction ''that the same term has the same meaning when it occurs here and there in a single statute,'' may be overcome where context indicates that the term was intended to be construed differently.[22]

Consistent with the Court's analysis in *Duke,* the FDIC believes that neither the text, the context in which the text appears, nor the legislative purpose or history of the Dodd-Frank Act suggests that Congress intended that a nonbank company must engage in financial activities in compliance with all the conditions and requirements imposed under section 4(k) and the Board of Governors' implementing regulations in order for the company to be considered

include those conditions that were imposed to ensure that a bank holding company that conducts the activity does so in a safe and sound manner or to comply with another provision of law. *See* 77 FR 21494 (April 10, 2012).

[20] 12 U.S.C. 1843(l)(1). To engage in the board range of activities authorized by section 4(k), a bank holding company must be well-capitalized and well-managed, and its subsidiary insured depository institutions must also be well-capitalized and well-managed and have 'satisfactory' ratings under the Community Reinvestment Act.

[21] 549 U.S. 561 (2007).

[22] *See id.* at 574, 576, citing *Atlantic Cleaners & Dyers, Inc.* v. *United States,* 286 U.S. 427, 433. The Court considered whether the Environmental Protection Agency (''EPA'') was required to interpret the term ''modification'' identically where one section of the Clean Air Act (''CAA'') defined ''modification'' ''as defined in'' a different section of the CAA. The Court held that when considering whether a term that is used in different statutes must be interpreted identically, ''context counts.'' See id. at 575–76, citing United States v. Cleveland Indians Baseball Co., 532 U.S. 200, 213 (2001). The Court considered the context in which the term ''modification'' was used and the legislative history of the relevant statutory provisions and found no evidence of Congressional intent that ''modification'' be construed identically by the EPA despite the cross-reference to the term in the statute because the contexts in which the term was used and the purposes of each use were different.

to be engaged in the relevant financial activity. A reading of Title II that limits the scope of companies considered to be ''predominantly engaged'' in financial activities to only those companies that conduct activities in compliance with the conditions applicable to bank holding companies would undermine the purpose of Title II and the authority granted by Congress to the Secretary to order the resolution under Title II of an organization whose failure might reasonably threaten U.S. financial stability.[23] Moreover, defining financial activities for purposes of Title II to include all of the conditions imposed on the conduct of the activities by bank holding companies for purposes of safety and soundness or to ensure their compliance with other laws would lead to an absurd result. Specifically, some companies that are predominantly engaged in financial activities could avoid orderly liquidation under Title II simply by choosing not to abide by one or more of these conditions that are unrelated to whether the activity is a financial activity.

Furthermore, the FDIC also continues to believe that it is important that the definition of ''financial activities'' for purposes of Title II remain as similar as practicable to the definition of ''financial activities'' for purposes of Title I. In both the FDIC's first NPR and the FDIC's second NPR, the FDIC noted the benefits and importance of maintaining symmetry with the definition in Title I. For example, utilizing in Title II an interpretation of ''financial in nature'' that is inconsistent with the Title I interpretation could result in confusion on the part of companies that may be subject to either or both of Titles I and II. As noted above, the FDIC believes that it is important that Titles I and II work together in a manner that provides a coherent framework for monitoring and supervising the operation of financial companies whose failure could have a serious adverse effect on the financial stability of the United States, and for liquidating such companies with the least disruption to the U.S. financial stability, if any should fail. The FDIC received a number of comments in response to both the FDIC's first NPR and the FDIC's second NPR that supported this approach. For these reasons, the FDIC believes that consistency, to the extent possible, with the Board of Governors' interpretation of what constitutes ''financial activities'' for purposes of Title I is appropriate. As discussed in further detail below, the FDIC has determined that the modifications adopted by the Board of Governors in its final rule were appropriate and consistent with the purposes and goals of Title II and has therefore adopted them in this final rule.

B. Description of ''Financial Activities''

As an initial matter, the FDIC notes that the only purpose of this rulemaking is to establish criteria for determining which activities are financial. This rulemaking does not designate any specific entity for resolution under Title II. As discussed earlier in section I of this Preamble, sections 202 and 203 of the Act govern the appointment of the FDIC as receiver for a covered financial company. Under those sections, the authority to appoint the FDIC as receiver of a financial company rests with the Secretary, in consultation with the President.

The final rule retains the approach set forth in the FDIC's second NPR with certain modifications, including, the restoration of several conditions that the FDIC proposed to remove in the FDIC's second NPR. These conditions are the same conditions that were reinstated in the Board of Governors' final rule defining ''financial activities'' for purposes of Title I, and one condition related to finder activities. As discussed in more detail below, the FDIC restored conditions relating to the activities of providing agency transactional services, engaging as principal in derivative transactions, data processing, management consulting services, investing as part of a bona fide underwriting, or merchant or investment banking activity, and acting as a finder. The final rule also retains all of the conditions set forth in the description of the financial activities listed in section 4(k), other than two conditions with respect to bona fide underwriting or merchant or investment banking activities, and one with respect to insurance company portfolio investments, which do not define the activity itself. This approach in the final rule is consistent with the Board of Governors' final rule.

Because section 4(k) references financial activities that were authorized by the Board of Governors under various authorities at different points in time, certain of the financial activities listed below overlap with, or are wholly subsumed by, other financial activities permissible for financial holding companies. The FDIC did not receive any comments in response to the FDIC's second NPR that addressed overlapping and redundant activities. To reduce the ambiguity, however, created by the overlapping and redundant descriptions, the final rule, like the Board of Governors' final rule, provides that a company that engages in a particular activity in a manner that does not comply with the narrower definition of the particular activity will be considered to be engaged in a financial activity if its activities are captured by the broader description of the activity. Consistent with the FDIC's second NPR, the final rule includes such overlapping and redundant activities, in order to ensure completeness.

1. Financial Activities Added to the BHC Act by the Gramm-Leach-Bliley Act

The following financial activities were authorized for financial holding companies and added to section 4(k) by the Gramm–Leach–Bliley Act (''GLB Act'').

• Lending, Exchanging, Transferring, Investing for Others, and Safeguarding Money or Securities

The activities of lending, exchanging, transferring, investing for others, or safeguarding money or securities are specifically enumerated, without conditions, in section 4(k).[24] The Board of Governors' determined that the activity of ''investing for others'' includes buying, selling, or otherwise acquiring and disposing of money or securities in order to benefit from changes in the value of those assets and distribute profits to investors. These activities are often conducted by investment advisors, wealth managers, limited purpose trust companies, mutual funds, hedge funds, private equity funds, real estate investment trusts, and similar vehicles.

One commenter argued that open-end investment companies (e.g., mutual funds) are not engaged in financial activities as defined in section 4(k) of the BHC Act. However, the Board of Governors' regulations have long authorized bank holding companies to engage in organizing, sponsoring, and managing mutual funds and closed-end investment companies and to serve as an investment adviser to mutual funds and closed-end investment companies and others using the authority described in section 4(k).[25] Prior to enactment of

[23] *See* Committee on Banking, Housing, and Urban Affairs Report, S. Rep. No. 111–176, April 30, 2010, page 5, citing Testimony of Timothy Geithner, Secretary of the Treasury, to the Banking Committee, June 18, 2009.

[24] 12 U.S.C. 1843(k)(4)(A).

[25] *See, e.g.,* 12 CFR 211.10(a)(11); 225.28(b)(6)(i); 225.86(b)(3); and 225.125. See also, *e.g., Mellon Bank Corporation,* 79 *Federal Reserve Bulletin* 626 (1993), and *Bayerische Vereinsbank AG,* 73 *Federal Reserve Bulletin* 155 (1987).

the GLB Act in 1999, the Board of Governors permitted bank holding companies to own more than 5 percent (and up to 25 percent) of the shares of an open-end investment company—a determination that represents a finding that open-end investment companies engage in a financial activity.[26] The investment limitation reflects a decision by the Board of Governors that the public benefits of allowing a bank holding company to own more than 25 percent of the shares of a mutual fund did not outweigh the potential costs consequent with treating the mutual fund as a subsidiary of the bank holding company. Under the BHC Act, the decision to allow a bank holding company to own more than 5 percent of the shares of a mutual fund is sufficient to indicate that the mutual fund itself, which is a company, is engaged in a financial activity.[27] The activity of organizing, sponsoring, and managing a mutual fund was also determined to be usual in connection with the transaction of banking or other financial operations abroad prior to November 11, 1999, and, thus, is incorporated as a financial activity in section 4(k) by the GLB Act.[28] The Board of Governors' regulations prohibit bank holding companies from exerting managerial control over the companies in which the mutual fund invests and require bank holding companies to reduce their ownership to less than 25 percent of the equity of the mutual fund within one year of sponsoring the fund.[29] These limitations were imposed to prevent circumvention of the investment restrictions in the BHC Act.

Moreover, section 4(k) itself authorizes all of the component activities in which a mutual fund engages—investing for others,[30] merchant banking,[31] investment advice,[32] and underwriting [33]—as financial. These activities are defined as financial under section 4(k) separately from, and in addition to, those activities previously approved by the Board of Governors as being so closely related to banking as to be a proper incident thereto, or usual in connection with the transaction of banking or other financial operations abroad, which are incorporated into the definition of financial activities in section 4(k).[34]

Section 4(k) specifically defines the activities of underwriting, dealing in, or making a market in securities as a financial activity, which includes key components of sponsoring and distributing shares of mutual funds and investment companies. Section 4(k) also specifically enumerates as financial activities providing financial, investment, and economic advisory services and investing for others, which includes buying, selling, or otherwise acquiring and disposing of money or securities in order to benefit from changes in the value of those assets and distributing the profits to investors. Similarly, section 4(k) authorizes merchant banking activities—which represent investments made for the purpose of profiting from price appreciation—as financial.

The fact that the Board of Governors has imposed prudential conditions on bank holding companies engaged in the activity of organizing, sponsoring, or managing a mutual fund does not negate the fact that the activity is financial for purposes of section 4(k).[35]

• *Insurance Activities*

Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any state, are financial activities specifically enumerated in section 4(k).[36]

• *Financial, Investment, and Economic Advisory Services*

Financial, investment, and economic advisory services are financial activities specifically enumerated in section 4(k).[37] These activities may be provided individually or in combination and include discretionary and non-discretionary investment advisory activities. This broad authorization to provide financial, investment, or economic advisory services also includes activities that the Board of Governors determined were closely related to banking. For example, the Board of Governors previously determined that acting as an investment or financial advisor to any person was closely related to banking, including, without limitation, the activities of sponsoring, organizing, and managing a closed-end investment company, such as a hedge fund, and furnishing general economic information and advice.[38] The Board of Governors also previously determined that providing administrative and other services to mutual funds could be provided in connection with acting as an investment or financial advisor as activities that were closely related to banking as described further below.

• *Issuing or Selling Instruments Representing Interests in Pools of Bank-Permissible Assets*

Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly is a financial activity specifically enumerated in section 4(k).[39]

• Underwriting, Dealing, and Market Making

Underwriting, dealing in, or making a market in securities is a financial activity specifically enumerated in section 4(k) of the BHC Act,[40] which includes sponsoring and distributing all types of mutual funds and investment companies.[41]

• Merchant Banking

Section 4(k)(4)(H) of the BHC Act describes the financial activity of acquiring or controlling shares, assets or ownership interests, including debt or equity securities, in a company engaged in any activity not authorized under section 4 of the BHC Act ''as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate

[26] *See* letter dated June 24, 1999, to H. Rodgin Cohen, Esq., Sullivan & Cromwell (First Union Corporation), from Jennifer J. Johnson, Secretary of the Board of Governors of the Federal Reserve System. *See also* 12 CFR 225.86(b)(3).

[27] Bank holding companies are generally prohibited from owning more than 5 percent of the voting shares of a company unless that company is engaged only in a financial activity. *See* 12 U.S.C. 1843(a).

[28] 12 U.S.C. 1843(k)(4)(G); 12 CFR 225.86(b)(3).

[29] 12 CFR 225.86(b)(3).

[30] 12 U.S.C. 1843(k)(4)(A).

[31] 12 U.S.C. 1843(k)(4)(H).

[32] 12 U.S.C. 1843(k)(4)(C).

[33] 12 U.S.C. 1843(k)(4)(E).

[34] In amending Regulation Y consistent with the GLB Act, the Board of Governors added the financial activities added to section 4(k) by the GLB Act and noted that in light of the passage of the GLB Act ''securities underwriting, dealing, and market making . . . is authorized for financial holding companies in a broader form'' than had previously been permitted. *See* 65 FR 14440, 14443, 14435 (March 17, 2000).

[35] As noted previously, bank holding companies are generally prohibited from owning more than 5 percent of the voting shares of a company unless that company is engaged only in a financial activity. *See* 12 U.S.C. 1843(a).

[36] 12 U.S.C. 1843(k)(4)(B). In amending Regulation Y, the Board of Governors noted that section 4(k)(4) authorized financial activities, including ''activities that previously have not been permissible for bank holding companies, such as acting as principal, agent, or broker for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, and issuing annuity products. Permissible insurance activities as principal include reinsuring insurance products. A financial holding company acting under that section may conduct insurance activities without regard to the restrictions on the insurance activities imposed on bank holding companies under section 4(c)(8).'' *See* 65 FR 14433, 14435 (March 17, 2000).

[37] 12 U.S.C. 1843(k)(4)(C).

[38] *See* 12 CFR 225.28(b)(6) and 225.125.

[39] 12 U.S.C. 1843(k)(4)(D).

[40] 12 U.S.C. 1843(k)(4)(E).

[41] *See* H.R. Rep. No. 106–434 at 153 (1999) (Conf. Rep.)

resale or disposition of the investment''[42] (''merchant banking''). Section 4(k)(4)(H) imposes several requirements on financial holding companies seeking to engage in merchant banking activities. In particular, (i) the shares may not be acquired or held by a depository institution; (ii) the shares must be acquired and held by a securities affiliate or an affiliate thereof, or in the case of a financial holding company that has an insurance company affiliate, by an affiliate that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940, or an affiliate thereof; (iii) the shares must be held as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment; (iv) the shares are held for a period of time to enable the sale or disposition on a reasonable basis consistent with the financial viability of the company's underwriting, merchant, or investment banking activities; and (v) during the period the shares are held, the bank holding company does not routinely manage or operate the company except as may be necessary to obtain a reasonable return on investment upon resale or disposition.[43]

The Board of Governors determined in its final rule that the condition in section 4(k)(4)(H) requiring that the shares only be held for a period of time to enable their sale or disposition on a reasonable basis consistent with the financial viability of the company's merchant banking activities is an essential element of a bona fide merchant banking activity. Thus, this condition is also reflected in this final rule. Bona fide merchant banking activities involve investing with the intent to sell the investment at some later point in time at which a profit is expected to be realized. For example, companies such as hedge funds, mutual funds, and private equity firms[44] that are engaged in bona fide merchant banking activities typically make investments in companies that they believe will increase in value over time and that can be resold at a profit. Hedge funds, mutual funds, and private equity funds invest with the expectation of selling those instruments at a future date in order to realize profits consistent with a particular investment strategy rather than for the purpose of owning and operating the business.

The Board of Governors and the Secretary of the Treasury jointly issued regulations adopting holding periods for merchant banking investments by financial holding companies pursuant to section 4(k)(4)(H).[45] Specific time periods are not set forth in section 4(k). As such, the Board of Governors did not include a condition on holding periods in the definition of merchant banking in the Board of Governors' final rule for purposes of Title I. Similarly, the FDIC has not included such a condition in this final rule. However, the Board of Governors noted in the preamble to the Board of Governors' final rule that the time periods adopted by the Board of Governors and the Secretary are instructive in determining whether a nonbank company is engaged in bona fide merchant banking activities under Title I. Thus, for purposes of determining whether a nonbank company is predominantly engaged in financial activities under Title I, nonbank companies that acquire and hold shares for the period permitted for financial holding companies under the Board of Governors' regulations are presumed to hold the shares for the purpose of appreciation and ultimate resale or disposition in accordance with the condition in section 4(k)(4)(H). Similarly, for purposes of this final rule under Title II, shares held for the period permitted for financial holding companies under the Board of Governors' regulations generally will be treated as held for the purpose of appreciation and ultimate resale or disposition in accordance with the condition in section 4(K)(4)(H). This approach will help companies determine whether they are predominantly engaged in financial activities.

The Board of Governors recognized in its final rule that some investment vehicles may hold shares for longer periods as part of a bona fide merchant banking activity consistent with the vehicle's investment strategy. For this reason, the Board of Governors' final rule permitted the Financial Stability Oversight Council, with respect to the definition of a ''nonbank financial company'' for purposes of Title I, or the Board of Governors, with respect to the definition of a ''significant nonbank financial company'', to determine, on a case-by-case basis, whether a company that acquires and holds shares for a period of time greater than the period permissible for a financial holding company is engaged in bona fide merchant banking activities for purposes of determining whether the company is predominantly engaged in financial activities under Title I. Similarly, this final rule permits the recommending agencies and the Secretary to determine on a case-by-case basis, whether a company that acquires and holds shares for a period of time greater than the period permissible for a financial holding company is engaged in bona fide merchant banking and, therefore, a financial activity for purpose of Title II.

The Board of Governors' final rule clarifies that the prohibition in section 4(k)(4)(H) on routinely managing a portfolio company, other than for purposes of recognizing a reasonable return on resale or disposition, is an essential element of bona fide merchant banking activities. As previously discussed, companies engaging in these activities purchase shares of portfolio companies to recognize an ultimate profit, rather than to engage in the underlying activity in which the portfolio company engages as its primary business activity. Routinely managing the companies, other than for the goal of recognizing a reasonable return, may indicate a strategic investment in the operations of another firm. This prohibition is included in the final rule for purposes of Title II.

Section 4(k) does not define the statutory prohibition of routinely managing a portfolio company. The regulations issued by the Board of Governors and the Secretary governing the merchant banking activities of financial holding companies provide guidance on the statutory prohibition of routinely managing a portfolio company in connection with a bona fide merchant banking activity. The Board of Governors determined in its final rule that such regulations are instructive in determining whether a nonbank company is engaged in bona fide merchant banking activities for purposes of Title I. The FDIC has determined to adopt a similar approach for purposes of this final rule. Therefore, for purposes of determining whether a company is engaged in a bona fide merchant banking activity under Title II, companies that comply with the Board of Governors' guidance regarding the limitations on managing or operating a

[42] 12 U.S.C. 1843(k)(4)(H).

[43] *See id.*

[44] *See* H.R. Rep. No. 106–434 at 154 (1999) (Conf. Rep.) (describing the merchant banking authority under section 4(k)(4)(H) as authorizing a financial holding company (''FHC'') to acquire an ownership interest ''in an entity engaged in any kind of trade or business whatsoever . . . whether acting as principal, on behalf of one or more entities (e.g., as adviser to a fund, regardless of whether the FHC is also an investor in the fund), including entities that the FHC controls (other than a depository institution or a subsidiary of a depository institution), or otherwise.'').

[45] *See* 12 CFR 225.172 and 12 CFR 1500.3, respectively.

portfolio company generally will be treated as engaged in a bona fide merchant banking activity. This approach will reduce burden on companies attempting to determine whether they, or certain of their counterparties,[46] are predominantly engaged in financial activities.

By contrast, the Board of Governors' final rule concluded that the condition in section 4(k)(4)(H) requiring a financial holding company engaging in merchant banking activities to have a securities affiliate is not an essential element of bona fide merchant banking activities for determining whether these activities are financial activities.[47] This is evidenced by the fact that section 4(k) does not require that the securities affiliate participate in or play a role with respect to these activities. The Board of Governors determined in the Board of Governors' final rule that this condition was designed to ensure that only those financial holding companies with experience engaging in investment, securities, or advisory activities conducted merchant banking activities. Accordingly, this condition is not reflected in this final rule.

Similarly, the Board of Governors concluded that the condition in section 4(k)(4)(H) requiring that shares acquired as part of a bona fide merchant banking activity not be acquired or held by a depository institution is not an essential element of such activities. This restriction was imposed because banks are restricted from investing in certain types of companies by statute and regulation, and in particular, national banks were prohibited by the GLB Act from engaging in merchant banking activities through a financial subsidiary unless certain findings were made by the Secretary and the Board of Governors.[48] The Board of Governors concluded that the restriction on acquiring or holding investments through a depository institution does not define the activity of merchant banking but rather imposes conditions on holding the investment through one type of corporate affiliate. The condition does not define the activity itself, as financial holding companies, which have bank affiliates, engage in these activities on a regular basis. Accordingly, the condition is not included in this final rule.

Finally, section 4(k)(4)(H) provides that shares acquired in connection with a bona fide merchant banking activity must be those of a company engaged in an activity not authorized under section 4 of the BHC Act. This provision provided new authority for bank holding companies that qualify as financial holding companies to engage in merchant banking activities with regard to nonbanking firms; bank holding companies were already authorized under other provisions of section 4 of the BHC Act to invest in firms engaged in financial activities.[49] For this reason, the Board of Governors retained this reference to an ''activity not authorized under section 4 of the BHC Act'' in the description of bona fide merchant banking activities in the Board of Governors' final rule. An investment in a company engaged in activities otherwise permissible under section 4 would otherwise be treated as a financial activity under section 4(k)(1) or other provisions of section 4(k). Thus, shares acquired in all types of firms in connection with a bona fide merchant banking activity are effectively included by section 4(k) within the list of permissible financial activities. Consequently, the requirement that shares acquired in connection with a bona fide underwriting, merchant, or investment banking activity must be those of a company engaged in an activity not authorized under section 4 of the BHC Act is included in this final rule.

• Insurance Company Portfolio Investments

Section 4(k)(4)(I) of the BHC Act authorizes companies engaged in certain types of insurance activities to make portfolio investments. In particular, financial holding companies are authorized to acquire assets or ownership interests, including debt or equity securities, of a company or other entity engaged in any activity not authorized by section 4(k) if: (i) The shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution; (ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities; (iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant state law governing such investments; and (iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.[50] The Board of Governors determined in its final rule that the conditions in section 4(k)(4)(I) requiring that the shares be acquired and held (i) by an insurance company engaged in particular activities, and (ii) in the ordinary course of business of the acquiring insurance company in accordance with relevant state law governing such investments, are essential elements of this activity. Insurance company portfolio investments were authorized by Congress specifically to permit ''an insurance company that is affiliated with a depository institution to continue to directly or indirectly acquire or control any kind of ownership interest in any company,'' in recognition of the fact ''that as part of the ordinary course of business, insurance companies frequently invest funds received from policyholders by acquiring most or all the shares of stock of a company that may not be engaged in a financial activity.'' [51] Thus, these conditions are reflected in the final rule. In contrast to merchant banking activities described in section 4(k)(4)(H), which requires a financial holding company engaging in such activities to have a securities affiliate, but does not require that the securities affiliate play a role in the activities, section 4(k)(4)(I) requires that the investment activities authorized

[46] See *id.*

[47] The legislative history related to Congress's authorization of ''underwriting, merchant, and investment banking activities'' distinguishes between the activities themselves and certain conditions imposed on the conduct of these activities by a financial holding company that do not define the activities, such as the requirement that a financial holding company have a securities affiliate. *See* Conf. Rep. 106–434, 154 (November 2, 1999). (''The authorization of merchant banking activities as provided in new section 4(k)(4)(H) of the BHCA is designed to recognize the essential role that these activities play in modern finance and permits an FHC that has a securities affiliate or an affiliate of an insurance company engaged in underwriting life, accident and health, or property and casualty insurance, or providing and issuing annuities, to conduct such activities.'').

[48] *See, e.g.,* 12 U.S.C. 24, (Seventh); 12 U.S.C. 24, (Eleventh); 12 CFR 1.

[49] *See* 65 FR 16460, 16463–16464 (March 28, 2000), in which the Board of Governors noted that the provision in section 4(k)(4)(H) that authorizes a financial holding company to invest in any company engaged in any activity not authorized pursuant to section 4 of the BHC Act ''appears to have been included in recognition of the fact that other provisions of the BHC Act permit a financial holding company to make investments in companies that conduct financial activities without resorting to merchant banking authority.''

[50] 12 U.S.C. 1843(k)(4)(I).

[51] *See* H.R. Rep. No. 106–434 at 154 (1999) (Conf. Rep.) (further describing section 4(k)(4)(I) as recognizing that ''these investments are made in the ordinary course of business pursuant to state insurance laws governing investments by insurance companies, and are subject to ongoing review and approval by the applicable state regulator.''

thereunder be conducted by or through an insurance company.

The Board of Governors determined in its final rule that the prohibition in section 4(k)(4)(I) on routinely managing a portfolio company, other than for purposes of recognizing a reasonable return on the investment, is an essential element of the investment activities conducted by insurance companies as well. Thus, this prohibition is reflected in this final rule for purposes of Title II. As noted previously, insurance companies typically invest policyholder funds in other companies in the ordinary course of business pursuant to state insurance laws. Routinely managing the companies, other than for the purpose of recognizing a return on investment, may indicate a strategic investment in the operations of the other company.[52]

Section 4(k)(4)(I) requires that shares acquired pursuant to an insurance company's investment activities not be acquired or held by a depository institution. The Board of Governors' final rule does not identify this condition as an essential element of this activity, and, thus, it is not reflected in this final rule. The restriction on acquiring or holding investments through a depository institution does not define the investment activity described in section 4(k)(4)(I), but rather imposes conditions on holding the investment through one type of corporate affiliate. As discussed previously, section 4(k)(4)(I) requires that the investment activities authorized thereunder be conducted by or through an insurance company. In addition, as noted previously, banks are restricted from investing in certain types of companies by statute and regulation.[53] The Board of Governors' final rule clarifies that the condition does not define the activity itself, as insurance companies affiliated with depository institutions engage in these activities on a regular basis.[54] Accordingly, this condition is not included in this final rule for purposes of Title II.

Finally, as in section 4(k)(4)(H), section 4(k)(4)(I) provides that shares acquired by an insurance company in connection with its investment activities must be those of a company engaged in an activity not authorized under section 4 of the BHC Act. An investment in a company engaged in activities otherwise permissible under section 4 would be treated as a financial activity under section 4(k)(1) or other provisions of section 4(k). Thus, investments by insurance companies in all types of firms are effectively included by section 4(k) within the list of permissible financial activities. Like the Board of Governors' final rule, this final rule also includes this condition.

• Lending, Exchanging, Transferring, Investing for Others, Safeguarding Financial Assets Other Than Money or Securities, and Other Activities

The activities of lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities; providing any device or other instrumentality for transferring money or other financial assets; and arranging, effecting, or facilitating financial transactions for the account of third parties are financial activities specifically enumerated in section 4(k)(5) of the BHC Act.[55]

2. Financial Activities That Are Closely Related to Banking

Section 4(k) provides that ''any activity that the Board has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto'' is a financial activity.[56] These activities, as described in more detail below, are also included in the definition of ''financial activities'' for purposes of Title II.

Extending Credit and Servicing Loans

Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others were authorized by the Board of Governors as activities that are closely related to banking.[57]

• Activities Related to Extending Credit

Activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit were authorized by the Board of Governors as activities that are closely related to banking.[58] These activities include performing appraisals of real estate and personal property (including securities), acting as an intermediary for commercial or industrial real estate financing, providing check guarantee, collection agency, and credit bureau services, engaging in asset management, servicing, and collection activities, acquiring debt in default, and providing real estate settlement services.[59]

The Board of Governors' regulations impose certain conditions on the conduct of these activities that are not relevant for determining whether these activities are considered financial for purposes of determining whether a firm is predominantly engaged in financial activities under Title II. For instance, under the Board of Governors' regulations, a bank holding company that is arranging financing for commercial or industrial income-producing real estate may not have an interest in, participate in managing or developing, or promote or sponsor the development of a property for which it is arranging financing, or engage in property management or real estate brokerage.[60] These conditions were imposed to clarify that real property management and real estate brokerage activities—which were not at the time found to be financial activities—are not indirectly authorized as permissible for bank holding companies through the activity of real estate financing.[61] As such, the Board of Governors' final rule reflects the activity of arranging commercial real estate financing without reference to the independent activities of owning, managing, developing, or promoting or sponsoring

[52] *See id.* at 155 (noting that ''to the extent an FHC participates in the management or operation of a portfolio company, such participation would ordinarily be for the purpose of safeguarding the investment of the insurance company in accordance with applicable state insurance law. This is irrespective of any overlap between board members and officers of the FHC and the portfolio company.''

[53] *See, e.g.,* 12 U.S.C. 24, (Seventh); 12 U.S.C. 24, (Eleventh); 12 CFR 1.

[54] As discussed above, section 4(k)(4)(I) was intended to permit ''an insurance company that is affiliated with a depository institution to continue to directly or indirectly acquire or control any kind of ownership interest in any company if certain requirements are met.'' *See* H.R. Rep. No. 106–434 at 154 (1999) (Conf. Rep.).

[55] 12 U.S.C. 1843(k)(5). The BHC Act requires the Board of Governors to define the extent to which these activities are financial in nature or incidental thereto. The Board of Governors and the Secretary issued a joint interim rule authorizing such activities as permissible for financial holding companies. *See* 66 FR 257 (January 3, 2001).

[56] 12 U.S.C. 1843(k)(4)(F).

[57] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(1). *See* 62 FR 9290, 9305 (February 28, 1997), in which the Board of Governors noted that ''[l]ending activities are already broadly defined and contain no restrictions.''

[58] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(2).

[59] *Id.*

[60] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(2)(ii).

[61] The Board of Governors first approved the application of a bank holding company to engage in real estate equity financing in 1982. In approving this activity, the Board of Governors noted that it had imposed conditions, including that the bank holding company not have an interest in, participate in managing or developing, or promote or sponsor the development of a property for which it is arranging financing, ''to confine the activity . . . to equity financing and to prevent [the bank holding company] from engaging in real estate development . . .'' *See BankAmerica Corporation,* 68 Federal Reserve Bulletin 647 (1982). The activity of arranging commercial real estate equity financing was added to the Board of Governors' Regulation Y in 1984 and incorporated the limitations that the Board of Governors had placed on the activity in the 1982 order. *See* 70 Federal Reserve Bulletin 121, 137 (1984).

development of real estate.[62] Accordingly, this final rule takes the same approach. While neither real estate brokerage nor real estate management are financial activities under section 4(k), a company may engage in these activities and still be predominantly engaged in the financial activity of arranging commercial real estate financing. Under the final rule, only revenues associated with this latter activity are considered financial for purposes of determining whether a firm is predominantly engaged in financial activities.

Acquiring debt in default also is a financial activity for purposes of determining whether a firm is predominantly engaged in financial activities under Title II as it is an activity that is usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.[63] Under the Board of Governors' regulations, a bank holding company that acquires debt in default must divest assets securing the debt that are impermissible for bank holding companies to hold within a certain time period, stand only in the position of a creditor, not purchase equity of obligors of debt in default, and not acquire debt in default secured by shares of a bank or bank holding company. These conditions are intended to prevent bank holding companies from circumventing the BHC Act and other provisions of law. For instance, the condition requiring a bank holding company to divest impermissible assets within a certain timeframe was intended to distinguish between a bank holding company's acquisition of debt in default and its retention of impermissible collateral securing the debt.[64] The conditions requiring the bank holding company to stand only in the position of a creditor and not purchase equity of obligors of debt in default are intended to prevent a bank holding company from acquiring assets in connection with a debt previously contracted the ownership of which is prohibited by the BHC Act or other provisions of law. The Board of Governors determined in the Board of Governors' final rule that these conditions are not related to defining the financial nature of the activity of acquiring debt in default. The condition requiring that the debt not be secured by shares of a bank or bank holding company was imposed to prevent the bank holding company from circumventing the BHC Act's requirement that a bank holding company obtain approval from the Board of Governors before acquiring control of another bank or bank holding company.[65] For these reasons, these conditions are not relevant for determining whether the activity is financial for purposes of Title I. Accordingly, the final rule provides that the activity of acquiring debt that is in default at the time of acquisition is a financial activity for purposes of determining whether a company is predominantly engaged in financial activities under Title II without reference to these conditions.

• Leasing

Leasing personal or real property, and acting as an agent, broker, or adviser for leasing personal or real property were determined to be closely related to banking by the Board of Governors.[66] Under the Board of Governors' regulations, permissible leasing must involve a lease that is on a nonoperating basis with an initial term of at least 90 days. In addition, leasing involving real property must have the effect of yielding a return that will compensate the lessor for not less than the lessor's full investment plus the estimated cost of financing the property over the term of the lease, and the property must have an estimated residual value that is no more than 25 percent of the acquisition cost of the property. The Board of Governors determined in the Board of Governors' final rule that these conditions serve to distinguish between the financial activity of leasing and the nonfinancial activities of real or personal property rental and real estate management.[67] As such, the final rule reflects these conditions in defining the activities of leasing and acting as an agent, broker, or adviser for personal or real property.

• Operating Nonbank Depository Institutions

The activity of owning, controlling, and operating depository institutions, including industrial banks, Morris Plan banks, industrial loan companies and savings associations that do not qualify as ''banks'' for purposes of the BHC Act was determined to be closely related to banking by the Board of Governors.[68] While the Board of Governors' regulations require that a thrift owned, controlled, or operated by a bank holding company be engaged only in deposit-taking activities and activities permissible for bank holding companies, the final rule does not include these conditions because they are inconsistent with section 201(b) of the Dodd-Frank Act, which provides that all revenues from the ownership of a depository institution shall be considered to be financial for purpose of Title II.

• Trust Company Functions

The activities performed by a trust company (including activities of a fiduciary, agency, or custodial nature) that is not a bank for purposes of section 2(c) of the BHC Act were determined to be closely related to banking by the Board of Governors.[69]

• Financial and Investment Advisory Activities

Acting as an investment or financial advisor to any person was determined to be closely related to banking by the Board of Governors.[70] The activity includes, without limitation, serving as a registered investment adviser to a registered investment company, including sponsoring, organizing, and managing a closed-end investment company; furnishing general economic information and advice, general economic statistical forecasting services, and industry studies; providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, leveraged buyouts, recapitalizations, capital structurings, financing transactions and similar transactions; and conducting financial feasibility studies; providing information, statistical forecasting, and advice with respect to any transaction in foreign exchange, swaps, and similar transactions, commodities, and any forward contract, option, future, option on a future, and similar instruments; providing educational courses and instructional materials to consumers on individual financial management matters; and providing tax-planning and tax-preparation services to any person.[71]

• Agency Transactional Services for Customer Investments

Providing agency transactional services, including providing securities

[62] Neither real estate brokerage nor real estate management is an activity that is financial in nature. *See* 12 U.S.C. 1843 note; Public Law 111–8, sec. 624 (Mar. 11, 2009).

[63] 12 CFR 225.28(b)(2)(vii).

[64] *See* 62 FR 9290, 9305 (February 28, 1997).

[65] *Id.*

[66] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(3).

[67] *See* 62 FR 9290, 9306 (February 28, 1997) (''These requirements were developed in the course of litigation regarding the leasing activities of national banks, and were relied on by the courts in distinguishing bank leasing activities from general property rental and real estate development businesses. The requirement that a lease be nonoperating is also a statutory requirement limiting the high residual value leasing activities of national banks.'')

[68] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(4).

[69] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(5).

[70] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(6).

[71] *Id.*

brokerage services, acting as a riskless principal, providing private placement services, and acting as a futures commission merchant were determined to be closely related to banking by the Board of Governors.[72]

The Board of Governors' Regulation Y imposes conditions on the manner in which a bank holding company may conduct securities brokerage services, act as riskless principal, provide private placement services, and act as a futures commission merchant. For instance, bank holding companies providing securities brokerage services under this authority are limited to buying and selling securities solely as agent for the account of customers and may not conduct securities underwriting or dealing activities. Bank holding companies providing private placement services under this authority may not purchase or repurchase for their own account the securities being placed or hold in inventory unsold portions of issues of those securities. Bank holding companies acting as riskless principal under this authority are subject to conditions with respect to bank-ineligible securities.

Each of these conditions was intended to prevent a bank holding company from engaging in securities underwriting or dealing activities in connection with the activities of securities brokerage, private placement, or riskless principal, which were impermissible for bank holding companies under the Glass-Steagall Act at the time the activities were authorized.[73] The fact that a firm may retain some portion of shares in connection with, for example, private placement activities, does not affect or negate the financial nature of private placement activities. Moreover, as described elsewhere, securities underwriting and dealing activities were subsequently determined by statute to be financial activities. Thus, the final rule adopts the Board of Governors' interpretation, as expressed in the Board of Governors' final rule, that the following activities are financial without the non-definitional conditions:

○ Providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services).

○ Buying and selling in the secondary market all types of securities on the order of customers as a ''riskless principal'' in a transaction in which the company purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer.

○ Acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 (1933 Act) and the rules of the Securities and Exchange Commission.

Under the Board of Governors' regulations, a bank holding company acting as a futures commission merchant must conduct the activity through a separately incorporated subsidiary, the contract must be traded on an exchange, and the parent bank holding company may not guarantee that subsidiary's liabilities. The Board of Governors' final rule does not reflect these conditions, as they were imposed for the prudential purpose of limiting the transmission of risk from these activities to an insured depository affiliate or the parent bank holding company.[74] Similarly, this final rule does not contain these conditions for purposes of Title II.

The Board of Governors' regulations also contain a broad provision authorizing a bank holding company to provide ''transactional services for customers involving any derivative or foreign exchange transaction that a bank holding company is permitted to conduct for its own account.''[75] Specifically, the Board of Governors' Regulation Y describes the activity as ''[p]roviding to customers as agent transactional services with respect to swaps and similar transactions, any transaction described in paragraph (b)(8) of this section, any transaction that is permissible for a state member bank, and any other transaction involving a forward contract, option, futures, option on a futures or similar contract (whether traded on an exchange or not) relating to a commodity that is traded on an exchange.''[76] In the FDIC's second NPR, the FDIC proposed removing the requirement that agent transactional services on certain commodity derivatives transactions be provided only with respect to a commodity that is traded on an exchange (regardless of whether the contract being traded is traded on an exchange) because the limitation was imposed for safety and soundness reasons. In light of comments received, the Board of Governors determined in its final rule that this condition, while serving a prudential role, also is part of the definition of the authorized activity because it prevents a bank holding company from engaging in the forward sale of commercial products. Because the condition distinguishes the financial activity of engaging in derivatives contracts from the commercial sale of assets, the final rule includes this condition.

• Investment Transactions as Principal

Engaging in investment transactions as principal, including underwriting and dealing in government obligations and money market instruments, investing and trading as principal in foreign exchange and derivatives, and buying and selling bullion were determined to be closely related to banking by the Board of Governors.[77] Under the Board of Governors' regulations, bank holding companies engaged in underwriting and dealing in government obligations and money market instruments are subject to the same limitations as would be applicable if the activity were performed by member banks.[78] The Board of Governors' final rule does not reflect this limitation because the Board of Governors determined that this condition was intended to prevent circumvention of the Glass-Steagall Act. It does not define the activity of engaging in investment transactions as principal and is, therefore, not relevant for determining whether the activity of underwriting and dealing in government obligations and money market instruments is financial for purposes of determining whether a firm is predominantly engaged in financial activities.[79]

Under the Board of Governors' regulations, engaging in derivatives

[72] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(7).

[73] *See* 62 FR 9290, 9307–9308 (February 28, 1997).

[74] *Id.* at 9309. (''The Board has determined that a . . . restriction that prohibits the parent bank holding company from guaranteeing or otherwise becoming liable for non-proprietary trades conducted by or through its FCM subsidiary . . . effectively addresses the Board's concern about a parent bank holding company's exposure to an exchange's or clearinghouse's loss sharing rules . . . [by protecting] the parent bank holding company from potential exposure from customer trades and open-ended contingent liability under loss sharing rules . . .'').

[75] *Id.* at 9310.

[76] 12 CFR 225.28(b)(7)(v). The Board of Governors' 1997 rulemaking describes this financial activity as permitting a bank holding company to ''. . . act as a broker with respect to forward contracts based on a financial or nonfinancial commodity that also serves as the basis for an exchange-traded futures contract. This permits a bank holding company to act as agent in a forward contract that involves the same commodities and assessment of risk that underlay the permissible FCM activities of bank holding companies without extending this authority to forward contracts for the delayed sale of commercial products (such as automobiles, consumer products, etc.) or real estate.'' *See* 62 FR 9290, 9311 (February 28, 1997).

[77] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(8).

[78] 12 CFR 225.28(b)(8)(i).

[79] 62 FR 9290, 9311 (February 28, 1997).

transactions is a financial activity provided that the derivative contract is not a bank-ineligible security, and either the asset underlying the contract is a bank permissible asset or the contract contains conditions designed to limit the potential that physical settlement would occur.[80]

In the FDIC's second NPR, the FDIC proposed to remove these conditions in defining derivatives activities that are financial activities. The Board of Governors received comments in response to the Board of Governors' second NPR that expressed the view that the conditions requiring cash settlement were necessary to distinguish between commercial activities involving physically-settled derivatives contracts and the types of financial derivative activities conducted by financial companies. The Board of Governors noted in its final rule that these conditions were originally imposed to reduce the potential that bank holding companies would become involved in, and bear the risks of, physical possession, transport, storage, and delivery of commodities and to ensure that the commodity derivatives business of a bank holding company is largely limited to acting as a financial intermediary in the facilitation of transactions for customers who use or produce commodities or are otherwise exposed to commodity price risk as part of their regular business.[81] In certain instances, the Board of Governors has determined that engaging in physically-settling commodities, physical commodity trading, energy tolling, and energy management services, are activities that are complementary to the financial activity of engaging as principal in commodity derivatives transactions.[82] Under section 4(k), complementary activities are those that, although not necessarily financial in nature, are so meaningfully connected to financial activities that they complement those financial activities.

The Board of Governors determined in its final rule that these conditions, while serving an important prudential role, are also part of the definition of the authorized activity because they distinguish these derivatives activities from similar derivatives activities that are not conducted as a financial intermediary. Thus, the final rule includes, as a financial activity for purposes of Title II, engaging as principal in forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal), nonfinancial asset, or group of assets, other than a bank-ineligible security[83] if: (i) A state member bank is authorized to invest in the asset underlying the contract;[84] (ii) the contract requires cash settlement; (iii) the contract allows for assignment, termination, or offset prior to delivery or expiration, and the company makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract, or receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset; or (iv) the contract does not allow for assignment, termination, or offset prior to delivery or expiration and is based on an asset for which futures contracts or options on futures contracts have been approved for trading on a U.S. contract market by the Commodity Futures Trading Commission, and the company makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract, or receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset.

Similarly, engaging as principal in forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on an index of a rate, a price, or the value of any financial asset, nonfinancial asset, or group of assets, is a financial activity under the Board of Governor's final rule only if the contract requires cash settlement. The final rule adopts this approach.

Additionally, investing and trading in foreign exchange is a financial activity under the Board of Governors' regulations and is thus included in both the Board of Governors' final rule and this final rule.

• Management Consulting and Counseling Activities

The Board of Governors has authorized management consulting as a permissible activity under several different authorities, each of which are encompassed within the cross-references contained in section 4(k). Providing management consulting advice on any matter to unaffiliated depository institutions and on any financial, economic, accounting, or audit matter to any other company (''financial management consulting services'') was determined to be closely related to banking by the Board of Governors.[85] Under the Board of Governors' regulations, bank holding companies that engage in financial management consulting services also are permitted to provide management consulting services generally to any company other than an unaffiliated depository institution, on any non-financial matter (''non-financial management consulting services''), provided at least 70 percent of the bank holding company's total annual revenue derived from all management consulting services is derived from financial management consulting services. The revenue limitation on providing non-financial management consulting services was designed to limit the involvement of bank holding companies in the provision of management consulting services on non-financial matters to nondepository institutions. The Board of Governors determined in its final rule that the limitations on the authority of bank holding companies to provide non-financial management consulting services does not change the nature of the permissible financial management consulting services done within those limits. Therefore, for purposes of the final rule, revenues derived from any management consulting services to a depository

[80] 12 CFR 225.28(b)(8)(ii)(B).

[81] *See* 68 FR 39807, 39808 (July 3, 2003).

[82] *See* Board of Governors letters regarding Bank of America Corporation (April 24, 2007), Credit Suisse Group (March 27, 2007), Fortis S.A./N.V. (September 29, 2006), and Wachovia Corporation (April 13, 2006); and Board orders regarding Royal Bank of Scotland Group plc, 94 Federal Reserve Bulletin C60 (2008), *Societe Generale,* 92 Federal Reserve Bulletin C113 (2006), *Deutsche Bank AG,* 91 Federal Reserve Bulletin C54 (2005), *JPMorgan Chase & Co.,* 91 Federal Reserve Bulletin C57 (2005); *Barclays Bank PLC,* 90 Federal Reserve Bulletin 511 (2004), *UBS AG,* 90 Federal Reserve Bulletin 215 (2004), and *Citigroup Inc.,* 89 Federal Reserve Bulletin 508 (2003).

[83] The Board of Governors' Regulation Y provides that a bank-ineligible security is any security that a state member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[84] State member banks may own, for example, investment grade corporate debt securities, U.S. government and municipal securities, foreign exchange, and certain precious metals. *See* 68 FR 39807, 39808, note 2 (July 3, 2003).

[85] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(9)(i). The Board of Governors' regulations provide that in conducting management consulting advice, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. This restriction was designed to limit a bank holding company's activities to providing advice rather than other services that may involve impermissible activities for bank holding companies. For purposes of Title II, revenues derived from providing management consulting services to a depository institution and any consulting on financial, economic, accounting, or audit matters to any company, will be considered financial regardless of other services the firm might provide. *See* 12 CFR 225.28(b)(9)(i), note 11.

institution and any consulting on financial, economic, accounting, or audit matters to any company, will be considered financial activities. In addition, because a bank holding company may derive up to 30 percent of its total annual revenue from non-financial management consulting services and still be considered to be engaged in financial management consulting activities under the Board of Governors' regulations, for purposes of the final rule, up to 30 percent of a nonbank company's revenues related to non-financial management consulting services will be included in the company's financial revenues.

The Board of Governors' regulations also prohibit a bank holding company providing financial management consulting services from owning or controlling more than 5 percent of the voting securities of a client institution or from having a management interlock.[86] These conditions were intended to ensure that a bank holding company does not effectively exercise control over a client company with which it has a management consulting contract, thereby circumventing the prohibitions and notice requirements applicable to bank holding companies seeking to acquire a controlling interest in a company engaged in nonbanking activities, and to prevent conflicts of interest.[87] The Board of Governors concluded in the its final rule that these conditions also serve a definitional role to distinguish management consulting from the actual conduct of the commercial activity in which a client firm is engaged. These conditions are also included in this final rule.

The authorization for these activities overlaps with, and is largely subsumed under, the broader authority to engage in management consulting services that was determined to be usual in connection with banking abroad, described below. Therefore, a company that engages in management consulting activities in a manner that does not comply with the conditions described above will be considered to be engaged in a financial activity if its management consulting activities are captured by the broader authority.

Providing employee benefits consulting services to employee benefit, compensation and insurance plans, including designing plans, assisting in the implementation of plans, providing administrative services to plans, and developing employee communication programs for plans was determined to be closely related to banking by the Board of Governors.[88] Providing career counseling services also was determined to be closely related to banking by the Board of Governors,[89] subject to the condition that the services must be provided to a financial organization and individuals currently employed by, or recently displaced from, a financial organization; to individuals who are seeking employment at a financial organization, or to individuals currently employed in or who are seeking positions in the finance, accounting, and audit departments of any company. The Board of Governors determined in the Board of Governors' final rule that these conditions are essential to this activity's being considered financial, and thus, this activity is included in the final rule with these conditions.

• Courier Services and Printing and Selling MICR-Encoded Items

The activity of providing courier services for: (i) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions, and (ii) audit and accounting media of a banking or financial nature and other business records and documents used in processing such media was determined to be closely related to banking by the Board of Governors.[90]

The activity of printing and selling checks and related documents, including corporate image checks, cash tickets, voucher checks, deposit slips, savings withdrawal packages, and other forms that require Magnetic Ink Character Recognition encoding also was determined to be closely related to banking by the Board of Governors.[91]

• Insurance Agency and Underwriting

Certain insurance activities, including activities related to the provision of credit insurance and insurance in small towns were determined to be closely related to banking by the Board of Governors.[92] Under the Board of Governors' regulations, bank holding companies may engage in these activities, subject to various conditions and limitations. The Board of Governors' final rule included these conditions and limitations, which are also reflected in this final rule. However, the authorization for these activities overlaps with, and is largely subsumed under, the general authority to engage in insurance underwriting and insurance agency activities discussed above. Therefore, a company that engages in insurance activities in a manner that does not comply with the conditions described above will be considered to be engaged in a financial activity if its insurance activities are captured by the general authority.

• Community Development Activities

The activities of making debt and equity investments in corporations or projects that are designed primarily to promote community welfare, and providing advisory and related services for such programs was determined to be closely related to banking by the Board of Governors.[93]

• Money Orders, Savings Bonds, and Traveler's Checks

Issuing and selling money orders and similar consumer-type payment instruments, selling U.S. savings bonds, and issuing traveler's checks were determined to be closely related to banking by the Board of Governors.[94]

• Data Processing

Providing data processing services and related activities with respect to financial, banking, or economic data was determined to be closely related to banking by the Board of Governors.[95] Under the Board of Governors' regulations, a bank holding company's data processing activities must comply with the conditions that the hardware provided in connection with these services be offered only in conjunction with software related to the processing, storage, and transmission of financial, banking, or economic data, and that all general purpose hardware provided with financial software not constitute more than 30 percent of the cost of any packaged offering.

The restrictions on providing hardware as part of providing financial data processing services were designed to limit the involvement of bank holding companies in the sale of data processing hardware, in particular, the sale of general purpose hardware. The Board of Governors determined in its final rule that the limitations on the authority of bank holding companies to provide hardware as part of financial data processing do not change the nature of the permissible financial data

[86] *See id. See also* 62 FR 9290, 9304, 9312 (February 28, 1997).

[87] *See* 62 FR 9290, 9304, 9312 (February 28, 1997).

[88] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(9)(ii).

[89] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(9)(iii).

[90] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(10)(i).

[91] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(10)(ii).

[92] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(11).

[93] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(12).

[94] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(13).

[95] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.28(b)(14).

processing done within those limits. For purposes of applying this final rule, only that portion of a firm's data processing that involves providing financial data processing along with related hardware up to the limits imposed on bank holding companies would be considered financial activities for purposes of Title II. The provision of hardware or nonfinancial data processing beyond those limits would not disqualify the financial data processing revenues or assets, but also would not be considered financial activities.

• Mutual Fund Administrative Services

Providing administrative and other services to mutual funds was determined to be closely related to banking by the Board of Governors.[96]

• Owning Shares of a Securities Exchange

Owning shares of a securities exchange was determined to be closely related to banking by the Board of Governors.[97]

• Certification Services

Acting as a certification authority for digital signatures and authenticating the identity of persons conducting financial and nonfinancial transactions was determined to be closely related to banking by the Board of Governors.[98]

• Providing Employment Histories

Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business was determined to be closely related to banking by the Board of Governors.[99]

• Check-Cashing and Wire-Transmission Services

Providing check-cashing and wire-transmission services was determined to be closely related to banking by the Board of Governors.[100]

• Postage, Vehicle Registration, Public Transportation Services

The activities of providing notary-public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public-transportation tickets and tokens, when offered in connection with banking services, were determined to be closely related to banking by the Board of Governors.[101]

• Real Estate Title Abstracting

Engaging in real estate title abstracting was determined to be closely related to banking by the Board of Governors.[102]

3. Financial Activities That Are Usual in Connection With Banking or Other Financial Operations Abroad

Section 4(k) defines as a financial activity ''engaging, in the United States, in any activity that: (i) A bank holding company may engage in outside of the United States; and (ii) the Board has determined pursuant to section 4(c)(13) of the BHC Act to be usual in connection with the transaction of banking or other financial operations abroad.'' [103] For purposes of this final rule, these activities are described below.

• Management Consulting Services

As noted previously, the Board of Governors has authorized management consulting as a permissible activity under several different authorities, contained in the cross-references in section 4(k). In addition to finding that management consulting services are closely related to banking for purposes of section 4(c)(8) of the BHC Act, as described earlier, the Board of Governors also determined that providing management consulting services is usual in connection with the transaction of banking or other financial operations abroad under section 4(c)(13) of the BHC Act.[104] Under the Board of Governors' regulations, a bank holding company may provide management consulting services, ''including to any person with respect to nonfinancial matters, so long as the management consulting services are advisory and do not allow the financial holding company to control the person to which the services are provided.'' [105]

In the FDIC's second NPR, the FDIC proposed to define this financial activity without regard to the condition that the bank holding company not control a client firm because this condition was imposed to prevent bank holding companies from circumventing the prohibitions and approval requirements in the BHC Act and to prevent conflicts of interest, as described previously. However, the Board of Governors has determined in the Board of Governors' final rule that this condition also serves a definitional role to distinguish management consulting from the actual conduct of the activities in which a client firm is engaged, which may be commercial in nature. Therefore, the FDIC has restored this condition to the definition of management consulting activities that will be considered financial for purposes of Title II.

• Travel Agency

Operating a travel agency in connection with providing financial services was determined to be usual in connection with the transaction of banking or other financial operations abroad.[106] This activity could be conducted in connection with any of the financial activities listed in this final rule, such as, for example, engaging in credit card activities.[107]

• Mutual Fund Activities

Organizing, sponsoring, and managing a mutual fund was determined to be usual in connection with the transaction of banking or other financial operations abroad.[108] Under the Board of Governor' regulations, bank holding companies are prohibited from exerting managerial control over the companies in which the mutual fund invests and must reduce their ownership to less than 25 percent of the equity of the mutual fund within one year of sponsoring the fund. The Board of Governors determined in the Board of Governors' final rule that these conditions do not define the essential nature of organizing, sponsoring, or managing a mutual fund. Rather, they were imposed to prevent circumvention of the investment restrictions in the BHC Act.[109] Therefore, they are not reflected in this final rule.

• Commercial Banking Activities

Engaging in commercial banking and other banking activities was determined to be usual in connection with the transaction of banking or other financial operations abroad.[110] Commercial banking activities include the ownership of a bank, as well as engaging in activities and making investments

[96] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.86(a)(2)(i).

[97] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.86(a)(2)(ii).

[98] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.86(a)(2)(iii).

[99] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.86(a)(2)(iv).

[100] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.86(a)(2)(v).

[101] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.86(a)(2)(vi).

[102] 12 U.S.C. 1843(k)(4)(F); 12 CFR 225.86(a)(2)(vii).

[103] 12 U.S.C. 1843(k)(4)(G).

[104] 12 U.S.C. 1843(k)(4)(G); 12 CFR 225.86(b)(1).

[105] 12 CFR 225.86(b)(1).

[106] 12 U.S.C. 1843(k)(4)(G); 12 CFR 225.86(b)(2).

[107] *See* 48 FR 56932, 56933 (December 27, 1983).

[108] 12 U.S.C. 1843(k)(4)(G); 12 CFR 225.86(b)(3).

[109] Furthermore, the Board of Governors' regulations governing a financial holding company's merchant banking activities authorizes the financial holding company to own all of the voting shares of a fund, but no more than 25 percent of the equity of the fund, which demonstrates that section 4(k) authorizes financial holding companies to control funds. The limitation on a financial holding company's equity interest in a fund was a prudential limitation imposed to limit the potential losses to which the financial holding company may be exposed.

[110] 12 CFR 211.10(a)(1).

permissible for a bank.[111] The purchase of liquidity instruments, such as U.S. government securities, is an activity that is permissible for a bank. A nonbank company's purchase of liquidity instruments would be included in the company's financial revenues.

4. Activities That Are Incidental to Financial Activities

• Finder Activities

Acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate has been determined to be an activity that is incidental to a financial activity by the Board of Governors under section 4(k). Under regulations issued by the Board of Governors, acting as a finder includes providing any or all of the following services through any means: (a) Identifying potential parties, making inquiries as to interest, introducing and referring potential parties to each other, and arranging contacts between and meetings of interested parties; (b) conveying between interested parties expressions of interest, bids, offers, orders and confirmations relating to a transaction; and (c) transmitting information concerning products and services to potential parties in connection with the activities listed in (a) and (b).[112]

The FDIC's second NPR proposed to define the finder activities discussed above as financial activities for purposes of Title II. Under the Board of Governors' Regulation Y, certain limitations are applicable to financial holding companies that engage in finder activities. These limitations include acting only as an intermediary between a buyer and a seller; and not binding any buyer or seller to the terms of a specific transaction or negotiating the terms of a specific transaction on behalf of a buyer or seller, except that (1) a finder may arrange for buyers to receive preferred terms from sellers so long as the terms are not negotiated as part of any individual transaction, are provided generally to customers or broad categories of customers, and are made available by the seller (and not by the company), and (2) a finder may establish rules of general applicability governing the use and operation of the finder service, including rules that govern the submission of bids and offers by buyers and sellers, the circumstances under which the finder service will match bids and offers, and the manner in which buyers and sellers may bind themselves to the terms of a specific transaction. The definition of ''financial activities'' in the FDIC's second NPR included these conditions in the description of finder activities.

Additionally, The Board of Governors' Regulation Y prohibits financial holding companies engaged in finder activities from (a) taking title to or acquiring or holding an ownership interest in any product or service offered or sold through the finder service; (b) providing distribution services for physical products or services offered or sold through the finder service; (c) owning or operating any real or personal property that is used for the purpose of manufacturing, storing, transporting, or assembling physical products offered or sold by third parties; (d) owning or operating any real or personal property that serves as a physical location for the physical purchase, sale or distribution of products or services offered or sold by third parties; or (e) engaging in any activity that would require the company to register or obtain a license as a real estate agent or broker under applicable law. Each of these conditions, with the exception of the prohibition on engaging in any activity that would require the company to register or obtain a license as a real estate agent or broker, was included in the FDIC's second NPR.

The prohibition on engaging in any activity that would require the company to register or obtain a license as a real estate agent or broker prevents bank holding companies from engaging in any real estate brokerage or property management activities. In the FDIC's second NPR, the FDIC proposed removing this condition from the description of finder activities in the definition of ''financial activities.''

The FDIC received no comments addressing the proposed inclusion of these conditions in the FDIC's second NPR. After reviewing the conditions contained in the definition of finder activities in the FDIC's second NPR and consulting with the Board of Governors, the FDIC has determined that the prohibition on engaging in any activity that would require the company to register or obtain a license as a real estate agent or broker is definitional. Consequently, this condition has been restored in the final rule. While neither real estate brokerage nor real estate management are financial activities under section 4(k), a company may engage in such activities and still be predominantly engaged in the financial activity of acting as a finder. Under the final rule, only revenues associated with this latter activity will be considered financial for purposes of determining whether a firm is predominantly engaged in financial activities.

• Other Activities

As described above, section 4(k) of the BHC Act authorizes the Board of Governors, in consultation with the Secretary, to determine in the future that additional activities are ''financial in nature or incidental thereto.''[113] One comment that was submitted in response to the Board of Governors' second NPR suggested that the universe of financial activities that should be included when calculating either the revenue or assets test[114] should be frozen as of the date on which the Act was passed and should not include additional activities that the Board of Governors, in consultation with the Secretary, determines in the future to be ''financial in nature or incidental thereto.'' This comment, which specifically addressed the Board of Governor's rulemakings under Title I, was also submitted to the FDIC in response to the FDIC's second NPR.

The activities listed in the final rule's definition of ''financial activities'' represent all of the activities that the Board of Governors has determined, to date, are financial in nature or incidental thereto for purposes of section 4(k), but without certain of the conditions that are imposed to ensure a bank holding company conducting the activity does so in a safe and sound manner or in compliance with other applicable law. In the interests of providing certainty, the FDIC believes that this comprehensive list is appropriate for determining if a company is predominantly engaged in financial activities for purposes of Title II, However, the FDIC also acknowledges that the definition of activities that are financial in nature or incidental thereto under section 4(k) is not static. If the Board of Governors determines in the future that other

[111] The Board of Governors' regulations implementing section 4(k) do not include this activity because the regulations were intended to identify the activities that may be conducted using the post-transaction notice procedures. In the preamble to the final rule implementing section 4(k), the Board of Governors expressed the view that ''the GLB Act did not authorize a financial holding company to conduct commercial and other banking activities in the United States by using the post-transaction notice procedure.'' 66 FR 400, 405 (January 3, 2001). The fact that post-transaction notice procedures are not available for commercial or other banking activities does not impact the conclusion that engaging in commercial and other banking activities is a financial activity for purposes of determining whether a firm is predominantly engaged in financial activities under Title II.

[112] 12 CFR 255.86(a)(1).

[113] *See* 12 U.S.C. 1834(k)(1)–(k)(3).

[114] 12 U.S.C. 5831(a)(6) provides that a company is predominantly engaged in financial activities for purposes of Title I if 85 percent or more of the company assets are related to, or revenues are derived from, activities that are financial in nature for purposes of section 4(k) of the BHC Act.

activities are financial in nature or incidental thereto for purposes of section 4(k), the FDIC can amend the definition of ''financial activities'' for purposes of Title II at that time. Accordingly, the provision incorporating section 4(k)(1) in the proposed definition of ''financial activities'' has been removed from the final rule.

3. Equity Investments in Unconsolidated Entities

The FDIC's first NPR included two rules of construction governing the application of the revenue tests to revenues attributable to a company's minority equity investments in unconsolidated entities. Under the first rule of construction, the FDIC proposed to attribute to a company all revenues derived from the company's equity investment in any unconsolidated company that itself is predominantly engaged in financial activities.[115] This rule of construction would have required companies to determine whether 85 percent or more of an investee company's revenues were attributable to financial activities for purposes of determining whether to treat revenues related to unconsolidated minority investments as financial.

Under the second rule of construction, the FDIC proposed to permit (but not require) a company to treat as nonfinancial the revenues attributable to a limited amount of *de minimis* equity investments in unconsolidated companies without having to separately determine whether the investee company is itself predominantly engaged in financial activities.[116]

First Rule of Construction: Unconsolidated Investments

Some of the comments received by the FDIC expressed the view that requiring a company to determine whether unconsolidated investee companies are themselves predominantly engaged in financial activities would be unduly burdensome. One such commenter noted that situations may exist where an investing company will not have sufficient access to information about the business operations of an investee company to perform the required analysis. Another commenter recommended that the FDIC revise the first rule of construction to provide that a company may treat revenues derived from an unconsolidated investment as not financial for purposes of Title II if the company is unable to obtain the relevant information about the source of revenues of the investee company, including from publicly available information, to perform the required analysis. One commenter requested that the FDIC accept determinations made by investing companies, provided such determinations are based on good-faith efforts. Another commenter expressed concern that the ''look-through'' feature of the first rule of construction would complicate the calculation of the 85-percent total consolidated revenue test for funds and other companies that generally make non-controlling unconsolidated investments. This commenter requested that the FDIC accept determinations made by investors so long as such determinations are based on good-faith efforts.

One commenter expressed concern that any securitization trust or special purpose fund that pools and services (or arranges for the servicing of) any number of assets classes could be considered ''predominantly engaged'' for purposes of the FDIC's first NPR. The commenter argued that such a rule would deter investment in asset-backed securities and securities issued by investment funds that are not debt in form, requesting that a third rule of construction be added that would permit a company to treat revenues it derives from any equity investments in an unconsolidated investee company as not derived from financial activities if such investee company is a securitization trust or a special purpose fund that directly or indirectly holds and services (or arranges for the servicing of) pools of specified asset classes.

The first rule of construction contained in the FDIC's first NPR mirrored the first rule of construction proposed in the Board of Governors' first NPR. The Board of Governors received comments asserting that a company's minority equity investments in an unconsolidated company should not be included in a company's financial revenues or assets when determining whether such company is predominantly engaged in financial activities for purposes of Title I unless the investment was made in connection with a merchant banking investment as defined in section 4(k) or was made in a subsidiary of the company. Some commenters also viewed as burdensome the requirement to determine whether an investee company is itself predominantly engaged in financial activities. In light of those comments, the Board of Governors eliminated the requirement that a company determine whether an unconsolidated company in which it has made an investment is predominantly engaged in financial activities in the Board of Governors' final rule. In its place, the Board of Governors' final rule provided that an investment in an unconsolidated company will be presumed to be made in the course of conducting a financial activity set forth in section 4(k). The Board of Governors' final rule also permits a company to rebut the presumption that an investment in a particular unconsolidated company is related to a financial activity by providing evidence to (i) the Financial Stability Oversight Council (''Council''), with respect to the definition of a nonbank financial company for purposes of Title I of the Act (other than with respect to the definition of a significant nonbank financial company), or (ii) the Board of Governors, with respect to the definition of a significant nonbank financial company, that the investment is not a merchant banking investment, an investment for others, an investment in a company engaged in activities that are financial in nature, or is not otherwise related to a financial activity. The preamble to the Board of Governors' final rule clarified that such evidence would be considered on a case-by-case basis to determine whether the revenues derived from, or the assets related to, a company's investment in an unconsolidated company should be considered to be financial revenues or assets of the company.

After reviewing the comments received and considering the Board of Governors' final rule, the FDIC also has eliminated the first rule of construction as proposed in the FDIC's first NPR. For purposes of the final rule, a company's revenues derived from an investment in an unconsolidated entity will be treated as revenues derived from a financial activity unless the recommending agencies or the Secretary, as applicable, determine otherwise based on information to the contrary that they have at the time that the recommendation and determination are made under section 203 of the Act. The FDIC believes that most companies that derive a significant portion of revenue from investments in unconsolidated companies (such as hedge funds, private equity funds, or mutual funds) generally hold those investments for purposes of resale, make those investments in connection with the activity of investing for others, or invest in companies engaged in financial activities. Such investments will typically be made in the course of conducting one of the financial activities listed in section 4(k) (e.g., (i) bona fide merchant banking

[115] *See* § 308.8(d)(1) of the FDIC's first NPR.

[116] *See* § 308.8(d)(2) of the FDIC's first NPR.

activity under section 4(k)(4)(H); (ii) an investment made for others as defined in section 4(k)(4)(A); or (iii) an investment in a company engaged in activities that are financial in nature). The FDIC also believes that this approach will reduce burden on companies by allowing them to determine whether they may be predominantly engaged in financial activities for purposes of Title II without having to determine whether an unconsolidated company in which it has invested is itself predominantly engaged in financial activities.

Unlike the rebuttable presumption contained within the Board of Governors' final rule, this final rule generally treats revenues derived from investments in unconsolidated entities as revenues derived from financial activities by definition. The FDIC believes that this approach is necessary given the nature of the orderly liquidation authority including, specifically, the need for expeditious action under Title II. Title II is intended to resolve in an orderly, yet expeditious manner, companies that are in default or in danger of default and whose failure could have serious adverse effects on the U.S. financial system. The determinations to be made by the recommending agencies and the Secretary necessarily must be made quickly if those serious adverse effects are to be avoided. It is important to note, in this regard, that Title II provides for expedited judicial review of any determination that a company is a ''financial company.'' For companies other than bank holding companies and nonbank financial companies supervised by the Board of Governors this review would likely include an examination of whether the company meets one of the revenue tests and is appropriately considered a financial company.

The FDIC believes that this approach would also address investments in securitization trusts and special purpose funds that directly or indirectly hold and service pools of specified asset classes because such investments would likely qualify as one or more of the activities listed in the definition of ''financial activities'' in the final rule. For this reason, the FDIC did not adopt an additional rule of construction to exempt such investments.

The final rule also clarifies that the FDIC's treatment of revenues derived from a company's investment in an unconsolidated company is not dependent on whether the investment would constitute a ''minority'' investment under applicable accounting standards. This approach is intended to address circumstances in which an investor holds more than a majority of an investee company's voting shares but has granted substantive participating rights or similar rights to minority shareholders and, therefore, does not have a controlling financial interest under applicable accounting standards.

Second Rule of Construction: De Minimis Investments

As noted above, the FDIC's first NPR contained a second rule of construction that would permit, but not require, a company to treat as nonfinancial the revenues attributable to investments in unconsolidated companies representing less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the unconsolidated company without having to separately determine whether those companies are themselves predominantly engaged in financial activities.[117] This rule of construction was subject to several conditions designed to limit the potential for these *de minimis* investments to substantially alter the financial character of the activities of a company.[118]

In light of the FDIC's modifications to the first rule of construction, the second rule of construction is no longer necessary and the FDIC has removed the second rule of construction from the final rule.

4. Appropriate Accounting Standards

''Applicable accounting standards'' was defined in the FDIC's first NPR to mean the accounting standards that a company uses in the ordinary course of business in preparing its consolidated financial statements, provided those standards are: (i) U.S. generally accepted accounting principles (''GAAP''); (ii) International Financial Reporting Standards (''IFRS''); or (iii) such other accounting standards that the FDIC determines to be appropriate.[119] In determining whether an accounting standard other than GAAP or IFRS is appropriate, various factors will be considered, including whether the accounting standard is used by the company in the ordinary course of its business in preparing its consolidated financial statements. Reliance on an accounting standard that the company uses in the ordinary course of business reduces the potential for companies to change the outcome of the 85 percent revenue test by changing the accounting standards used for these purposes.

One commenter requested that the FDIC provide in the final rule that, in all cases, the ''applicable accounting standards'' will be the standards ''utilized by the company in the ordinary course of business'' unless the accounting standards in question have been designated as inappropriate by the FDIC. One commenter noted that allowing companies to use their consolidated year-end financial statements prepared in accordance with GAAP, or its functional equivalent, as the basis for determining their total consolidated revenue, allows the FDIC to compare such amounts across a broad spectrum of companies. This commenter also noted that this approach would facilitate the ability of companies to determine whether they are financial companies for the purposes of the Act. The FDIC agrees that this methodology is likely to provide a transparent, practical, and comparable basis for determining such amounts across companies and, thus, should facilitate the ability of a company, the recommending agencies, and the Secretary to determine whether a company is a financial company for purposes of Title II. Moreover, allowing companies to use the year-end consolidated financial statements that they already prepare for financial reporting or other purposes should help reduce potential burden.

A number of commenters noted that insurance companies are not required by applicable insurance law or regulation to prepare financial statements in accordance with GAAP. Two such commenters suggested that certain insurance companies, including mutual and fraternal insurance companies, prepare their financial statements in accordance with Statutory Accounting Principles (''SAP''). One commenter noted that the rules governing SAP are developed by the National Association of Insurance

[117] *See* § 308.8(d)(2) of the FDIC's first NPR.

[118] Specifically, this rule of construction provided that a company may treat revenues derived from an equity investment by the company in an investee company as revenues not derived from activities that are financial in nature or incidental thereto (regardless of the type of activities conducted by the other company), if (i) the company owns less than five percent of any class of outstanding voting shares, and less than 25 percent of the total equity, of the investee company; (ii) the financial statements of the investee company are not consolidated with those of the company under applicable accounting standards; (iii) the company's investment in the investee company is not held in connection with the conduct of any financial activity (such as, for example, investment advisory activities or merchant banking investment activities) by the company or any of its subsidiaries; (iv) the investee company is not a bank, bank holding company, broker-dealer, insurance company, or other regulated financial institution; and (v) the aggregate amount of revenues treated as nonfinancial under the rule of construction in any year does not exceed five percent of the company's total consolidated financial revenues.

[119] *See* § 380.8(b)(3) of the FDIC's first NPR.

Commissioners, which promulgates comprehensive accounting guidelines that are then implemented under state law and state insurance regulations. This commenter also suggested that SAP-based accounting is generally more conservative than GAAP-based accounting. These commenters recommended that the final rule include, with respect to insurance companies, SAP under the definition of ''applicable accounting standards.''

To avoid unintended consequences that could arise as a result of differences between SAP and GAAP with respect to consolidation, section 380.8(b) in the final rule does not expressly list SAP within the definition of ''applicable accounting standards.'' Nonetheless, the FDIC believes that the use of SAP as an accounting standard may be appropriate in certain circumstances and that if such a circumstance occurs, it can be appropriately addressed under section 380.8(b)(1)(iii) of the final rule.[120] However, the final rule removes the reference to the FDIC in that provision. The reason for that change is that, consistent with section 203 of the Act, it is not solely the FDIC that will determine whether the use of any other standard is appropriate. Rather, it is the recommending agencies, for purposes of their evaluations, and the Secretary, for purposes of the Secretary's determination who will determine whether the use of any other standard is appropriate.

5. Timing of Determination

The final rule, like the FDIC's first NPR, provides flexibility, in appropriate circumstances, to consider whether a company meets the statutory definition of predominantly engaged in activities that are financial in nature or incidental thereto based on the full range of information that may be available concerning the company's activities (including information obtained from other Federal or state financial supervisors or agencies) at any time rather than only as reflected in the company's year-end consolidated financial statements.

For example, the FDIC notes that the mix of a company's revenues, as well as the risks the company could pose to the U.S. financial system, may change significantly and quickly as a result of various types of transactions or actions, such as a merger, consolidation, acquisition, establishment of a new business line, or the initiation of a new activity. Moreover, these transactions and actions may occur at any time during a company's fiscal year and, accordingly, the effects of the transactions or actions may not be reflected in the year-end consolidated financial statements of the company for several months.

The FDIC believes that the final rule appropriately takes into account the effect of changes in the nature or mix of a company's activities as a result of such transactions or actions where such changes may affect the determination of the Secretary as to whether the company is a financial company for purposes of the orderly liquidation authority under Title II.

III. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. This final rule does not involve any new collections of information pursuant to the Paperwork Reduction Act. Consequently, no information has been submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* generally requires an agency to consider whether a final rule will have a significant economic impact on a substantial number of small entities. The agency must prepare and publish a final regulatory flexibility analysis with respect to the potential significant economic impact. Pursuant to section 605(b) of the RFA, the final regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The FDIC has considered the potential impact of the final rule on small entities in accordance with the RFA. Pursuant to section 605 of the RFA, the FDIC certifies that the final rule will not have a significant impact on a substantial number of small entities. The final rule only establishes definitional criteria for calculating revenues to determine whether a company is ''predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto'' for purposes of determining whether a company is a ''financial company'' under Title II of the Dodd-Frank Act. Moreover, it does not subject any company to a Title II resolution.

Additionally, to be eligible to be designated as a ''covered financial company'' and subject to the orderly liquidation provisions of Title II, a company must satisfy, among other criteria, the definition of ''financial company.'' Importantly, a ''financial company'' is not automatically subject to the orderly liquidation authority provisions of Title II. Only a financial company for which a systemic risk determination has been made under section 203 of the Act is a ''covered financial company'' subject to the orderly liquidation authority under Title II. Under section 203(b) of the Act, a determination by the Secretary that a financial company satisfies the criteria for designation as a ''covered financial company'' requires, among other things, a determination that the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability in the United States. Although asset size may not be the only factor relevant to that determination, it is an important consideration. Under the regulations of the Small Business Administration (SBA), firms within the ''Finance and Insurance'' sector are considered ''small'' if they have asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[121] It is unlikely that a determination would be made that a financial company at or below these size thresholds is a ''covered financial company,'' given the above-referenced criterion that must be satisfied under Section 203(b). In addition, as described in the Supplementary Information section of this preamble, the FDIC has taken steps to reduce the potential burden of the final rule on companies that may be affected by the final rule.

One commenter expressed the view that although it is unlikely that companies with less than $175 million in assets would be subject to the orderly liquidation process under Title II, in the event that a money market mutual fund were determined to be a covered financial company, small businesses, municipal entities, and small non-profit organizations that invest in the fund would be face higher costs. The commenter asserted that the RFA requires the FDIC to perform a cost-benefit analysis of its proposed rules because the RFA applies even in those instances in which a regulation does not

[120] The ordering of the definitions listed in § 380.8(b) has been modified from the FDIC's first NPR. The final rule lists the definitions in alphabetical order.

[121] *See* 13 CFR 121.201.

directly apply to an entity, but directly affects it.[122]

The question of whether the RFA requires consideration of the indirect application of a rule has been considered by the courts, which have held that the RFA only requires an analysis of how a rule affects small entities that would be directly subject to its requirements.[123] As described above, the final rule establishes criteria for determining if a company is ''predominantly engaged in activities that are financial in nature or incidental thereto'' for purposes of Title II. The final rule does not impose requirements directly on any entity.[124] Moreover, as noted above, it is unlikely that a company with less than $175 million in assets would be a ''covered financial company'' under Title II. As such, the FDIC believes that the final rule will not have a significant impact on a substantial number of small entities.

The same commenter also asserted that the FDIC is required to perform a cost benefit analysis under Executive Order 13579. The Executive Order cited does not mandate that independent agencies such as the FDIC perform cost benefit analysis of their regulations. However, the FDIC takes seriously the importance of evaluating the burdens imposed by its rulemaking efforts. For example, the FDIC seeks to adopt final rules that faithfully reflect the statutory provisions and Congressional intent while minimizing regulatory burden. As described above, the FDIC considered the potential impact of the final rule on small entities and certified that the final rule will not have a significant impact on a substantial number of small entities. In addition, since the final rule does not involve any new collections of information, no PRA analysis is required.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), 5 U.S.C. 801 *et seq.* As required by the SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule will be reviewed.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, the FDIC has sought to present the final rule in a simple and straightforward manner.

Text of the Final Rule

List of Subjects in 12 CFR Part 380

Holding companies, Insurance companies.

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal Deposit Insurance Corporation amends Part 380 of Chapter III of Title 12, Code of Federal Regulations as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

■ 1. Revise the authority citation for part 380 to read as follows:

Authority: 12 U.S.C. 5389; 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D); 12 U.S.C. 5381(b).

■ 2. Add § 380.8 to read as follows:

§ 380.8 Predominantly engaged in activities that are financial or incidental thereto.

(a) For purposes of sections 201(a)(11) and 201(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act[1] (''Dodd-Frank Act'') and this part, a company is predominantly engaged in activities that the Board of Governors of the Federal Reserve System (''Board of Governors'') has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (''BHC Act'') (12 U.S.C. 1843(k)), if:

(1) At least 85 percent of the total consolidated revenues of such company (determined in accordance with applicable accounting standards) for either of its two most recently completed fiscal years were derived, directly or indirectly, from financial activities, or

(2) Based upon all of the relevant facts and circumstances, the consolidated revenues of the company from financial activities constitute 85 percent or more of the total consolidated revenues of the company.

(b) For purposes of paragraph (a) of this section, the following definitions apply:

(1) The term ''applicable accounting standards'' means the accounting standards utilized by the company in the ordinary course of business in preparing its consolidated financial statements, provided that those standards are:

(i) U.S. generally accepted accounting principles,

(ii) International Financial Reporting Standards, or

(iii) Such other accounting standards that are determined to be appropriate on a case-by-case basis.

(2) The terms ''broker'' and ''dealer'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

(3) The term ''financial activity'' means:

(i) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(ii) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any state.

(iii) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

[122] The commenter cited to *Aeronautical Repair Station Ass'n, Inc.* v. *FAA.,* 494 F.3d 161, 177 (D.C. Cir. 2007). In that case, the FAA regulation at issue required employees who performed certain functions ''directly or by contract (including by subcontract at any tier)'' to be subject to drug and alcohol testing. The commenter stated that the ''court rejected arguments that an RFA analysis was unnecessary because contractors of air carriers were not ''directly regulated'' and were not the ''targets'' of the regulation. The commenter asserted that the court held that contractors were ''subject to the proposed regulation'' for purposes of RFA even though the regulation was ''immediately addressed'' to the air carriers, because the regulations applied to employees of the air carriers. The contractors were ''directly affected and therefore regulated'' within the meaning of the RFA.

[123] *See Mid-Tex Elec. Coop* v. *FERC,* 773 F.2d 327 (DC Cir. 1985) and *American Trucking Ass'ns* v. *EPA,* 175 F.3d 1027, 1044 (DC Cir. 1999), *aff'd in part and rev'd in part on other ground, Whitman* v. *American Trucking Ass'ns,* 531 I/S/475 (2001). In *Mid-Tex,* the court rejected the argument that ''RFA is intended to apply to all rules that affect small entities, whether the small entities are directly regulated or not,'' and held that the RFA requires agencies to consider the ''economic impact'' of a regulation on ''a substantial number of small entities *that are subject to the requirements''* of the regulation. *See* 773 F.2d at 342 (emphasis added). The court further stated that ''Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small business in any stratum of the national economy.'' *See id.* At 343. The court in *Aeronautical Repair Station,* the case cited by the commenter, distinguished *Mid-Tex* and its progeny from the facts in that case, in which the regulations at issue ''expressly require[d] that the employees of contractors and subcontractors be tested'' for drug and alcohol use. *See* 494 F.3d at 177. For this reason, the court in *Aeronautical Repair Station* found that the rule at issue ''*impose[d] responsibilities directly on the contractors and subcontractors* and they [we]re therefore parties affected by and regulated by it.'' *See id.* (emphasis added).

[124] 12 U.S.C. 5383(b).

[1] 12 U.S.C. 5381(a)(11) and (b).

(iv) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(v) Underwriting, dealing in, or making a market in securities.

(vi) Engaging in any activity that the Board of Governors has determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, which include—

(A) Extending credit and servicing loans. Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for the company's account or for the account of others.

(B) Activities related to extending credit. Any activity usual in connection with making, acquiring, brokering or servicing loans or other extensions of credit, including the following activities—

(*1*) Real estate and personal property appraising. Performing appraisals of real estate and tangible and intangible personal property, including securities.

(*2*) Arranging commercial real estate equity financing. Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control, and risk of such a real estate project to one or more investors.

(*3*) Check-guaranty services. Authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services, and purchasing from the merchant validly authorized checks that are subsequently dishonored.

(*4*) Collection agency services. Collecting overdue accounts receivable, either retail or commercial.

(*5*) Credit bureau services. Maintaining information related to the credit history of consumers and providing the information to a credit grantor who is considering a borrower's application for credit or who has extended credit to the borrower.

(*6*) Asset management, servicing, and collection activities. Engaging under contract with a third party in asset management, servicing, and collection [2] of assets of a type that an insured depository institution may originate and own.

(*7*) Acquiring debt in default. Acquiring debt that is in default at the time of acquisition.

(*8*) Real estate settlement servicing. Providing real estate settlement services.[3]

(C) Leasing personal or real property. Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(*1*) The lease is on a nonoperating basis; [4]

(*2*) The initial term of the lease is at least 90 days; and

(*3*) In the case of leases involving real property:

(*i*) At the inception of the initial lease, the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease from rental payments, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial lease; and

(*ii*) The estimated residual value of property for purposes of paragraph (b)(2)(vi)(C)(*3*)(*i*) of this section shall not exceed 25 percent of the acquisition cost of the property to the lessor.

(D) Operating nonbank depository institutions—(*1*) Industrial banking. Owning, controlling, or operating an industrial bank, Morris Plan bank, or industrial loan company that is not a bank for purposes of the BHC Act.

(*2*) Operating savings associations. Owning, controlling, or operating a savings association.

(E) Trust company functions. Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law that is not a bank for purposes of section 2(c) of the BHC Act.

(F) Financial and investment advisory activities. Acting as investment or financial advisor to any person, including (without, in any way, limiting the foregoing):

(*1*) Serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(*2*) Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies;

(*3*) Providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, leveraged buyouts, recapitalizations, capital structurings, financing transactions and similar transactions, and conducting financial feasibility studies; [5]

(*4*) Providing information, statistical forecasting, and advice with respect to any transaction in foreign exchange, swaps, and similar transactions, commodities, and any forward contract, option, future, option on a future, and similar instruments;

(*5*) Providing educational courses, and instructional materials to consumers on individual financial management matters; and

(*6*) Providing tax-planning and tax-preparation services to any person.

(G) Agency transactional services for customer investments—(*1*) Securities brokerage. Providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services).

(*2*) Riskless principal transactions. Buying and selling in the secondary market all types of securities on the order of customers as a ''riskless principal'' to the extent of engaging in a transaction in which the company, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security for its own account to offset a contemporaneous sale to (or purchase from) the customer.

(*3*) Private placement services. Acting as agent for the private placement of securities in accordance with the requirements of the Securities Act of 1933 (''1933 Act'') and the rules of the Securities and Exchange Commission.

(*4*) Futures commission merchant. Acting as a futures commission merchant (''FCM'') for unaffiliated persons in the execution, clearance, or execution and clearance of any futures

[2] Asset management services include acting as agent in the liquidation or sale of loans and collateral for loans, including real estate and other assets acquired through foreclosure or in satisfaction of debts previously contracted.

[3] For purposes of this section, real estate settlement services do not include providing title insurance as principal, agent, or broker.

[4] The requirement that the lease is on a nonoperating basis means that the company does not, directly or indirectly, engage in operating, servicing, maintaining, or repairing leased property during the lease term. For purposes of the leasing of automobiles, the requirement that the lease is on a nonoperating basis means that the company does not, directly or indirectly: (1) Provide servicing, repair, or maintenance of the leased vehicle during the lease term; (2) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (3) provide the loan of an automobile during servicing of the leased vehicle; (4) purchase insurance for the lessee; or (5) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

[5] Feasibility studies do not include assisting management with the planning or marketing for a given project or providing general operational or management advice.

contract and option on a futures contract.

(*5*) Other transactional services. Providing to customers as agent transactional services with respect to swaps and similar transactions, any transaction described in paragraph (b)(2)(vi)(H) of this section, any transaction that is permissible for a state member bank, and any other transaction involving a forward contract, option, futures, option on a futures or similar contract (whether traded on an exchange or not) relating to a commodity that is traded on an exchange.

(H) Investment transactions as principal—(*1*) Underwriting and dealing in government obligations and money market instruments. Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including banker's acceptances and certificates of deposit.

(*2*) Investing and trading activities. Engaging as principal in:

(*i*) Foreign exchange;

(*ii*) Forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal), nonfinancial asset, or group of assets, other than a bank-ineligible security,[6] if: a state member bank is authorized to invest in the asset underlying the contract; the contract requires cash settlement; the contract allows for assignment, termination, or offset prior to delivery or expiration, and the company makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract, or receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset; or the contract does not allow for assignment, termination, or offset prior to delivery or expiration and is based on an asset for which futures contracts or options on futures contracts have been approved for trading on a U.S. contract market by the Commodity Futures Trading Commission, and the company makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract, or receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset.

(*iii*) Forward contracts, options,[7] futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on an index of a rate, a price, or the value of any financial asset, nonfinancial asset, or group of assets, if the contract requires cash settlement.

(*3*) Buying and selling bullion, and related activities. Buying, selling and storing bars, rounds, bullion, and coins of gold, silver, platinum, palladium, copper, and any other metal for the company's own account and the account of others, and providing incidental services such as arranging for storage, safe custody, assaying, and shipment.

(I) Management consulting and counseling activities—(*1*) Management consulting. Providing management consulting advice:[8]

(*i*) On any matter to unaffiliated depository institutions, including commercial banks, savings and loan associations, savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, industrial loan companies, trust companies, and branches or agencies of foreign banks;

(*ii*) On any financial, economic, accounting, or audit matter to any other company.

(*2*) Revenues derived from a company's management consulting activities under this paragraph (b)(3)(vi) will not be considered to be financial if the company:

(*i*) Owns or controls, directly or indirectly, more than 5 percent of the voting securities of the client institution; or

(*ii*) Allows a management official, as defined in 12 CFR 212.2(h), of the company or any of its affiliates to serve as a management official of the client institution, except where such interlocking relationship is permitted pursuant to an exemption permitted by the Board of Governors.

(*3*) Up to 30 percent of a nonbank company's revenues related to management consulting services provided to customers not described in paragraph (b)(3)(vi)(I)(*1*)(*i*) or regarding matters not described in paragraph (b)(3)(vi)(I)(*1*)(*ii*) of this section will be included in the company's financial revenues.

(*4*) Employee benefits consulting services. Providing consulting services to employee benefit, compensation and insurance plans, including designing plans, assisting in the implementation of plans, providing administrative services to plans, and developing employee communication programs for plans.

(*5*) Career counseling services. Providing career counseling services to:

(*i*) A financial organization[9] and individuals currently employed by, or recently displaced from, a financial organization;

(*ii*) Individuals who are seeking employment at a financial organization; and

(*iii*) Individuals who are currently employed in or who seek positions in the finance, accounting, and audit departments of any company.

(J) Support services—(*1*) Courier services. Providing courier services for:

(*i*) Checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(*ii*) Audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[10]

(*2*) Printing and selling MICR-encoded items. Printing and selling checks and related documents, including corporate image checks, cash tickets, voucher checks, deposit slips, savings withdrawal packages, and other forms that require Magnetic Ink Character Recognition (MICR) encoding.

(K) Insurance agency and underwriting—(*1*) Credit insurance. Acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is:

[6] A bank-ineligible security is any security that a state member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

[7] This reference does not include acting as a dealer in options based on indices of bank-ineligible securities when the options are traded on securities exchanges. These options are securities for purposes of the federal securities laws and bank-ineligible securities for purposes of section 20 of the Glass-Steagall Act, 12 U.S.C. 337. Similarly, this reference does not include acting as a dealer in any other instrument that is a bank-ineligible security for purposes of section 20. Bank holding companies that deal in these instruments must do so in accordance with the Board of Governor's orders on dealing in bank-ineligible securities.

[8] In performing this activity, companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board of Governors' interpretation of bank management consulting advice (12 CFR 225.131).

[9] Financial organization refers to insured depository institution holding companies and their subsidiaries, other than nonbanking affiliates of diversified savings and loan holding companies that engage in activities not permissible under section 4(c)(8) of the BHC Act (12 U.S.C. 1842(c)(8)).

[10] See also the Board of Governors' interpretation on courier activities (12 CFR 225.129), which sets forth conditions for company entry into the activity.

(*i*) Directly related to an extension of credit by the company or any of its subsidiaries; and

(*ii*) Limited to ensuring the repayment of the outstanding balance due on the extension of credit [11] in the event of the death, disability, or involuntary unemployment of the debtor.

(*2*) Finance company subsidiary. Acting as agent or broker for insurance directly related to an extension of credit by a finance company [12] that is a subsidiary of a company, if:

(*i*) The insurance is limited to ensuring repayment of the outstanding balance on such extension of credit in the event of loss or damage to any property used as collateral for the extension of credit; and

(*ii*) The extension of credit is not more than $10,000, or $25,000 if it is to finance the purchase of a residential manufactured home [13] and the credit is secured by the home; and

(*iii*) The applicant commits to notify borrowers in writing that: they are not required to purchase such insurance from the applicant; such insurance does not insure any interest of the borrower in the collateral; and the applicant will accept more comprehensive property insurance in place of such single-interest insurance.

(*3*) Insurance in small towns. Engaging in any insurance agency activity in a place where the company or a subsidiary has a lending office and that:

(*i*) Has a population not exceeding 5,000 (as shown in the preceding decennial census); or

(*ii*) Has inadequate insurance agency facilities, as determined by the Board of Governors, after notice and opportunity for hearing.

(*4*) Insurance-agency activities conducted on May 1, 1982. Engaging in any specific insurance-agency activity [14] if the company, or subsidiary conducting the specific activity, conducted such activity on May 1, 1982, or received approval from the Board of Governors to conduct such activity on or before May 1, 1982.[15] Revenues derived from a company's specific insurance agency activity under this clause will be considered financial only if the company:

(*i*) Engages in such specific insurance agency activity only at locations: in the state in which the company has its principal place of business (as defined in 12 U.S.C. 1842(d)); in any state or states immediately adjacent to such state; and in any state in which the specific insurance-agency activity was conducted (or was approved to be conducted) by such company or subsidiary thereof or by any other subsidiary of such company on May 1, 1982; and

(*ii*) Provides other insurance coverages that may become available after May 1, 1982, so long as those coverages insure against the types of risks as (or are otherwise functionally equivalent to) coverages sold or approved to be sold on May 1, 1982, by the company or subsidiary.

(*5*) Supervision of retail insurance agents. Supervising on behalf of insurance underwriters the activities of retail insurance agents who sell:

(*i*) Fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the company or its subsidiaries; and

(*ii*) Group insurance that protects the employees of the company or its subsidiaries.

(*6*) Small companies. Engaging in any insurance-agency activity if the company has total consolidated assets of $50 million or less. Revenues derived from a company's insurance-agency activities under this paragraph will be considered financial only if the company does not engage in the sale of life insurance or annuities except as provided in paragraphs (b)(3)(vi)(K)(*1*) and (*3*) of this section, and does not continue to engage in insurance-agency activities pursuant to this provision more than 90 days after the end of the quarterly reporting period in which total assets of the company and its subsidiaries exceed $50 million.

(*7*) Insurance-agency activities conducted before 1971. Engaging in any insurance-agency activity performed at any location in the United States directly or indirectly by a company that was engaged in insurance-agency activities prior to January 1, 1971, as a consequence of approval by the Board of Governors prior to January 1, 1971.

(L) Community development activities —(*1*) Financing and investment activities. Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(*2*) Advisory activities. Providing advisory and related services for programs designed primarily to promote community welfare.

(M) Money orders, savings bonds, and traveler's checks. The issuance and sale at retail of money orders and similar consumer-type payment instruments; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(N) Data processing.

(1) Providing data processing, data storage and data transmission services, facilities (including data processing, data storage and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or databases by any technological means, if the data to be processed, stored or furnished are financial, banking or economic.

(*2*) Up to 30 percent of a nonbank company's revenues related to providing general purpose hardware in connection with providing data processing products or services described in (b)(2)(vi)(N)(*1*) of this section will be included in the company's financial revenues.

(O) Administrative services. Providing administrative and other services to mutual funds.

(P) Securities exchange. Owning shares of a securities exchange.

(Q) Certification authority. Acting as a certification authority for digital signatures and authenticating the identity of persons conducting financial and nonfinancial transactions.

(R) Employment histories. Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business.

(S) Check cashing and wire transmission. Check cashing and wire transmission services.

[11] Extension of credit includes direct loans to borrowers, loans purchased from other lenders, and leases of real or personal property so long as the leases are nonoperating and full-payout leases that meet the requirements of paragraph (b)(2)(vi)(C) of this section.

[12] Finance company includes all non-deposit-taking financial institutions that engage in a significant degree of consumer lending (excluding lending secured by first mortgages) and all financial institutions specifically defined by individual states as finance companies and that engage in a significant degree of consumer lending.

[13] These limitations increase at the end of each calendar year, beginning with 1982, by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

[14] Nothing contained in this provision precludes a subsidiary that is authorized to engage in a specific insurance-agency activity under this clause from continuing to engage in the particular activity after merger with an affiliate, if the merger is for legitimate business purposes.

[15] For the purposes of this paragraph, activities engaged in on May 1, 1982, include activities carried on subsequently as the result of an application to engage in such activities pending before the Board of Governors on May 1, 1982, and approved subsequently by the Board of Governors or as the result of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition.

(T) Services offered in connection with banking services. In connection with offering banking services, providing notary public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public transportation tickets and tokens.

(U) Real estate title abstracting.

(vii) Engaging, in the United States, in any activity that a bank holding company may engage in outside of the United States; and the Board has determined, under regulations prescribed or interpretations issued pursuant to section 4(c)(13) of the BHC Act of 1956 (12 U.S.C. 1843(c)(13)) to be usual in connection with the transaction of banking or other financial operations abroad. Those activities include—

(A) Providing management consulting services, including to any person with respect to nonfinancial matters, so long as the management consulting services are advisory and do not allow the company to control the person to which the services are provided.

(B) Operating a travel agency in connection with financial services.

(C) Organizing, sponsoring, and managing a mutual fund.

(D) Commercial banking and other banking activities.

(viii) (A) Acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate, including providing any or all of the following services through any means—

(*1*) Identifying potential parties, making inquiries as to interest, introducing, and referring potential parties to each other, and arranging contacts between and meetings of interested parties;

(*2*) Conveying between interested parties expressions of interest, bids, offers, orders and confirmations relating to a transaction; and

(*3*) Transmitting information conveying products and services to potential parties in connection with the activities described paragraphs (b)(3)(viii)(A)(*1*) and (*2*) of this section.

(B) The following are examples of finder services when done in accordance with paragraphs (b)(3)(viii)(C)–(D) of this section. These examples are not exclusive.

(*1*) Hosting an electronic marketplace on the company's Internet Web site by providing hypertext or similar links to the Web sites of third party buyers or sellers.

(*2*) Hosting on the company's servers the Internet Web site of—

(*i*) A buyer (or seller) that provides information concerning the buyer (or seller) and the products or services it seeks to buy (or sell) and allows sellers (or buyers) to submit expressions of interest, bids, offers, orders and confirmations relating to such products or services; or

(*ii*) A government or government agency that provides the information concerning the services or benefits made available by government or government agency, assists persons in completing applications to receive such services or benefits from the government or agency, and allows persons to transmit their applications for services or benefits to the government or agency.

(*3*) Operating an Internet Web site that allows multiple buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counterparties for transactions, aggregate orders for goods or services with those made by other parties, and enter into transactions between themselves.

(*4*) Operating a telephone call center that provides permissible finder services.

(C) To be a finder service for purposes of this section, the company providing the service must comply with the following limitations.

(*1*) A company providing the service may act only as an intermediary between a buyer and a seller.

(*2*) A company providing the service may not bind any buyer or seller to the terms of a specific transaction or negotiate the terms of a specific transaction on behalf of a buyer or seller, except that the company may—

(*i*) Arrange for buyers to receive preferred terms from sellers so long as the terms are not negotiated as part of any individual transaction, are provided generally to customers or broad categories of customers, and are made available by the seller (and not by the company); and

(*ii*) Establish rules of general applicability governing the use and operation of the finder service, including rules that govern the submission of bids and offers by buyers and sellers that use the finder service and the circumstances under which the finder service will match bids and offers submitted by buyers and sellers, and govern the manner in which buyers and sellers may bind themselves to the terms of a specific transaction.

(*3*) Services provided by a company will not be considered finder services if the company providing the service—

(*i*) Takes title to or acquires or holds an ownership interest in any product or service offered or sold through the finder service;

(*ii*) Provides distribution services for physical products or services offered or sold through the finder service;

(*iii*) Owns or operates any real or personal property that is used for the purpose of manufacturing, storing, transporting, or assembling physical products offered or sold by third parties; or

(*iv*) Owns or operates any real or personal property that serves as a physical location for the physical purchase, sale or distribution of products or services offered or sold by third parties.

(D) Services provided by a company will not be considered finder services if the company providing such services engages in any activity that would require the company to register or obtain a license as a real estate agent or broker under applicable law.

(E) To be a finder service for purposes of this section, a company providing the service must distinguish the products and services offered by the company from those offered by a third party through the finder service.

(ix) Directly, or indirectly acquiring or controlling, whether as principal, on behalf of one or more entities, or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not financial in nature as defined in this section if:

(A) Such shares, assets, or ownership interests are acquired and held as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(B) Such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in paragraph (b)(3)(ix)(A) of this section; and

(C) During the period such shares, assets, or ownership interests are held, the company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

(x) Directly or indirectly acquiring or controlling, whether as principal, on behalf of one or more entities, or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust

certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity engaged in any activity not financial in nature as defined in this section if—

(A) Such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(B) Such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(C) During the period such shares, assets, or ownership interests are held, the company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

(xi) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(xii) Providing any device or other instrumentality for transferring money or other financial assets.

(xiii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(xiv) Ownership or control of one or more depository institutions.

(4) The term ''recommending agencies'' means:

(i) The Board of Governors and the Securities and Exchange Commission in consultation with the FDIC, for a company;

(A) That is a broker or a dealer; or

(B) Whose largest U.S. subsidiary is a broker or a dealer;

(ii) The Board of Governors and the Director of the Federal Insurance Office in consultation with the FDIC, for a company that is an ''insurance company'', or whose largest U.S. subsidiary is an insurance company, as that term is defined in section 201(a)(13) of the Dodd-Frank Act; [16] and

(iii) The Board of Governors and the FDIC, for any other company.

(5) The term ''total consolidated revenues'' means the total gross revenues of the company and all entities subject to consolidation by the company for a fiscal year.

(c) *Effect of other authority.* Any activity described in paragraph (b)(2) of this section is considered financial in nature or incidental thereto for purposes of this section regardless of whether—

(1) A bank holding company (including a financial holding company or a foreign bank) may be authorized to engage in the activity, or own or control shares of a company engaged in such activity, under any other provisions of the BHC Act or other Federal law including, but not limited to, section 4(a)(2), section 4(c)(5), section 4(c)(6), section 4(c)(7), section 4(c)(9), or section 4(c)(13) of the BHC Act (12 U.S.C. 1843(a)(2), (c)(5), (c)(6), (c)(7), (c)(9), or (c)(13)) and the Board of Governors' implementing regulations; or

(2) Other provisions of Federal or state law or regulations prohibit, restrict, or otherwise place conditions on the conduct of the activity by a bank holding company (including a financial holding company or foreign bank) or bank holding companies generally.

(d) *Rule of construction.* Revenues derived from an investment by the company in an entity whose financial statements are not consolidated with those of the company will be treated as revenues derived from financial activities, unless such treatment is not appropriate based on information that the recommending agencies or the Secretary, have at the time a written recommendation or determination is made under section 203 of the Dodd-Frank Act.

Dated at Washington, DC, this 4th day of June, 2013.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–13595 Filed 6–7–13; 8:45 am]

BILLING CODE 6714–01–P

[16] 12 U.S.C. 5381(a)(13).

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0026, FRL–9820–4]

Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a State Implementation Plan (SIP) submitted by the State of Wyoming on January 12, 2011, that addresses regional haze. This SIP revision was submitted to address the requirements of the Clean Air Act (CAA or ''the Act'') and our rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is taking this action pursuant to section 110 of the CAA.

EPA is also proposing a Federal Implementation Plan (FIP) to address the deficiencies identified in our proposed partial disapproval of Wyoming's regional haze SIP. In lieu of our proposed FIP, or a portion thereof, we will propose approval of a SIP revision as expeditiously as practicable if the State submits such a revision and the revision matches the terms of our proposed FIP. We will also review and take action on any regional haze SIP submitted by the state to determine whether such SIP is approvable, regardless of whether or not its terms match those of the FIP. We encourage the State to submit a SIP revision to replace the FIP, either before or after our final action.

DATES: *Comments:* Written comments must be received at the address below on or before August 9, 2013. *Public Hearing:* A public hearing for this proposal is scheduled to be held on Monday, June 24, 2013, at the Hershchler Building, Room 1699, 122 W. 25th St., Cheyenne, Wyoming 82002. The public hearing will be held from 1 p.m. until 5 p.m., and again from 6 p.m. until 8 p.m.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0026, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Email: r8airrulemakings@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0026. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov*, 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 instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

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

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

ii. The initials *AFRC* mean or refer to air-fuel ratio controls.

iii. The initials *BART* mean or refer to Best Available Retrofit Technology.

iv. The initials *CAMx* mean or refer to Comprehensive Air Quality Model.

v. The initials *CMAQ* mean or refer to Community Multi-Scale Air Quality modeling system.

vi. The initials *CEMS* mean or refer to continuous emission monitoring systems.

vii. The initials *EC* mean or refer to elemental carbon.

viii. The initials *EGUs* mean or refer to Electric Generating Units.

ix. The initials *EGR* mean or refer to exhaust gas recirculation.

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

xi. The initials *ESP* mean or refer to electrostatic precipitator.

xii. The initials *FGC* mean or refer to flue gas conditioning.

xiii. The initials *FGD* mean or refer to flue gas desulfurization.

xiv. The initials *FGR* mean or refer to external flue gas recirculation.

xv. The initials *FIP* mean or refer to Federal Implementation Plan.

xvi. The initials *FLMs* mean or refer to Federal Land Managers.

xvii. The initials *FS* mean or refer to the U.S. Forest Service.

xviii. The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

xix. The initials *IWAQM* mean or refer to Interagency Workgroup on Air Quality Modeling.

xx. The initials *LEC* mean or refer to low-emission combustion.

xxi. The initials *LNB* mean or refer to low NO_X burner.

xxii. The initials *LTS* mean or refer to the long-term strategy.

xxiii. The initials *MW* mean or refer to megawatts.

xxiv. The initials NH_3 mean or refer to ammonia.

xxv. The initials NO_X mean or refer to nitrogen oxides.

xxvi. The initials *NPS* mean or refer to National Park Service.

xxvii. The initials *OC* mean or refer to organic carbon.

xxviii. The initials *OFA* mean or refer to overfire air.

xxix. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

xxx. The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xxxi. The initials *PSAT* mean or refer to Particle Source Apportionment Technology.

xxxii. The initials *PSD* mean or refer to Prevention of Signification Deterioration.

xxxiii. The initials *RAVI* mean or refer to Reasonably Attributable Visibility Impairment.

xxxiv. The initials *RHR* mean or refer to the Regional Haze Rule.

xxxv. The initials *RMC* mean or refer to the Regional Modeling Center at the University of California Riverside.

xxxvi. The initials *RPGs* mean or refer to Reasonable Progress Goals.

xxxvii. The initials *RPOs* mean or refer to regional planning organizations.

xxxviii. The initials *SCR* mean or refer to selective catalytic reduction.

xxxix. The initials *SIP* mean or refer to State Implementation Plan.

xl. The initials *SNCR* mean or refer to selective non-catalytic reduction.

xli. The initials SO_2 mean or refer to sulfur dioxide.

xlii. The initials *SOFA* mean or refer to separated overfire air.

xliii. The initials *TSD* mean or refer to Technical Support Document.

xliv. The initials *ULNB* mean or refer to ultra-low NO_X burners.

xlv. The initials *URP* mean or refer to Uniform Rate of Progress.

xlvi. The initials *VOC* mean or refer to volatile organic compounds.

xlvii. The initials *WAQSR* mean or refer to Wyoming Air Quality Standards and Regulations.

xlviii. The initials *WEP* mean or refer to Weighted Emissions Potential.

xlix. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

l. The words *Wyoming* and *State* mean the State of Wyoming.

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I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim 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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. EPA's Prior Action

We signed a notice of proposed rulemaking on May 15, 2012, and it was published in the **Federal Register** on June 4, 2012 (77 FR 33022).

In our proposal, we proposed to disapprove the following:

- The State's nitrogen oxides (NO_X) best available retrofit technology (BART) determinations for PacifiCorp Dave Johnston Unit 3, PacifiCorp Jim Bridger Units 1 and 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Station Units 1, 2, and 3.
- The State's NO_X reasonable progress determination for PacifiCorp Dave Johnston Units 1 and 2.
- The State's Reasonable Progress Goals (RPGs).
- The State's monitoring, recordkeeping, and reporting requirements in Chapter 6.4 of the SIP.
- Portions of the State's long-term strategy (LTS) that rely on or reflect aspects of the regional haze SIP that we are disapproving.
- The State's SIP because it does not contain the necessary provisions to meet the requirements for the coordination of the review of the reasonably attributable visibility impairment (RAVI) and the regional haze LTS.

We proposed to approve the remaining aspects of the State's January 12, 2011 SIP submittal. We also sought comment on two alternative proposals related to the State's NO_X BART determination for PacifiCorp Jim Bridger Units 1 and 2.

We proposed the promulgation of a FIP to address the deficiencies in the Wyoming regional haze SIP that we identified in the proposal. The proposed FIP included the following elements:

- NO_X BART determinations and limits for PacifiCorp Dave Johnston Unit 3, PacifiCorp Jim Bridger Units 1 and 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Station Units 1, 2, and 3.
- NO_X reasonable progress determination and limits for PacifiCorp Dave Johnston Units 1 and 2.
- RPGs consistent with the SIP limits proposed for approval and the proposed FIP limits.
- Monitoring, recordkeeping, and reporting requirements applicable to all BART and reasonable progress sources for which there is a SIP or FIP emissions limit.
- LTS elements pertaining to emission limits and compliance schedules for the proposed BART and reasonable progress FIP emission limits.
- Provisions to ensure the coordination of the RAVI and regional haze LTS.

In lieu of our proposed FIP, or a portion thereof, we stated that we would propose approval of a SIP revision if the State submits such a revision and the revision matches the terms of our proposed FIP. We encouraged the State to submit a SIP revision to replace the FIP, either before or after our final action.

We requested comments on all aspects of our proposed action and provided a 60-day comment period, with the comment period closing on August 3, 2012. We also held two public hearings. The public hearings were held on June 26, 2012, in Cheyenne, Wyoming and June 28, 2012, in Rock Springs, Wyoming.

The Conservation Organizations [1] and the National Park Service submitted comments during the public comment period pertaining to, among other things, the cost analyses that the State relied upon in its SIP and that EPA subsequently relied on to make its proposed rulemaking decision. The commenters asserted that the State overestimated the costs for some control technologies and underestimated the costs for other control technologies. Based on our review of these comments and upon further review of the State's cost and visibility analyses, we determined that the State's analyses are flawed in several respects and are therefore inconsistent with the BART Guidelines and statutory requirements, as discussed further in this notice. As a result, EPA conducted its own cost analyses for the BART and reasonable progress electric generating units (EGUs), and also revised its modeling of the visibility improvement for these sources in order to be comparable to the revised costs analyses as explained in section V.II.C.3. The revised costs and visibility modeling are explained in further detail in section VII.C.3. Because we have developed new cost and visibility improvement modeling analyses, we are re-proposing action on Wyoming's SIP in order to give the public the opportunity to comment on our updated cost and visibility analyses and our proposed determinations based on this new information.

III. Overview of Proposed Actions

EPA is proposing to partially approve and partially disapprove a regional haze SIP submitted by the State of Wyoming on January 12, 2011. Specifically, we are proposing to disapprove the following:

- The State's NO_X BART determinations for PacifiCorp Dave Johnston Units 3 and 4, PacifiCorp Naughton Units 1 and 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3.
- The State's NO_X reasonable progress determinations for PacifiCorp Dave Johnston Units 1 and 2.
- Wyoming's RPGs.
- The State's monitoring, recordkeeping, and reporting requirements in Chapter 6.4 of the SIP.
- Portions of the State's LTS that rely on or reflect other aspects of the regional haze SIP.
- The provisions necessary to meet the requirements for the coordination of the review of the RAVI and the regional haze LTS.

We are proposing to approve the remaining aspects of the State's January 12, 2011SIP submittal. However, we are also seeking comment on an alternative proposal, related to the State's NO_X BART determinations, for PacifiCorp Jim Bridger Units 1 and 2, that would

[1] The Conservation Organizations refers to comments submitted on behalf of Powder River Basin Resource Council, Wyoming Outdoor Council, Greater Yellowstone Coalition, Sierra Club, National Parks Conservation Association, and WildEarth Guardians.

involve disapproval and the promulgation of a FIP.

We are proposing the promulgation of a FIP to address the deficiencies in the Wyoming regional haze SIP that we have identified in this notice. The proposed FIP includes the following elements:

- NO_X BART determinations and limits for PacifiCorp Dave Johnston Units 3 and 4, PacifiCorp Naughton Units 1 and 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3.
- NO_X reasonable progress determinations and limits for PacifiCorp Dave Johnston Units 1 and 2.
- RPGs consistent with the SIP limits proposed for approval and the proposed FIP limits.
- Monitoring, recordkeeping, and reporting requirements applicable to all BART and reasonable progress sources for which there is a SIP or FIP emissions limit.
- LTS elements pertaining to emission limits and compliance schedules for the proposed BART and reasonable progress FIP emission limits.
- Provisions to ensure the coordination of the RAVI and regional haze LTS.

In lieu of our proposed FIP, or a portion thereof, we will propose approval of a SIP revision as expeditiously as practicable if the State submits such a revision and the revision matches the terms of our proposed FIP. We will also review and take action on any regional haze SIP submitted by the state to determine whether such SIP is approvable, regardless of whether or not its terms match those of the FIP. We encourage the State to submit a SIP revision to replace the FIP, either before or after our final action.

IV. SIP and FIP Background

The CAA requires each state to develop plans to meet various air quality requirements, including protection of visibility. CAA sections 110(a), 169A, and 169B. The plans developed by a state are referred to as SIPs. A state must submit its SIPs and SIP revisions to us for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, also known as being federally enforceable. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or unapprovable, then we must promulgate a FIP to fill this regulatory gap. CAA section 110(c)(1). As discussed elsewhere in this notice, we are proposing to disapprove aspects of Wyoming's regional haze SIP. We are proposing a FIP to address the deficiencies in Wyoming's regional haze SIP.

V. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [2] in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [3] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.[4]

Few states submitted a regional haze SIP prior to the December 17, 2007 deadline, and on January 15, 2009, EPA found that 37 states (including Wyoming), the District of Columbia, and the Virgin Islands, had failed to submit SIPs addressing the regional haze requirements. 74 FR 2392. Once EPA

[2] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[4] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

has found that a state has failed to make a required submission, EPA is required to promulgate a FIP within two years unless the state submits a SIP and the Agency approves it within the two-year period. CAA § 110(c)(1).

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of pollutants that lead to regional haze.

The Western Regional Air Partnership (WRAP) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the western United States. WRAP member state governments include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

VI. Requirements for Regional Haze SIPs

The following is a summary of the requirements of the RHR. See 40 CFR 51.308 for further detail regarding the requirements of the rule.

A. The CAA and the Regional Haze Rule

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. *See* 70 FR 39104, 39118. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithmic function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[5]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.[6]

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

[5] The preamble to the RHR provides additional details about the dv. 64 FR 35714, 35725 (July 1, 1999).

[6] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/Regional Haze_envcurhr_gd.pdf,* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* (September 2003, EPA–454/B–03–004, available at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf,* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

C. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. *See* 40 CFR 51.308(d), (f). The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

In establishing RPGs, states are required to consider the following factors established in section 169A of the CAA and in our RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' (URP) or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the state's Class I areas. 40 CFR 51.308(d)(1)(iv). In determining whether a state's goals for visibility improvement provide for reasonable progress toward natural visibility conditions, EPA is required to evaluate the demonstrations developed by the state pursuant to paragraphs 40 CFR 51.308(d)(1)(i) and (d)(1)(ii). 40 CFR 51.308(d)(1)(iii).

D. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. Regardless of source size or type, a state must meet the requirements of the CAA and our regulations for selection of BART, and the state's BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.

The process of establishing BART emission limitations can be logically broken down into three steps: First, states identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301;[8] second, states determine which of such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART''); and third, for each source subject-to-BART, states then identify the best available type and level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 emissions impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview. 40 CFR part 51, appendix Y, section III.A.1.

In their SIPs, states must identify the sources that are subject-to-BART and document their BART control determination analyses for such sources. In making their BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors when evaluating potential control technologies: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject-to-BART. Once a state

[7] The set of ''major stationary sources'' potentially subject-to-BART is listed in CAA section 169A(g)(7).

[8] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. See CAA section 110(a). As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART.

E. Long-Term Strategy

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10- to 15-year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. *Id.* at (d)(3)(ii). The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their long-term strategy, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

F. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject-to-BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

G. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any

public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

VII. EPA's Evaluation of Wyoming's Regional Haze SIP

A. Affected Class I Areas

Pursuant to 40 CFR 51.308(d), the State identified seven mandatory Class I areas in Wyoming: Grand Teton National Park, Yellowstone National Park, Bridger Wilderness, Fitzpatrick Wilderness, North Absaroka Wilderness, Teton Wilderness, and Washakie Wilderness.

B. Baseline Visibility, Natural Visibility, and Uniform Rate of Progress

As required by 40 CFR 51.308(d)(2), Wyoming provided baseline visibility, natural visibility, and the URP for each Class I area in the State. Natural background visibility, as defined in our *2003 Natural Visibility Guidance,* is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in our *2003 Natural Visibility Guidance,* EPA allows states to use ''refined'' or alternative approaches to this guidance to estimate the values that characterize the natural visibility conditions of Class I areas.

One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[9] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction.

Wyoming used the new IMPROVE equation to calculate natural conditions and baseline visibility. The natural condition for each Class I area represents the visibility goal expressed in deciviews for the 20% worst days and the 20% best days that would exist if there were only naturally occurring visibility impairment. In accordance with 40 CFR 51.308(d)(2)(iii), the State calculated natural visibility conditions based on available monitoring information and appropriate data analysis techniques and in accordance with our *2003 Natural Visibility Guidance*. The State also calculated the number of deciviews by which baseline conditions exceed natural conditions at each of its Class I areas to meet the requirements of 40 CFR 51.308(d)(2)(iv)(A).

Wyoming established the baseline visibility for the best and worst visibility days for each Class I area based on data from the IMPROVE monitoring sites. Each IMPROVE monitor collects particulate concentration data which are converted into reconstructed light extinction through a complex calculation using the IMPROVE equation (see Chapter 13 of the SIP for more information on reconstructed light extinction and the IMPROVE equation). Per 40 CFR 51.308(d)(2)(i), the State calculated baseline visibility using a five-year average (2000 to 2004) of IMPROVE data for both the 20% best and 20% worst days. The State's baseline calculations were made in accordance with our *2003 Tracking Progress Guidance*.

Pursuant to 40 CFR 51.308(d)(1)(i)(B), the State calculated the URP for each of its Class I areas. For the 20% worst days, the URP is the calculation of the deciview reduction needed to achieve natural conditions by 2064. For the 20% worst days, the State calculated the URP in deciviews per year using the following formula: URP = [Baseline Condition—Natural Condition]/60 years. In order to determine the uniform progress needed by 2018 to be on the path to achieving natural visibility conditions by 2064, the State multiplied the URP by the 14 years in the first planning period (2004–2018).

Table 1 shows the baseline visibility, natural conditions, and URP for each of the Class I areas. As indicated by the table, some Class I areas share a single monitor because of the proximity of the areas to each other.

TABLE 1—BASELINE VISIBILITY, NATURAL CONDITIONS, AND URP FOR WYOMING CLASS I AREAS

20% Worst Days							20% Best Days
Wyoming Class I areas	Monitor name	2000–2004 Baseline (deciview)	2018 URP (deciview)	Reduction Needed to Reach 2018 URP (delta deciview)	2064 Natural Conditions (deciview)	Delta Baseline—2064 Natural Conditions	2000–2004 Baseline (deciview)
Yellowstone National Park, Grand Teton National Park, Teton Wilderness	YELL2	11.8	10.5	1.3	6.44	5.36	2.58

[9] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and regional planning organizations. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. TheIMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

TABLE 1—BASELINE VISIBILITY, NATURAL CONDITIONS, AND URP FOR WYOMING CLASS I AREAS—Continued

		20% Worst Days					20% Best Days
Wyoming Class I areas	Monitor name	2000–2004 Baseline (deciview)	2018 URP (deciview)	Reduction Needed to Reach 2018 URP (delta deciview)	2064 Natural Conditions (deciview)	Delta Baseline—2064 Natural Conditions	2000–2004 Baseline (deciview)
North Absaroka Wilderness							
Washakie Wilderness	NOABI	11.5	10.4	1.1	6.83	4.67	2.0
Bridger Wilderness, Fitzpatrick Wilderness	BRID1	11.1	10.0	1.1	6.45	4.65	2.1

We have reviewed Wyoming's baseline visibility, natural conditions, and URP. We find they have been calculated correctly and are proposing to approve them.

C. BART Determinations

BART is an element of Wyoming's LTS for the first implementation period. As discussed in more detail in section VI.D of this notice, the BART evaluation process consists of three components: (1) An identification of all the BART-eligible sources; (2) an assessment of whether those BART-eligible sources are in fact subject-to-BART; and (3) a determination of any BART controls. Wyoming addressed these steps as follows:

1. BART-Eligible Sources

The first step of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. Wyoming identified its BART-eligible sources by using the approach set out in the BART Guidelines (70 FR 39158). This approach provides three criteria for identifying BART-eligible sources: (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit or units began operation on or after August 6, 1962, and were in existence on August 6, 1977; and (3) combined potential emissions of any visibility-impairing pollutant from the units that meet the criteria in (1) and (2) are 250 tons or more per year. Wyoming reviewed source permits and emission data from 2001–2003 to identify facilities in the BART source categories with potential emissions of 250 tons per year or more for any visibility-impairing pollutant from any unit or units that were in existence on August 7, 1977 and began operation on or after August 7, 1962. The BART Guidelines direct states to address SO_2[10], NO_X, and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairing pollutants and to exercise their ''best judgment to determine whether VOC or NH_3 emissions from a source are likely to have an impact on visibility in an area.'' (70 FR 39162).

The State analyzed the emissions from VOC and NH_3 from sources in the State and eliminated them from further consideration for BART controls. The State evaluated the BART-eligible sources and determined emissions of VOC and NH_3 were negligible. Thus, the State has eliminated VOC and NH_3 from further consideration for BART controls. We agree with the State that emissions of VOC and NH_3 are negligible and propose to accept this determination.

The State determined that the following were BART-eligible sources: PacifiCorp Jim Bridger, P4 Production, PacifiCorp Naughton, OCI Wyoming, FMC Granger, Dyno Nobel, FMC Westvaco, Sinclair Casper Refinery, Basin Electric Laramie River, Black Hills Neil Simpson 1, PacifiCorp Wyodak, Sinclair—Sinclair Refinery, PacifiCorp Dave Johnston, and General Chemical Green River.

We have reviewed this information and propose to accept this determination.

2. Sources Subject-to-BART

The second step of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to any visibility impairment at any Class I area, i.e., those sources that are subject-to-BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, Wyoming performed dispersion modeling on the BART-eligible sources to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

a. Modeling Methodology

The BART Guidelines provide that states may use the CALPUFF[11] modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area and to, therefore, determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., ''is subject to BART.'' The Guidelines state that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162).

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions, and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. Wyoming used the CALPUFF model for Wyoming BART sources in accordance with a protocol it developed titled *BART Air Modeling Protocol Individual Source Visibility Impairment Analysis,* March 2006, which was approved by EPA and is included in Chapter 6 of the State's TSD. The Wyoming protocol follows

[10] Wyoming has elected to submit its RH SIP pursuant to the requirements of 40 CFR 51.309. For states electing to submit under section 309, States do not have to do a BART analysis for SO_2. SO_2 controls are included in the backstop trading program under 40 CFR 51.309(d)(4).

[11] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer at *http://www.src.com/verio/download/download.htm.*

recommendations for long-range transport described in appendix W to 40 CFR part 51, *Guideline on Air Quality Models,* and in EPA's *Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts* as recommended by the BART Guidelines. (40 CFR part 51, appendix Y, section III.A.3). To determine if each BART-eligible source has a significant impact on visibility, Wyoming used the CALPUFF model to estimate daily visibility impacts above estimated natural conditions at each Class I area within 300 km of any BART-eligible facility. The emission rates used in the CALPUFF modeling were determined by Wyoming based upon existing permits, allowable rates, and emissions reporting data.

b. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' (70 FR 39104, 39161). The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source ''contributes'' to visibility impairment should not be higher than 0.5 deciviews.'' *Id.* Further, in setting a contribution threshold, states should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity to a Class I area justifies this approach.

Wyoming used a contribution threshold of 0.5 deciviews for determining which sources are subject-to-BART. By using a contribution threshold of 0.5 deciviews, Wyoming exempted seven of the fourteen BART-eligible sources in the State from further review under the BART requirements. Based on the modeling results, the State determined that P4 Production, FMC Granger,[12] and OCI Wyoming had an impact of .07 deciview, 0.39 deciview, and 0.07 deciview, respectively, at Bridger Wilderness. Black Hills Neil Simpson 1, Sinclair Casper Refinery, and Sinclair—Sinclair Refinery have an impact of 0.27 deciview, 0.06 deciview, and 0.12 deciview, respectively, at Wind Cave. Dyno-Nobel had an impact of 0.22 deciview at Rocky Mountain National Park. These sources' modeled visibility impacts fell below the State's threshold of 0.5 deciview and were determined not to be subject-to-BART.[13] Given the relatively limited impact on visibility from these seven sources, we propose to agree with Wyoming that 0.5 deciviews is a reasonable threshold for determining whether its BART-eligible sources are subject-to-BART.

Because our recommended modeling approach already incorporates choices that tend to lower peak daily visibility impact values,[14] our BART Guidelines state that a state should compare the 98th percentile (as opposed to the 90th or lower percentile) of CALPUFF modeling results against the ''contribution'' threshold established by the state for purposes of determining BART applicability. Wyoming used a 98th percentile comparison that we find appropriate. Further explanation on use of the 98th versus 90th percentile value is provided at 70 FR 39121.

c. Sources Identified by Wyoming as Subject-to-BART

Table 2 shows the sources identified by the State as subject-to-BART and the results of the CALPUFF modeling. The results reflect the single highest impacted year.

[12] The State of Wyoming performed a refined CALPUFF visibility modeling analysis for the two BART-eligible units at the FMC Wyoming Granger Facility and demonstrated that the predicted 98th percentile impacts at Bridger Wilderness Area and Fitzpatrick Wilderness Area would be below 0.5 dv for all meteorological periods modeled. This modeling used higher-resolution meteorological data as compared to the data used by the State for the initial screening modeling that identified the facility as subject-to-BART.

[13] CALPUFF modeling results, which provide the maximum change in visibility are summarized in the *WY BART Screening Analysis Results* and the *WY BART Screening Analysis Results DV Frequency,* which can also be found in Chapter 6 of the State's TSD.

[14] See our BART Guidelines, Section III.A.3.

TABLE 2—WYOMING SUBJECT-TO-BART SOURCES AND CALPUFF MODELING RESULTS

Facility name	Subject-to-BART units	State modeling results—98th percentile delta-deciview
PacifiCorp—Jim Bridger	Units 1–4	3.1
Basin Electric—Laramie River	Units 1, 2 and 3	3.68
PacifiCorp—Dave Johnston	Units 3 and 4	3.30
PacifiCorp—Naughton	Units 1–3	4.36
PacifiCorp—Wyodak	Unit 1	1.66
FMC—Westvaco	Units NS–1A and NS–1B	1.3
General Chemical—Green River	Boilers C and D	1.36

We are proposing to approve the State's determination of the subject-to-BART sources.

3. BART Determinations and Federally Enforceable Limits

The third step of a BART evaluation is to perform the BART analysis. The BART Guidelines (70 FR 39164) describe the BART analysis as consisting of the following five steps:

- Step 1: Identify All Available Retrofit Control Technologies;
- Step 2: Eliminate Technically Infeasible Options;
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies;
- Step 4: Evaluate Impacts and Document the Results; and
- Step 5: Evaluate Visibility Impacts.

In determining BART, the State must consider the five statutory factors in section 169A of the CAA: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. *See also* 40 CFR 51.308(e)(1)(ii)(A).

We find that Wyoming considered all five steps above in its BART determinations, but we propose to find that its consideration of the costs of compliance and visibility improvement for the EGUs was inadequate and did not properly follow the requirements in the BART Guidelines and statutory requirements, as explained below.

a. Costs of Compliance

Wyoming obtained the costs of compliance for controls from the BART applications submitted by sources that were subject to BART.[15] EPA in turn relied on these costs in our original proposed rule. EPA has reviewed Wyoming's cost analyses and has identified deficiencies in various cost assumptions and methods. Accordingly, EPA has subsequently and independently calculated costs of compliance and performed new visibility modeling. In many instances, the BART sources underestimated the cost of selective non-catalytic reduction (SNCR), while overestimating the cost of selective catalytic reduction (SCR) (both in combination with additional combustion controls). Depending on the particular BART source in question, we believe this was due to a number of errors, such as: use of incorrect baseline emissions; overestimation of the ability of SNCR to reduce NO_X; underestimation of SNCR reagent (urea) usage and cost; and underestimation of the ability of SCR to reduce NO_X.

EPA has identified a number of flaws in Wyoming's cost analyses for SNCR. For example, in the case of Laramie River Units 1–3, Wyoming significantly overestimated the ability of SNCR to reduce NO_X. The analyses submitted by the source, and in turn used by Wyoming, assumed that after the installation of additional combustion controls, SNCR would reduce NO_X from 0.23 lb/MMBtu to 0.12 lb/MMBtu (or by roughly 48%). However, SNCR typically reduces NO_X an additional 20 to 30% above combustion controls without excessive NH_3 slip.[16] NO_X reduction with SNCR is known to be greater at higher NO_X emission rates than lower rates.[17] Accordingly, EPA has estimated that the NO_X reduction from SNCR as 30% for initial NO_X greater than 0.25 lb/MMBtu, 25% for NO_X from 0.20 to 0.25 lb/MMBtu and 20% for NO_X less than 0.20 lb/MMBtu.[18] Due to the relatively recent installation of overfire air at the Laramie River units, the actual annual emissions in 2012 dropped to around 0.19 lb/MMBtu,[19] even lower than the 0.23 lb/MMbtu rate assumed by Wyoming. Therefore, EPA predicts that the reduction that can be achieved with SNCR at the Laramie River units is 20%, which is much lower than the 48% assumed by Wyoming. This significantly reduces the tons reduced by SNCR which is in turn used in the calculation of cost effectiveness. It also affects the incremental cost effectiveness between SNCR and SCR (both in combination with additional combustion controls). In addition, our analysis of urea prices indicates that producer prices for urea have increased the past three years. This increase in price is not reflected in the Wyoming estimates for SNCR.

EPA has also identified a number of flaws in Wyoming's cost analyses for SCR. For example, Wyoming assumed that SCR could only achieve a control effectiveness of 0.07 lb/MMBtu. By contrast, EPA has determined that on an annual basis SCR can achieve emission rates of 0.05 lb/MMbtu or lower. Moreover, we note that Wyoming's SCR capital costs on a $/kW basis often exceeded real-world industry costs. The capital costs for SCR claimed by Wyoming for Dave Johnston 3 and 4, Naughton Units 1–3, and Wyodak are in excess of the range of capital costs documented by various studies for actual installations. Five industry studies conducted between 2002 and 2007 have reported the installed unit capital cost of SCRs, or the costs actually incurred by owners, to range from $79/kW to $316/kW (2010 dollars). By contrast, Wyoming's SCR costs range from $415/kW to $531/kW.[20] These studies show actual capital costs are much lower than Wyoming's, particularly for the PacifiCorp units.

For all control technologies, EPA has identified instances in which

[15] Attachment A to the Wyoming 309(g) Regional Haze SIP.

[16] White Paper, SNCR for Controlling NO_X Emissions, Institute of Clean of Clean Air Companies, pp. 4 and 9, February 2008.

[17] Hofmann, J., Sun, W., ''Process for Nitrogen Oxides Reduction to Lowest Achievable Level'', US Patent 5,229,090, July 20, 1993, Figure 6.

[18] *Review of Estimated Compliance Costs for Wyoming Electric Generating (EGUs)—Revision of Previous Memo,* memo from Jim Staudt, Andover Technology Partners, to Doug Grano, EC/R, Inc., February 7, 2013, page 7 (Staudt Memo).

[19] Staudt memo, Table 2, p. 7.

[20] Staudt memo, Table 1, p. 4.

Wyoming's source-based cost analyses did not follow the methods set forth in the EPA Control Cost Manual.[21] For example, Wyoming included an allowance for funds used during construction and for owners costs and did not provide sufficient documentation such as vendor estimates or bids.

In addition, for the PacifiCorp units, Wyoming calculated the baseline annual emissions used for determining cost effectiveness based on allowable emissions, rated heat input, and 7,884 hours of operation (equivalent to a 85% capacity factor), which are not representative of actual emissions from the baseline period. By contrast, the BART Guidelines state that the baseline emissions should ''represent a realistic depiction of anticipated annual emissions for the source.'' [22] Therefore, in our revised cost analyses, we have consistently used the actual annual average emissions from 2001–2003 to represent baseline emissions.

To address these flaws and deficiencies, EPA has developed independent cost analyses. In our revised cost analyses, we have followed the structure of the EPA Control Cost Manual, though we have largely used the Integrated Planning Model cost calculations to estimate direct capital costs and operating and maintenance costs. We have also followed the BART Guidelines. Detailed information on the revised costs can be found in the docket.[23] [24] In addition, we received comments on our original proposed rulemaking from the National Park Service and Conservation Organizations that expressed similar concerns with the State's cost analyses.

b. Visibility Improvement Modeling

The BART Guidelines provide that states may use the CALPUFF modeling system or another appropriate model to determine the visibility improvement expected at a Class I area from potential BART control technologies applied to the source. The BART Guidelines also recommend that states develop a modeling protocol for modeling visibility improvement, and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. Wyoming developed a modeling protocol titled BART Air Modeling Protocol Individual Source Visibility Assessments for BART Control Analyses, September 2006, for sources to use when they performed their BART analysis (see Chapter 6 of the State's TSD). The Wyoming protocol follows recommendations for long-range transport described in appendix W to 40 CFR part 51, Guideline on Air Quality Models, and in EPA's Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts, as recommended by the BART Guidelines (40 CFR part 51, appendix Y, section III.D.5).

While we are able to propose approval of the State's PM BART determinations without having additional visibility improvement modeling for PM controls, as discussed below, additional visibility improvement modeling to address the EGU NO_X BART controls was needed and subsequently performed by EPA and presented in our original proposed rulemaking.[25] Our additional modeling to support the original proposed rule was intended to addresses two deficiencies. First, while Wyoming took into consideration the degree of visibility improvement for some BART NO_X control options for the PacifiCorp EGUs, such as SCR, they did not do so for SNCR. The visibility improvement for SNCR was neither provided in the State's SIP nor made available to EPA. Wyoming did not assess the visibility improvement of SNCR despite having found it to be a technically feasible control option, and having considered a number of the other statutory factors for SNCR, such as costs of compliance and energy impacts. Wyoming did not consider the visibility improvement associated with SNCR, which is clearly in conflict with the requirements set forth in section 169A(g)(2) of the CAA, as well as in the implementing regulations,[26] which require that states take into consideration ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.'' Because Wyoming did not do so, and in order to be consistent with the statutory and regulatory requirements, EPA conducted additional CALPUFF modeling to fill this gap in the State's visibility analysis (that is, to assess the visibility improvement associated with SNCR).

Second, it was not possible for EPA, or any other party, to ascertain the visibility improvement that would result from the installation of the various NO_X control options because Wyoming modeled the emission reductions for multiple pollutants together in its SIP. In other words, because the visibility improvement associated with each of the State's control scenarios was due to the combined emission reductions associated with SO_2, NO_X, and PM controls, it was not possible to isolate what portion of the improvement was attributable to the NO_X controls alone. In addition, because Wyoming varied SO_2 and PM emission rates along with NO_X emission rates, it was not possible to assess the incremental visibility improvement between the various NO_X controls options. For these reasons, EPA conducted additional modeling for the EGUs in which we held SO_2 and PM emission rates constant (reflecting the ''committed controls'' identified by Wyoming), and varied only the NO_X emission rate. This allowed us to isolate the degree of visibility improvement attributable to the NO_X control technologies. The modeling which EPA performed to support our original proposed rule addressed these two deficiencies in the State's analysis.

To support today's proposal, EPA has found it necessary to revise the CALPUFF modeling we performed in association with our original proposed rule. The revised modeling to support today's proposed rule is intended to address two additional issues that were raised by commenters during the comment period for the original proposed rule. First, as discussed above in section V.II, we have revised the costs of control submitted by the State. In the process of revising these costs, we have calculated a new removal efficiency for the control options under consideration to reflect updated assumptions about baseline emissions and control effectiveness.[27]

In order to align our cost and modeling analyses, these removal efficiencies have been incorporated into our revised modeling. Second, the emission rates we relied on in our original proposed rule for both the baseline (i.e., pre-control) and post-control modeling scenarios were not consistent with the BART Guidelines. For pre-control emission rates, the BART Guidelines recommend that States use the 24-hour average actual

[21] ''In order to maintain and improve consistency, cost estimates should be based on the OAQPS Control Cost Manual, where possible.'' 70 FR 39166.

[22] 70 FR 39167.

[23] *Review of Estimated Compliance Costs for Wyoming Electric Generating (EGUs)—Revision of Previous Memo,* memo from Jim Staudt, Andover Technology Partners, to Doug Grano, EC/R, Inc., February 7, 2013. (Staudt Memo).

[24] *Review of Estimated BART Compliance Costs for Wyoming Electricity Generating Units (EGUs)* memo from Jim Staudt, Andover Technology Partners, to Doug Grano, EC/R, Inc., February 7, 2013.

[25] A summary of EPA's modeling methodology and results for the original proposed rulemaking can be found in the docket under *EPA BART and RP Modeling for Wyoming Sources.*

[26] 40 CFR 51.308(e)(1)(ii)(A).

[27] See Staudt memos.

emission rate from the highest emitting day of the meteorological period modeled.[28] By contrast, the visibility modeling performed by PacifiCorp, and subsequently submitted by the State and utilized by EPA in our original proposal, deviates from the BART Guidelines by using permit limits and the maximum rated heat input to derive the modeled emission rates. Similarly, the visibility modeling performed by Basin Electric, and subsequently submitted by the State and utilized by EPA in our original proposal, deviates from the BART Guidelines by using actual annual average heat input and actual annual average emission rates (on a lb/MMBtu basis) from 2001–2003 continuous emissions monitoring data to derive modeled emission rates. Furthermore, the BART Guidelines recommend that post-control emission rates be calculated as a percentage of pre-control emission rates.[29] The visibility modeling performed by PacifiCorp and Basin Electric, and subsequently submitted by the State and utilized by EPA in our original proposal, deviates from the BART Guidelines by using post-control emission rates calculated in a similar manner to the pre-control emission rates. Our revised modeling remedies both of the issues identified by the commenters and is consistent with the requirements of the BART Guidelines. We have otherwise followed the procedures contained in the Wyoming BART Air Modeling Protocol. A summary of EPA's revised modeling methodology and results can be found in the docket.[30]

Because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analyses of visibility improvement for NO_X BART to be reasonable. We propose to find that Wyoming's analyses are inconsistent with the statutory and regulatory requirement that Wyoming reasonably take into consideration ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.'' Therefore, as discussed in more detail below, we are proposing to disapprove several of the State's NO_X BART determinations that do not meet the requirements of the CAA and regional haze regulations because they are inconsistent with the visibility requirements.

c. Summary of BART Determinations and Federally Enforceable Limits

For the subject-to-BART sources, the State provided BART analyses, as well as additional technical information and materials, in Attachment A to the SIP. Chapter 6 of the SIP provides a summary of the five-factor analyses. As noted above, for this proposed rulemaking, EPA performed cost analyses and NO_X visibility improvement modeling for the control technology options analyzed for the subject-to-BART EGU sources. We are presenting the BART analyses that we based our June 4, 2012 proposed rulemaking on, as well as EPA's revised BART analyses, reflecting our revised cost and visibility improvement modeling for the EGUs.

EPA is proposing to approve the State's BART determinations for the following units because we have determined that the State's conclusions were reasonable despite the cost and visibility errors for the EGUs discussed earlier: NO_X and PM BART for FMC Westvaco Unit NS–1A and NS–1B; NO_X and PM BART for General Chemical Green River Boiler C and Boiler D;[31] PM BART for Basin Electric Laramie River Units 1, 2, and 3; PM BART for PacifiCorp Dave Johnston Unit 3; PM BART for PacifiCorp Dave Johnston Unit 4; NO_X and PM BART (including reasonable progress controls) for PacifiCorp Jim Bridger Units 1–4; PM BART for PacifiCorp Naughton Units 1and 2; NO_X and PM BART for Naughton Unit 3; and PM BART for PacifiCorp Wyodak Unit 1. A summary of the State's and EPA's BART determination for each source is provided below.

EPA is proposing to disapprove the State's NO_X BART determinations and promulgate a FIP for the following units: PacifiCorp Dave Johnston Units 3 and 4; PacifiCorp Naughton Units 1 and 2; PacifiCorp Wyodak Unit 1; and Basin Electric Laramie River Units 1, 2, and 3. After re-analyzing the costs of control and visibility improvement associated with these units, we determined that the State's selection of NO_X BART controls could not be supported, warranting a FIP. EPA's reasoning behind its own NO_X BART determinations and emission limitations for these units can be found in section VIII.A of this notice.

i. FMC Westvaco—Units NS–1A and NS–1B

Background

FMC's Westvaco facility is a trona mine and sodium products plant located in Sweetwater County, Wyoming. FMC Westvaco has two existing coal-fired boilers, Unit NS–1A and Unit NS–1B, that are subject to BART. Unit NS–1A and Unit NS–1B each have a design heat input rate of 887 MMBtu/hr and were constructed in 1975. They are both wall-fired, wet-bottom boilers burning subbituminous coal. The State's BART determinations for these units can be found in Chapter 6.5.2 and Attachment A of the SIP.

NO_X BART Determination

Units NS–1A and NS–1B are currently controlled with combustion air control with a permit limit of 0.7 lb/MMBtu (3-hour rolling average). The State determined that low NO_X burners (LNBs) and overfired air (OFA), LNBs and OFA with SNCR, and LNBs and OFA with SCR were all technically feasible for reducing NO_X emissions at Unit NS–1A and NS–1B. The State did not identify any technically infeasible options. The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's NO_X BART analyses and the visibility impacts is provided in Table 3. Baseline NO_X emissions are 2,719.5 tpy for each unit based on a heat input rate of 887 MMBtu/hr and 8,760 hours of operation per year.

[28] The BART Guidelines, Section IV. (70 FR 39170) specify that the modeling should ''[u]se the 24-hour average actual emission rate from the highest emitting day of the meteorological period modeled (for the pre-control scenario)''.

[29] The BART Guidelines, Section IV. (70 FR 39170) specify that ''[p]ost-control emission rates are calculated as a percentage of pre-control emission rates''.

[30] EPA's modeling results and a summary of EPA's modeling methodology can be found in the docket under *Summary of EPA's Revised Modeling—Including Revisions from Previous Version Posted on 1/18/2013 and Results for Jim Bridger Units 1–4* and *EPA's Revised Modeling Results;* posted to the docket on February 11, 2013.

[31] FMC Westvaco and General Chemical Green River are not EGUs and EPA did not identify the same cost and visibility improvement modeling issues as it did for the EGUs and are thus proposing to approve the State's BART analyses and determinations for these units.

TABLE 3—SUMMARY OF FMC WESTVACO UNIT NS–1A AND UNIT NS–1B NO_X BART ANALYSIS*

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Bridger Wilderness Area)
LNB + OFA	0.35	$1,359.7	$413,145	$304		0.13
LNB + OFA + SNCR	0.21	1,903.6	1,281,851	673	$1,597	0.19
LNB + OFA + SCR	0.10	2,331.0	8,141,177	3,493	16,051	0.24

*This table reflects the costs and visibility improvements per boiler.

The visibility modeling in the State's SIP only includes the visibility improvement at the two most impacted Class I areas: Bridger Wilderness Area and Fitzpatrick Wilderness Area. The visibility improvement at Bridger is listed in the Table above. For Fitzpatrick, the visibility improvement is .09 dv for LNBs with OFA, 0.11 dv for LNBs with SNCR, and 0.13 dv for LNBs with SCR. Given the limited visibility improvement at the two most impacted areas, we propose to find that it was reasonable for the State to model only those two receptors.

Based on its consideration of the five factors, the State determined that LNBs plus OFA are reasonable for BART. The State determined that the other control options were not reasonable based on the cost effectiveness and associated visibility improvement. The State has determined that NO_X BART emission limit for FMC Westvaco Unit NS–1A and Unit MS–1B is 0.35 lb/MMBtu (30-day rolling average).

We agree with the State's conclusions, and we are proposing to approve its NO_X BART determinations for FMC Westvaco Unit NS–1A and Unit NS–1B. Although the cost-effectiveness for SNCR is reasonable, we find it reasonable for the State not to select this control technology based on the incremental visibility improvement for this control technology.

PM BART Determination

Unit NS–1A and Unit NS–1B are currently controlled for PM emissions by electrostatic precipitators (ESPs). The units each currently have a PM emission limit of 0.05 lb/MMBtu. The State determined that fabric filters on the wet scrubber, addition of an ESP downstream of the wet scrubber, and replacement of the ESPs with fabric filters were technically feasible control options. The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's PM BART analysis is provided in Table 4 below. Baseline PM emissions are 197 tpy for each unit based on a heat input rate of 887 MMBtu/hr and 8,760 hours of operation per year.

TABLE 4—SUMMARY OF FMC WESTVACO UNIT NS–1A AND UNIT NS–1B PM BART ANALYSIS*

Control technology	Control efficiency (%)	Emission rate (lb/mmbtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)
Fabric Filter on Wet Scrubber	21.4	0.04	41.7	$1,791,364	$42,948
ESP after Wet Scrubber	63.3	0.019	123.3	3,507,617	28,448
Replace ESP with Fabric Filter	71.3	0.015	138.8	4,116,036	29,654

*This table reflects the costs and visibility improvements per boiler.

Given the high cost of controls, which are higher than what EPA, or other states have considered reasonable for PM, FMC did not evaluate the visibility improvement that would result from the PM controls evaluated. Previous visibility modeling analyses from the source indicate that the contribution in visibility degradation from PM is minor when compared to the effects of NO_X and SO_2. Results from FMC's visibility modeling screening and analysis confirm this conclusion and are discussed in further detail within the comprehensive visibility analysis included as part of FMC's BART application (see Attachment A to the SIP). The State agreed with FMC's conclusions and did not require FMC to perform additional visibility analyses for the PM control options.

The State determined that the current ESP control was reasonable for PM BART. The State rejected other controls because of their high cost-effectiveness values. The State has determined that the PM BART emission limits for FMC Westvaco Unit NS–1A and NS–1B are 0.05 lb/MMBtu, 45.0 lb/hr, and 197 tpy.

We agree with the State's conclusions, and we are proposing to approve its PM BART determinations for FMC Westvaco Unit NS–1A and Unit NS–1B.

ii. General Chemical Green River—Boilers C and D

General Chemical Green River is a trona mine and sodium products plant. General Chemical's two existing coal-fired boilers, C and D, are co-located at the facility power plant. Both boilers burn low sulfur bituminous coal, and they supply power and process steam to mining and ore processing operations. Both boilers are tangentially fired using in-line coal pulverizers. The firing rate is 534 MMBtu/hr for Boiler C and 880 MMBtu/hr for Boiler D. The State's BART determinations can be found in Chapter 6.5.3 and Attachment A of the SIP.

NO_X BART Determination

Boiler C and Boiler D are currently controlled with LNBs plus OFA with a permit limit of 0.7 lb/MMBtu (3-hour rolling average). On August 7, 2009, the State issued a BART permit to General Chemical that required the source to meet a NO_X emission limit of 0.32 lb/MMBtu (30-day rolling average) for Boiler C and Boiler D. The State assumed the source could meet this

emission limit with the installation and operation of new LNBs with the existing OFA. Upon further investigation, the source determined it could not meet a limit of 0.32 lbs/MMBtu with new LNBs and the existing OFA.

In response to the additional information provided by the source, the State reexamined its BART determination for Boiler C and D. The State determined that installing SOFA in addition to the existing LNBs and OFA could achieve an emission limit of 0.28 lb/MMBtu. Because SOFA in conjunction with the existing NO_X controls could achieve better emission reductions than new LNBs plus OFA, the State eliminated the latter from further consideration in the BART analysis. The State determined that SNCR and SCR were also technically feasible. The State did not identify any technically infeasible options.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's NO_X BART analysis and visibility impacts is provided in Tables 5 and 6 below. Baseline NO_X emissions are 1,167 tpy for Boiler C and 1,816 tpy for Boiler D based on an average of 2001–2003 actual emissions.

TABLE 5—SUMMARY OF GENERAL CHEMICAL—GREEN RIVER BOILER C NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Bridger Wilderness Area)
Existing LNBs with SOFA	0.28	512	$757,711	$1,480	—	0.05
SNCR	0.35	584	1,433,720	2,455	$4,782	0.08
SCR	0.14	934	2,434,809	2,607	3,156	0.14

TABLE 6—SUMMARY OF GENERAL CHEMICAL—GREEN RIVER BOILER D NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Bridger Wilderness Area)
Existing LNBs with SOFA	028	737	$943,549	$1,280	—	0.07
SNCR	0.35	908	1,486,581	3,176	$2,913	0.12
SCR	0.14	1,453	3,399,266	3,510	4,342	0.17

The visibility modeling in the State's SIP only includes the visibility improvement at the two most impacted Class I areas: Bridger Wilderness Area and Fitzpatrick Wilderness Area. The visibility improvement at Bridger is listed in the Table above. For Fitzpatrick, the visibility improvement is 0.10 dv for LNBs with SOFA, 0.09 for SNCR, and 0.12 dv for SCR for each unit. Given the limited visibility improvement at the two most impacted areas, we propose to find that it was reasonable for the State to model only those two receptors.

Based on its consideration of the five factors, the State determined that NO_X BART is the existing LNBs with new SOFA, or a comparable performing technology. The State determined that SNCR and SCR were not reasonable based on the high cost effectiveness and low visibility improvement. The State determined the NO_X BART emission limit for General Chemical Green River Boiler C is 0.28 lb/MMBtu (30-day rolling average) and that the NO_X BART emission limit for Boiler D is 0.28 lb/MMBtu (30-day rolling average).

We agree with the State's conclusions, and we are proposing to approve its NO_X BART determinations for General Chemical Green River—Boiler C and D. Although the cost-effectiveness for SNCR and SCR is reasonable, we find it reasonable for the State not to select this control technology based on the low visibility improvement for these control technologies.

PM BART Determination

Boilers C and D are currently controlled by ESPs with permit limits of 50 lb/hr and 80 lb/hr, respectively. General Chemical addressed PM emissions through an abbreviated analysis by using PM BART information from FMC Westvaco, as discussed above. The facilities are similar in size and located about ten miles apart. Baseline PM emissions are 98 tpy for Boiler C and 161 tpy for Boiler D based on the average of 2001–2003 actual emissions. As discussed above, visibility modeling screening and analyses for FMC Westvaco indicate that the contribution in visibility degradation from PM for a source comparable to Boiler C and Boiler D is minor. Additionally, costs for controlling PM from similar boilers are high as indicated by the FMC analysis for Westvaco.

The State accepted General Chemical's abbreviated PM BART analysis. The State determined that the current ESP control was reasonable for PM BART. The State rejected other controls because of their high cost-effectiveness values. The State determined that the PM BART emission limits for Boiler C are 0.09 lb/MMBtu, 50 lb/hr, and 219 tpy, and that the PM BART emissions limits for Boiler D are 0.09 lb/MMBtu, 80 lb/hr, and 350.4 tpy.

We agree with the State's conclusions, and we are proposing to approve its PM BART determination for General Chemical Green River Boiler C and D.

iii. Basin Electric Laramie River Station—Units 1–3

Basin Electric Laramie River Station is located in Platte County, Wyoming. Laramie River Station is comprised of three 550 MW dry-bottom, wall-fired boilers (Units 1, 2, and 3) burning

subbituminous coal for a total net generating capacity of 1,650 MW. All three units are subject-to-BART. The State's BART determination can be found in Chapter 6.5.8 and Attachment A of the SIP (The NO_X BART analysis is discussed in section VIII.A of this notice).

PM BART Determination

Laramie River Units 1, 2, and 3 are currently controlled with ESPs, each with a permit limit of 0.03 lb/MMBtu. The State determined that fabric filters were technically feasible for Unit 3 but not Units 1 and 2. Units 1 and 2 are controlled with wet flue gas desulfurization and fabric filters cannot be used downstream of such a system. The State determined that flue gas treatment and GE Max-9 hybrid were technically infeasible for all three units. Thus, the only technically feasible control option for PM is fabric filters on Unit 3.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's PM BART analysis for Unit 3 is provided in Table 7 below. Baseline PM emissions are 716 tpy for the unit based on 2001–2003 actual emissions.

TABLE 7—SUMMARY OF BASIN ELECTRIC LARAMIE RIVER UNIT 3 PM BART ANALYSIS

Control technology	Control efficiency (%)	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)
Fabric Filter—Peak Rate for Lost Generating Costs	50	0.015	358	$194,809,000	$54,707
Fabric Filter Non-Peak Rate for Lost Generating Costs	50	0.015	358	134,934,000	40,156

The State did not provide visibility improvement modeling for fabric filters, but EPA is proposing to conclude this is reasonable based on the high cost-effectiveness of fabric filters at each of the units, which is higher than EPA or other state have considered reasonable for PM BART.

Based on its consideration of the five factors, the State determined that the current ESPs are reasonable for PM BART, as fabric filters on Unit 3 are not cost-effective and there are no other technically feasible controls for Units 1 and 2. The State determined that the PM BART emission limit for each of the Laramie River Units 1, 2, and 3 is 0.03 lb/MMBtu.

We agree with the State's conclusions, and we are proposing to approve its PM BART determination for Basin Electric Laramie River Units 1, 2, and 3.

iv. PacifiCorp Dave Johnston—Units 3 and 4

Background

PacifiCorp's Dave Johnston power plant is located in Converse County, Wyoming. Dave Johnston Power Plant is comprised of four units burning pulverized subbituminous Powder River Basin coal. Units 3 and 4 are the only units subject-to-BART. Dave Johnston Unit 3 is a nominal 230 MW pulverized coal-fired boiler that commenced service in 1964. It was equipped with burners in a cell configuration until 2010, but was then converted to a dry bottom wall-fired boiler. Dave Johnston Unit 4 is a nominal 330 MW pulverized coal-fired boiler that commenced service in 1972. It is a tangential-fired boiler. The State's BART analysis can be found in Chapter 6.5.5 and Appendix A of the SIP (the NO_X BART determination for Dave Johnston Unit 3 and Unit 4 is discussed in section VIII.A of this notice).

PM BART Determination

Units 3 and 4 are currently controlled with fabric filters installed in 2008 with an emission limit of 0.015 lb/MMBtu. The State determined that fabric filters represent the most stringent PM control technology and that 0.015 lb/MMBtu is the most stringent emission limit. Consistent with the BART Guidelines, the State did not provide a five-factor analysis because the State determined BART to be the most stringent control technology and limit available (70 FR 39165). The State determined that the PM BART emission limits for Unit 3 and 4 are both 0.015 lb/MMBtu.

We agree with the State's conclusions, and we are proposing to approve its PM BART determination for Dave Johnston Units 3 and 4.

v. PacifiCorp Jim Bridger—Units 1–4

Background

PacifiCorp's Jim Bridger Power Plant is located in Sweetwater County, Wyoming. Jim Bridger is comprised of four identically sized nominal 530 MW tangentially fired boilers burning pulverized coal for a total net generating capacity of 2,120 MW. Jim Bridger Unit 1 was placed in service in 1974, Unit 2 in 1975, Unit 3 in 1976, and Unit 4 in 1979. The State's BART determination can be found in Chapter 6.5.4 and Appendix A of the SIP.

Wyoming's NO_X BART Determination for Jim Bridger Unit 1 and Unit 2

During the baseline period of 2001–2003, PacifiCorp Jim Bridger Units 1 and 2 were equipped with early generation LNBs with permit limits of 0.70 lb/MMBtu (3-hour fixed) and 0.42 lb/MMBtu and 0.40 lb/MMBtu (annual limit), respectively. The State determined that new LNBs with SOFA, new LNBs with SOFA plus SNCR, and new LNBs with SOFA plus SCR were all technically feasible for controlling NO_X emissions. The State did not identify any technically infeasible options.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, nor are there any remaining-useful-life issues for this source. Baseline NO_X emissions are 10,643 tpy for each unit based on unit heat input rate of 6,000 MMBtu/hr and 7,884 hours of operation. A summary of the State's NO_X BART analysis and the visibility impacts is provided in Table 8 below.[32]

[32] We are assuming the same costs for Unit 2 as the other Jim Bridger Units. The State analyzed Unit 2 using post installation of LNBs/OFA costs so the cost information provided in their analysis is not consistent with an uncontrolled baseline.

TABLE 8—SUMMARY OF WYOMING'S JIM BRIDGER UNITS 1 AND 2 NO_X BART ANALYSIS—COSTS PER BOILER

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta deciview for the maximum 98th percentile impact at Mt. Zirkel wilderness)
New LNB with SOFA	0.26	4,493	$1,144,969	$255	—	0.41/0.47
New LNB with SOFA and SNCR	0.20	5,913	2,710.801	459	$1,103	0.52/0.62
New LNB with SOFA and SCR	0.07	8,987	20,296,400	2,258	5,721	0.76/0.82

Based on its consideration of the five factors, the State determined new LNBs with SOFA was reasonable for NO_X BART. The State determined the NO_X BART emission limit for Jim Bridger Units 1and 2 is 0.28 lb/MMBtu (30-day rolling average).

PacifiCorp is required to install additional controls under the State's LTS. The State determined that based on the cost of compliance and visibility improvement presented by PacifiCorp in the BART applications for Jim Bridger Units 1 and 2 and taking into consideration the logistical challenge of managing multiple pollution control installations within the regulatory time allotted for installation of BART by the RHR, additional controls would be required under the LTS in order to achieve reasonable progress but would not be requires as BART. With respect to Jim Bridger Units 1 and 2, the State has required PacifiCorp to install SCR, or other NO_X control systems, to achieve an emission limit of 0.07 lb/MMBtu on a 30-day rolling average. As part of Wyoming's Regional Haze plan, PacifiCorp is required to meet the 0.07 lb/MMBtu emission rate on Unit 1 prior to December 31, 2021 and on Unit 2 prior to December 31, 2022.

EPA's PacifiCorp Jim Bridger Units 1 and 2 NO_X BART Determination

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. Baseline NO_X emissions are 8,426 tpy for Unit 1 and 7,577 for Unit 2 based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 9–12 below. The cost effectiveness values for the Jim Bridger units vary considerably for the same control option. This is largely due to differences in the (actual) baseline emissions.

TABLE 9—SUMMARY OF EPA'S JIM BRIDGER UNIT 1 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Mt. Zirkel)
New LNBs with OFA	0.18	4,558	$1,167,297	$256	—	0.59
New LNBs with OFA and SNCR	0.14	5,332	4,402,757	826	$4,182	0.69
New LNBs with OFA and SCR	0.05	7,352	17,592,636	2,393	6,530	0.96

Jim Bridger Unit 1 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 10 below.

TABLE 10—JIM BRIDGER UNIT 1: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – New LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – New LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – New LNBs + OFA/SCR
Bridger	0.53	0.62	0.91
Fitzpatrick	0.22	0.26	0.36
Rawah	0.59	0.70	0.96
Rocky Mountain	0.50	0.58	0.79
Grand Teton	0.17	0.19	0.27
Teton	0.16	0.19	0.26
Washakie	0.18	0.21	0.27
Yellowstone	0.23	0.15	0.26

TABLE 11—SUMMARY OF EPA'S JIM BRIDGER UNIT 2 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Mt. Zirkel)
New LNBs with OFA	0.19	3,787	$1,167,297	$308	—	0.55
New LNBs with OFA and SNCR	0.15	4,545	4,360,958	959	$4,214	0.65
New LNBs with OFA and SCR	0.05	6,554	19,757,979	3,015	7,664	0.95

Jim Bridger Unit 2 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 12 below.

TABLE 12—JIM BRIDGER UNIT 2: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SCR
Bridger	0.48	0.58	0.89
Fitzpatrick	0.21	0.25	0.36
Rawah	0.46	0.48	0.78
Rocky Mountain	0.38	0.46	0.68
Grand Teton	0.15	0.18	0.26
Teton	0.15	0.18	0.25
Washakie	0.17	0.20	0.27
Yellowstone	0.15	0.18	0.26

As discussed in detail above, because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analysis of visibility improvement for the NO_X BART to be reasonable for Wyodak Unit 1. We propose to find that Wyoming's analysis for this Unit is inconsistent with the statutory and regulatory requirement that ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Also, we are not relying on the State's costs due to reasons stated in section VII.C.3.b of this notice. We propose to find that Wyoming did not properly or reasonably ''take into consideration the costs of compliance.''

Our analysis follows our BART Guidelines. With the exception of the NO_X emission limits, the visibility improvement analyses, and the cost effectiveness analyses, EPA is proposing to find that the Wyoming RH BART analysis NO_X for Dave Johnson Units 4 fulfills all the relevant requirements of CAA Section 169A and the RHR.

PacifiCorp asserted to the State during formulation of the SIP proposal, and has since asserted directly to EPA [33], that a number of factors, when considered together, suggest that requiring installation of SCR at Jim Bridger Units 1 and 2 earlier than 2021–2022 is not reasonable. First, PacifiCorp points to the large number of retrofit actions it is taking at 20 coal-fired electric generating units in Wyoming, Utah, Colorado, and Arizona in order to reduce their emissions.[34] These retrofits are intended to comply with the requirements in the regional haze SIPs that these states have submitted to EPA and with other regulatory requirements, including required controls for mercury and acid gases under the recent Mercury and Air Toxics Standards rule. The company asserts that there are high capital costs for the measures required for these air quality-improving retrofits. Moreover, PacifiCorp states that accelerating the required installation of SCR at Jim Bridger Units 1 and 2 to late 2017, rather than the 2021 and 2022 dates established by the State, would significantly increase the costs to the utility and to its customers.

In addition, the company asserts that it has designed the installation schedule in order to minimize the number of units that are out of service system wide for installation of emissions controls at any one time. Its goal, it asserts, is to be able to maintain service to its customers with an adequate capacity margin. The company asserts that accelerating the timeline for installation of SCR would upset the orderly shut-down schedule they have devised and would threaten both service interruptions and an increased risk of spot-purchases of more expensive electrical energy, if it is available, to serve customers, but that either eventuality would significantly increase costs to its customers.[35]

EPA notes that PacifiCorp has offered these assertions taking into account only the requirements in the SIPs that have been submitted to EPA by Wyoming, Utah, Colorado, and Arizona. Today's proposal includes requirements that would likely require the additional installation of SCRs at three units and SNCR at two units owned by PacifiCorp

[33] See July 12, 2012 letter from PacifiCorp to EPA Region 8 located in the docket for this notice.

[34] For a listing of PacifiCorp's retrofit actions, see Table 1 of *Exhibit A—PacifiCorp's Emissions Reductions Plan* in Chapter 6 of the State's TSD.

[35] See *Exhibit A—PacifiCorp's Emissions Reductions Plan* in Chapter 6 of the State's TSD.

in Wyoming. In addition, we have since finalized action on the SIP for Arizona, and are requiring LNBs plus SCR on three units under a FIP.

As stated in the BART Guidelines pertaining to affordability: ''1. Even if the control technology is cost effective, there may be cases where the installation of controls would affect the viability of continued plant operations. 2. There may be unusual circumstances that justify taking into consideration the conditions of the plant and the economic effects of requiring the use of a given control technology. These effects would include effects on product prices, the market share, and profitability of the source. Where there are such unusual circumstances that are judged to affect plant operations, you may take into consideration the conditions of the plant and the economic effects of requiring the use of a control technology. Where these effects are judged to have a severe impact on plant operations you may consider them in the selection process, but you may wish to provide an economic analysis that demonstrates, in sufficient detail for public review, the specific economic effects, parameters, and reasoning. (We recognize that this review process must preserve the confidentiality of sensitive business information). Any analysis may also consider whether other competing plants in the same industry have been required to install BART controls if this information is available.'' 40 CFR part 50, Appendix Y, IV.E.3.

Based on the points made by PacifiCorp and noting the additional requirements in the proposed FIP for Wyoming, the finalized FIP for Arizona, and the possibility of additional requirements in a future FIP or SIP for Utah, EPA is proposing that the additional time to install controls under the State's LTS on Jim Bridger Unit 1 and Unit 2 is warranted under the affordability provisions in the BART Guidelines discussed above. Although neither the CAA nor the RHR require states or EPA to consider the affordability of controls or ratepayer impacts as part of a BART analysis, the BART guidelines allow (but do not require) consideration of ''affordability'' in the BART analysis.

EPA is proposing to determine that BART for all units at Jim Bridger would be SCR if the units were considered individually, based on the five factors, without regard for the controls being required at other units in the PacifiCorp system. However, when the cost of BART controls at other PacifiCorp-owned EGUs is considered as part of the cost factor for the Jim Bridger Units, EPA is proposing that Wyoming's determination that NO_X BART for these units is new LNB plus OFA for is reasonable. Considering costs broadly, it would be unreasonable to require any further retrofits at this source within five years of our final action. We note that the CAA establishes five years at the longest period that can be allowed for compliance with BART emission limits.

EPA is proposing to approve the SIP with regard to the State's determination that the appropriate level of NO_X control for Units 1 and 2 at Jim Bridger for purposes of reasonable progress is the SCR-based emission limit in the SIP, with compliance dates of December 31, 2021 for Unit 2 and December 31, 2022 for Unit 1. In the context of reasonable progress in the second planning period of the regional haze program, we have determined it is appropriate to give considerable deference to the State's conclusions about what controls are reasonable and when they should be implemented. Thus, we do not find it appropriate to disapprove the State's preferred compliance deadlines for Jim Bridger Units 1 and 2. As discussed below, we are seeking comment on an alternative proposal to promulgate a FIP for PacifiCorp Jim Bridger Units 1 and 2.

Wyoming's NO_X BART Determination for Jim Bridger Units 3 and 4

During the 2001–2003 baseline period, PacifiCorp Jim Bridger Units 3 and 4 were equipped with early generation LNBs with permit limits of 0.70 lb/MMBtu (3-hour fixed) and 0.41 lb/MMBtu and 0.45 lb/MMBtu (annual), respectively. The State determined that new LNBs with SOFA, new LNBs with SOFA plus SNCR, and new LNBs with SOFA plus SCR were technically feasible for controlling NO_X emissions. The State did not identify any technically infeasible options.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. Baseline NO_X emissions are 10,643 tpy for each unit based on unit heat input rate of 6,000 MMBtu/hr and 7,884 hours of operation.

A summary of the State's NO_X BART analysis and the visibility impacts is provided in Table 13 below.

TABLE 13—SUMMARY OF WYOMING'S JIM BRIDGER UNITS 3 AND 4 NO_X BART ANALYSIS—COSTS PER BOILER

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta deciview for the maximum 98th percentile impact at Mt. Zirkel Wilderness) [36]
New LNB with SOFA	0.26	4,493	$1,144,969	$255	—	0.41/0.47
New LNB with SOFA and SNCR	0.20	5,913	2,710.801	459	$1,103	0.53/0.62
New LNB with SOFA and SCR	0.07	8,987	20,296,400	2,258	5,721	0.80/0.82

The State determined that new LNBs with SOFA were reasonable for NO_X BART for Jim Bridger Units 3 and 4. The State determined that the NO_X BART emission limits for Jim Bridger Units 3 and 4 are both 0.26 lb/MMBtu (30-day rolling average). As explained below, the State determined SCR was not reasonable for BART.

The State is requiring PacifiCorp to install SCR controls under its LTS. The State determined that based on the cost of compliance and visibility improvement presented by PacifiCorp in the BART applications for Jim Bridger Units 3 and 4 and taking into consideration the logistical challenge of managing multiple pollution control installations within the regulatory time

[36] Unit 4 has different modeling results as the stack parameters used in the modeling are different enough from Units 1–3 to yield different modeled results.

allotted for installation of BART by the RHR, SCR controls would be required under the LTS but not BART (see Chapter 8.3.3 of the SIP). With respect to Jim Bridger Units 3 and 4, the State has required PacifiCorp to install SCR, or other NO_X control systems, to achieve an emission limit of 0.07 lb/MMBtu (30-day rolling average). PacifiCorp is required to meet the 0.07 lb/MMBtu emission rate on Unit 3 prior to December 31, 2015 and on Unit 4 prior to December 31, 2016.

EPA's NO_X BART Determination for Jim Bridger Unit 3 and Unit 4

The EPA agrees with the State's analysis pertaining to energy and non-air quality environmental impacts and remaining-useful-life for this source. EPA determined that baseline NO_X emissions are 7,853 tpy for Unit 3 and 8,133 tpy for Unit 4 based on the actual annual average for the years 2001–2003 (compared to 10,643 tpy that Wyoming relied on as noted above). As explained above, Wyoming determined that taking into consideration the logistical challenge of managing multiple pollution control installations within the regulatory time allotted for installation of BART by the RHR, SCR controls would be required under the LTS but not BART. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 14–17 below.

TABLE 14—SUMMARY OF EPA'S JIM BRIDGER UNIT 3 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Mt. Zirkel)
New LNBs with SOFA	0.20	3,710	$1,167,297	$315	—	0.50
New LNBs with SOFA and SNCR	0.16	4,539	4,530,069	998	$4,058	0.61
New LNBs with SOFA and SCR	0.05	6,799	20,135,420	2,961	6,905	0.92

Jim Bridger Unit 3 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 15 below.

TABLE 15—JIM BRIDGER UNIT 3: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + SOFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + SOFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + SOFA/SCR
Bridger	0.43	0.54	0.87
Fitzpatrick	0.19	0.23	0.34
Rawah	0.41	0.51	0.75
Rocky Mountain	0.34	0.42	0.65
Grand Teton	0.14	0.17	0.25
Teton	0.14	0.17	0.24
Washakie	0.22	0.19	0.26
Yellowstone	0.24	0.16	0.25

TABLE 16—SUMMARY OF EPA'S JIM BRIDGER UNIT 4 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (Annual Average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Mt. Zirkel)
New LNBs with SOFA	0.19	4,161	$1,167,297	$281	—	0.63
New LNBs with SOFA and SNCR	0.15	4,956	4,445,990	897	$4,127	0.75
New LNBs with SOFA and SCR	0.05	7,108	17,712,336	2,492	6,165	1.01

Jim Bridger Unit 4 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 17 below.

TABLE 17—JIM BRIDGER UNIT 3: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + SOFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + SOFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + SOFA/SCR
Bridger	0.56	0.68	1.00
Fitzpatrick	0.23	0.27	0.39
Rawah	0.45	0.53	0.71
Rocky Mountain	0.42	0.50	0.75
Grand Teton	0.18	0.21	0.30
Teton	0.15	0.18	0.27
Washakie	0.19	0.23	0.29
Yellowstone	0.17	0.20	0.29

As discussed in detail above, because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analysis of visibility improvement for the NO_X BART to be reasonable for Jim Bridger Unit 3 and 4. We propose to find that Wyoming's analysis for this Unit is inconsistent with the statutory and regulatory requirement that ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Also, we are not relying on the State's costs due to reasons stated in section VII.C.3.b of this notice. We propose to find that Wyoming did not properly or reasonably ''take into consideration the costs of compliance.''

Our analysis follows our BART Guidelines. With the exception of the NO_X emission limits, the visibility improvement analyses, and the cost effectiveness analyses, EPA is proposing to find that the Wyoming regional haze BART analysis NO_X for Jim Bridger Units 3 and 4 fulfills all the relevant requirements of CAA Section 169A and the RHR.

As stated above for Jim Bridger Units 1 and 2, EPA is proposing to determine that the facts indicate that BART for the all units at Jim Bridger is SCR when the units are considered individually based on the five factors without regard to the status of those factors for other units in the PacifiCorp system. However, when the five factors are considered across all the units, EPA is proposing that BART for Jim Bridger Units 3 and 4 is new LNB plus OFA.

EPA is proposing to approve the SIP with regard to the State's determination that the appropriate level of NO_X control for Units 3 and 4 at Jim Bridger for purposes of reasonable progress is the SCR-based emission limit in the SIP of 0.07 lb/MMBtu, with compliance dates of December 31, 2015 for Unit 3 and December 31, 2016 for Unit 4. As discussed above for Jim Bridger Units 1 and 2, in the context of reasonable progress in the second planning period of the regional haze program, we have determined it is appropriate to give considerable deference to the State's conclusions about what controls are reasonable and when they should be implemented. Thus, we do not find it appropriate to disapprove the State's preferred compliance deadlines for Jim Bridger Units 3 and 4. In addition, the State is requiring PacifiCorp to install the LTS controls within the timeline that BART controls would have to be installed pursuant to 40 CFR 51.308(e)(iv). Thus, we are proposing to approve the State's compliance schedule and emission limit of 0.07 lb/MMBtu for Jim Bridger Units 3 and 4 as meeting the BART requirements.

PM BART Determination for Jim Bridger Units 1–4

Units 1, 2, 3, and 4 are currently controlled for PM with ESPs and flue gas conditioning (FGC). The current permit limit for all four units is 0.03 lb/MMBtu. The State determined that fabric filters were technically feasible for controlling PM emissions. The State did not identify any technically infeasible controls or any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated. There are no remaining-useful-life issues for this source. A summary of the State's PM BART analyses for Units 1–4 is provided in Table 18 below. Baseline PM emissions are 1,064 tpy for Unit 1, 1,750 tpy for Unit 2, 1,348 tpy for Unit 3, and 710 tpy for Unit 4 based on unit heat input rate of 6,000 MMBtu/hr and 7,884 hours of operation per year.

TABLE 18—SUMMARY OF WYOMING'S PACIFICORP JIM BRIDGER UNITS 1–4 PM BART ANALYSIS

Control technology	Control efficiency (%)	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)
Fabric Filter—Unit 1	66.6	0.015	709	$6,367,118	$8,980
Fabric Filter—Unit 2	79.7	0.015	1,395	6,357,658	4,557
Fabric Filter—Unit 3	73.7	0.015	993	6,337,434	6,382
Fabric Filter—Unit 4	50	0.015	355	6,367,118	17,936

The State did not provide visibility improvement modeling for fabric filters, but EPA is proposing to conclude this is reasonable based on the high cost for fabric filters at each of the units. In addition, we anticipate that the visibility improvement that would result from lowering the limit from 0.03 lb/MMBtu to 0.015 lb/MMBtu would be

insignificant based on the State's analysis.[37]

Based on its consideration of the five-factors, the State determined the current ESPs with FGC are reasonable for BART. The State determined that fabric filters were not reasonable based on the high cost-effectiveness values. The State determined that the PM BART emission limit for Jim Bridger Units 1 through 4 is 0.03 lb/MMBtu.

We agree with the State's conclusions, and we are proposing approve its PM BART determination for Jim Bridger Units 1–4.

vi. PacifiCorp Naughton Units 1–3

PacifiCorp Naughton is located in Lincoln County, Wyoming. Naughton is comprised of three pulverized coal-fired units with a total net generating capacity of 700 MW. Naughton Unit 1 generates a nominal 160 MW and commenced operation in 1963. Naughton Unit 2 generates a nominal 210 MW and commenced operation in 1968. Naughton Unit 3 generates a nominal 330 MW and commenced operation in 1971. All three boilers are tangentially fired boilers. The State's BART determinations can be found in Chapter 6.5.6 and Appendix A of the SIP. The NO_X BART analysis for Unit 1 and Unit 2 is discussed in section VIII.A of this notice.

Wyoming's NO_X BART Determination for Naughton Unit 3

Naughton Unit 3 is currently controlled with LNBs with OFA with permit limits of 0.75 lb/MMBtu (93-hour block) and 0.49 lb/MMBtu (annual). The State determined that tuning the existing LNBs, existing LNBs with OFA and SNCR, and existing LNBs with OFA and SCR were all technically feasible for controlling NO_X emissions from Unit 3. The State did not identify any technically infeasible options.

Wyoming treated Naughton Unit 3 differently than most other units in that it did not assume that Unit 3 would first upgrade the combustion controls. The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there no remaining-useful-life issues for this source. A summary of the State's NO_X BART analyses for Unit 3 is provided in Table 19 below. Baseline NO_X emissions are 6,563 tpy for Unit 3 based on the unit heat input rate of 3,700 MMBtu/hr and 7,884 hours of operation per year.

TABLE 19—SUMMARY OF WYOMING'S NAUGHTON UNIT 3 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Bridger Wilderness Area)
Tuning Existing LNBs	0.37	1,167	$95,130	$82	—	0.25
Existing LNBs with OFA and SNCR	0.30	2,188	1,916,039	876	$1,783	0.46
Existing LNB with OFA and SCR	0.07	5,542	15,682,702	2,830	4,105	1.00

Based on its consideration of the five-factors, the State determined that the existing LNBs with OFA plus SCR were NO_X BART for Unit 3. The State determined the NO_X BART emission limit for Naughton Unit 3 is 0.07 lb/MMBtu (30-day rolling average).

EPA's NO_X BART Determination for Naughton Unit 3

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. Baseline NO_X emissions are 4,544 tpy for Unit 3 based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 20 and 21 below.

TABLE 20—SUMMARY OF EPA'S NAUGHTON UNIT 3 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park)
Existing LNBs with OFA	0.33	442	$106,393	$240	—	0.17
Existing LNBs with OFA and SNCR	0.23	1,673	3,896,839	2,329	$3,081	0.70
Existing LNBs with OFA and SCR	0.05	3,922	12,718,731	3,243	3,922	1.51

Naughton Unit 3 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 21 below.

[37] The cumulative 3-year averaged visibility improvement from new LNB with separated OFA, upgraded wet FGD, and FGC for enhanced ESP with FGC (Post-Control Scenario 1) across the three Class I areas achieved with LNB and separated OFA, upgraded wet FGD, and adding a polishing fabric filter (Post-Control Scenario 2) was 0.095 delta dv from Unit 1, 0.090 delta dv from Unit 2, 0.089 delta dv from Unit 3 and 0.025 delta dv from Unit 4.

TABLE 21—VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – existing LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – existing LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – existing LNBs + OFA/SCR
Fitzpatrick	0.09	0.33	0.74
N. Absaroka	0.04	0.16	0.36
Washakie	0.06	0.23	0.51
Teton	0.08	0.30	0.66
Grand Teton	0.09	0.33	0.73
Yellowstone	0.07	0.26	0.57

As stated above, the State determined that NO_X BART for Naughton Unit 3 was existing LNBs plus OFA with SCR with an emission limit of 0.07 lb/MMBtu (30-day rolling average). We find this determination reasonable given that the average cost effectiveness is reasonable at $3,243/ton with significant visibility improvement at the most impacted Class I area of 1.51 dv, as well as improvements ranging from 0.36 dv to 0.74 dv at six other Class I areas.

We agree with the State's conclusions, and we are proposing to approve its NO_X BART determination for Naughton Unit 3.

We are also asking if interested parties have additional information regarding the possible conversion of Naughton Unit 3 from a coal fired unit to a natural gas fired unit as part of a better-than-BART demonstration to the proposed requirement for the installation of combustion controls and SCR.[38] PacifiCorp has indicated that converting the unit to natural gas would reduce NO_X emissions to 0.10 lb/MMbtu, and nearly eliminate all SO_2 emissions. If PacifiCorp proceeds with their planned conversion to natural gas, we seek comment on whether the interested parties think the Agency should consider the conversion of Naughton Unit 3 to natural gas as a BART control technology option that could be finalized as either a FIP, or a SIP (if the Agency were to receive a SIP revision from the State) instead of BART as proposed, with associated changes to the proposed regulatory text as necessary.

PM BART Determination

Naughton Units 1 and 2 are currently controlled for PM with ESPs and FGC. The current permit limit for Units 1 and 2 is 0.04 lb/MMBtu. Unit 3 is required by permit to install fabric filters for both Units by 2014 with a permit limit of 0.015 lb/MMBtu. The State determined that fabric filters were technically feasible for controlling PM emissions for Units 1 and 2. The State did not identify any technically infeasible controls. The State determined that a fabric filter on Unit 3 represents the most stringent PM control technology and that 0.015 lb/MMBtu represents the most stringent emission limit. Consistent with the BART Guidelines, the State did not provide a full five-factor analysis because the State determined BART to be the most stringent control technology and limit.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's PM BART analyses for Units 1 and 2 is provided in Table 22 below. Baseline emissions for Unit 1 are 409 tpy and 605 tpy for Unit 2 based on unit heat input rate of 1,850 MMBtu/hr and 7,884 hours of operation per year.

TABLE 22—SUMMARY OF PACIFICORP NAUGHTON UNIT 1 AND UNIT 2 PM BART ANALYSIS

Control technology	Control efficiency (%)	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)
Fabric Filter—Unit 1	73.2	0.015	299	$3,436,594	$11,494
Fabric Filter—Unit 2	76.6	0.015	464	4,101,705	8,848

The State did not provide visibility improvement modeling for fabric filters, but EPA is proposing to conclude this is reasonable based on the high cost-effectiveness values of fabric filters at each of the units, which are higher than EPA or other state have considered reasonable for PM BART.

Based on its consideration of the five-factors, the State determined that the existing ESPs with FGC were reasonable for PM BART for Units 1 and 2. The State determined that fabric filters were not reasonable based on the high cost-effectiveness values. The State determined that the PM BART emission limit for Naughton Unit 1 and Unit 2 is 0.04 lb/MMBtu. The State determined the PM BART emission limit for Naughton Unit 3 is 0.015 lb/MMBtu.

We agree with the State's conclusions, and we are proposing to approve its PM BART determination for Naughton Units 1, 2, and 3.

vii. PacifiCorp Wyodak—Unit 1

Background

PacifiCorp Wyodak power plant is located in Campbell County, Wyoming. Wyodak is comprised of one coal-fired

[38] At PacifiCorp's request, on December 11, 2013, EPA Region 8 met with PacifiCorp. PacifiCorp discussed the option of Naughton Unit 3 being converted to natural gas and stated that they were working on the analysis. In subsequent conversations with the State, EPA learned that PacifiCorp had submitted its analysis to the State, which the State then provided to EPA. We have included this information in the docket (see document titled *2/19/2013 Email from Cole Anderson, Wyoming DEQ, to Laurel Dygowski, EPA Region 8).*

boiler, Unit 1, burning pulverized sub-bituminous Powder River Basin coal for a total net generating capacity of a nominal 335MW. Wyodak's boiler commenced service in 1978. The State's BART determination can be found in Chapter 6.5.7 and Appendix A of the SIP. The NO_X BART analysis for Wyodak Unit 1 is discussed in Section VII.A of this notice.

Wyodak Unit 1 PM BART Determination

Wyodak Unit 1 is currently controlled with fabric filters with an emission limit of 0.015 lb/MMBtu (30-day rolling average). The State determined that fabric filters on Wyodak Unit 1 represent the most stringent PM control technology and that 0.015 lb/MMBtu represents the most stringent emission limit. Consistent with the BART Guidelines, the State did not provide a full five-factor analysis because the State determined BART to be the most stringent control technology and limit. The State determined the PM BART emission limit for Wyodak Unit 1 is 0.015 lb/MMBtu.

We agree with the State's conclusions, and we are proposing to approve its PM BART determination for Wyodak Unit 1.

D. Reasonable Progress Requirements

In order to establish RPGs for it Class I areas, and to determine the controls needed for the LTS, Wyoming followed the process established in the RHR. Wyoming identified sources (other than BART sources) and source categories in Wyoming that are major contributors to visibility impairment and considered whether these sources should be controlled based on a consideration of the factors identified in the CAA and EPA's regulations (see CAA 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A)). Wyoming then identified the anticipated visibility improvement in 2018 in all its Class I areas using the WRAP Community Multi-Scale Air Quality (CMAQ) modeling results.

1. Visibility Impairing Pollutants and Sources

In order to determine the significant sources contributing to haze in Wyoming's Class I areas, Wyoming relied upon two source apportionment analysis techniques developed by the WRAP. The first technique was regional modeling using the Comprehensive Air Quality Model (CAMx) and the PM Source Apportionment Technology (PSAT) tool, used for the attribution for sulfate and nitrate sources only. The second technique was the Weighted Emissions Potential (WEP) tool, used for attribution of sources of OC, EC, $PM_{2.5}$, and PM_{10}. The WEP tool is based on emissions and residence time, not dispersion modeling, and looks at all sources throughout the modeling domain.

PSAT uses the CAMx air quality model to simulate nitrate-sulfate-ammonia chemistry and apply this chemistry to a system of tracers or ''tags'' to track the chemical transformations, transport, and removal of NO_X and SO_2. These two pollutants are important because they tend to originate from anthropogenic sources. Therefore, the results from this analysis can be useful in determining contributing sources that may be controllable, both in-state and in neighboring states.

WEP is a screening tool that helps to identify source regions that have the potential to contribute to haze formation at specific Class I areas. Unlike PSAT, this method does not account for chemistry or deposition. The WEP combines emissions inventories, wind patterns, and residence times of air masses over each area where emissions occur, to estimate the percent contribution of different pollutants. Like PSAT, the WEP tool compares baseline values (2000–2004) to 2018 values, to show the improvement expected by 2018 for OC, EC, $PM_{2.5}$, and PM_{10}. More information on the WRAP modeling methodologies is available in the document *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans* in the Supporting and Related Materials section of the docket. Table 23 shows Wyoming's contribution to extinction at its own Class I areas.

TABLE 23—WYOMING SOURCES EXTINCTION CONTRIBUTION 2000–2004 FOR 20% WORST DAYS [39]

Class I area	Pollutant species	Extinction (Mm^{-1})	Species contribution to total particulate extinction (%)	Wyoming sources contribution to species extinction (%)
Yellowstone National Park, Grand Teton National Park, Teton Wilderness.	Sulfate	4.3	16.7	5.9
	Nitrate	1.8	7.0	4.7
	OC	13.5	52.4	72.6
	EC	2.5	9.7	66.8
	Fine PM	1.0	3.9	24.0
	Coarse PM	2.6	10.1	20.0
	Sea Salt	0.02	0.08	
North Absaroka Wilderness, Washakie Wilderness	Sulfate	4.9	20.7	5.6
	Nitrate	1.6	6.8	8.2
	OC	11.6	48.9	44.6
	EC	1.9	8.0	39.5
	Fine PM	0.8	3.4	14.0
	Coarse PM	2.9	12.2	12.1
	Sea Salt		0.04	
Bridger Wilderness, Fitzpatrick Wilderness	Sulfate	5.0	22.2	15.4
	Nitrate	1.4	6.2	19.4
	OC	10.5	46.6	58.5
	EC	2.0	8.9	51.0
	Fine PM	1.1	4.9	30.3
	Coarse PM	2.5	11.1	27.4

[39] Extinction and species contribution to total particulate extinction taken from IMPROVE data (*http://vista.cira.colostate.edu/dev/web/AnnualSummaryDev/Composition.aspx*). IMPROVE data for NOABI based on available data for 2002–2004. Contribution of sulfate and nitrate based on PSAT; OC, EC, $PM_{2.5}$, and PM_{10} contribution based on WEP as taken from the WRAP TSS (*http://vista.cira.colostate.edu/tss/*).

TABLE 23—WYOMING SOURCES EXTINCTION CONTRIBUTION 2000–2004 FOR 20% WORST DAYS [39]—Continued

Class I area	Pollutant species	Extinction (Mm^{-1})	Species contribution to total particulate extinction (%)	Wyoming sources contribution to species extinction (%)
	Sea Salt	0.04	0.2	.....

Table 24 shows influences from sources both inside and outside of Wyoming per the PSAT modeling for 2018. As indicated, the outside domain (OD) region is the highest contributor to sulfate and nitrate at all Wyoming Class I areas. The outside domain region represents the concentration of pollutants at the boundaries of the modeling domain. Depending on meteorology and the type of pollutant (particularly sulfate), these emissions can be transported great distances from regions such as Canada, Mexico, and the Pacific Ocean. Wyoming is the second highest contributor of particulate sulfate and nitrate at Bridger and Fitzpatrick Wilderness areas, but is a lesser contributor at the other Class I areas.

TABLE 24—PSAT SOURCE REGION APPORTIONMENT FOR 20% WORST DAYS [40]

Class I area		2018 Sulfate PSAT					2018 Nitrate PSAT				
Yellowstone National Park, Grand Teton National Park, Teton Wilderness.	Region	OD	ID	WY	CAN	OR	OD	ID	WA	UT	OR
	% Contribution	46.5	8.1	5.8	5.4	4.6	31.3	28.2	9.4	7.4	7.0
North Absaroka Wilderness, Washakie Wilderness ...	Region	OD	CAN	MT	ID	WY	OD	ID	MT	CAN	WY
	% Contribution	50.1	12.5	6.5	5.7	5.5	30.7	16.7	14.8	11.5	8.2
Bridger Wilderness, Fitzpatrick Wilderness	Region	OD	WY	ID	UT	CAN	OD	WY	UT	ID	CA
	% Contribution	31.1	15.3	7.6	5.9	5.1	21.8	19.3	15.6	10.6	6.8

Table 25 shows the WEP contribution by source category for EC, OC, $PM_{2.5}$, and PM_{10}.

TABLE 25—WEP SOURCE CATEGORY CONTRIBUTION FOR 20% WORST DAYS

Class I area	Point	Area	Mobile	Anthropogenic fires	Natural fires and biogenic
OC					
Yellowstone National Park, Grand Teton National Park, Teton Wilderness	0.408	3.892	1.636	8.303	85.764
North Absaroka Wilderness, Washakie Wilderness	0.661	9.449	2.844	11.881	75.159
Bridger Wilderness, Fitzpatrick Wilderness	0.984	7.552	3.28	7.644	80.543
EC					
Yellowstone National Park, Grand Teton National Park, Teton Wilderness	0.243	2.628	13.659	5.51	77.958
North Absaroka Wilderness, Washakie Wilderness	0.386	5.755	23.253	7.054	63.55
Bridger Wilderness, Fitzpatrick Wilderness	0.54	4.509	25.65	4.105	65.195
$PM_{2.5}$					
Yellowstone National Park, Grand Teton National Park, Teton Wilderness	5.565	70.463	0.086	5.469	18.411
North Absaroka Wilderness, Washakie Wilderness	3.491	86.311	0.171	3.334	6.691
Bridger Wilderness, Fitzpatrick Wilderness	16.311	69.195	0.081	3.618	10.785

[40] OD denotes Outside Domain; ID denotes Idaho, MT denotes Montana, CAN denotes Canada, UT denotes Utah, WA denotes Washington, WY denotes Wyoming, CA denotes California, and OR denotes Oregon.

TABLE 25—WEP SOURCE CATEGORY CONTRIBUTION FOR 20% WORST DAYS—Continued

Class I area	Point	Area	Mobile	Anthropogenic fires	Natural fires and biogenic
PM_{10}					
Yellowstone National Park, Grand Teton National Park, Teton Wilderness	2.655	83.939	0.363	0.717	12.316
North Absaroka Wilderness, Washakie Wilderness	2.066	93.197	0.213	0.313	4.206
Bridger Wilderness, Fitzpatrick Wilderness	6.775	84.157	0.477	0.353	8.23

Table 25 shows that EC, OC, $PM_{2.5}$ and PM_{10} emissions come mainly from sources such as natural fire, windblown dust, and road dust. To select the sources that would undergo the required four-factor analysis, Wyoming looked at State emission inventory data in conjunction with the source apportionment information discussed above (a summary of the State's emission inventory can be found in section VI.E.1 of this notice). After evaluating this information, the State determined that stationary source emissions of NO_X and SO_2 were reasonable to evaluate for purposes of reasonable progress controls. The State also determined that emissions of NO_X from oil and gas development should be analyzed for purposes of reasonable progress. Since emissions of OC, EC, $PM_{2.5}$, and PM_{10} come from mainly uncontrollable sources, the State determined it was reasonable to not evaluate these pollutants for reasonable progress controls. The State submitted a January 12, 2011, SIP that addresses sources of SO_2.[41] Thus, the State evaluated emissions of the remaining pollutant, NO_X, for reasonable progress in this SIP.

2. Four-Factor Analysis

In determining the measures necessary to make reasonable progress, States must take into account the following four factors and demonstrate how they were taken into consideration in selecting reasonable progress goals for each Class I area:

- Costs of Compliance;
- Time Necessary for Compliance;
- Energy and Non-air Quality Environmental Impacts of Compliance; and
- Remaining Useful Life of any Potentially Affected Sources.

CAA § 169A(g)(1) and 40 CFR 308(d)(1)(i)(A).

The State performed a four factor analysis for each of the reasonable progress sources pursuant to 40 CFR 51.308(d)(1)(i)(A).

a. Stationary Sources

The State used a reasonable progress screening methodology termed ''Q/d'' to determine which stationary sources would be candidates for controls under reasonable progress. Q/d is a calculated ratio where Q represents (in this case) the NO_X emission rate in tpy of the source divided by the distance in kilometers of the point source from the nearest Class I area, denoted by ''d.'' The State used the maximum permitted emission rate for each source to determine the tpy of NO_X in the Q/d calculation. The State determined that a Q/d value of 10 is reasonable for determining which sources the State should consider for reasonable progress controls, since this value yielded sources of concern similar in magnitude to sources subject-to-BART.

The State determined there were three units with a Q/d of greater than 10 that are not already being controlled under BART and the State completed a reasonable progress analysis for each of the sources. The sources are PacifiCorp Dave Johnston Unit 1 and Unit 2 and Mountain Cement Company Laramie Plant kiln. Dave Johnston Units 1 and 2 are addressed as part of our FIP in section VII.B of this notice. In addition, as previously mentioned, the State considered reasonable controls on oil and gas development sources.

b. Summary of Reasonable Progress Determinations and Limits

For the subject-to-reasonable progress sources, the State provided analyses that took into consideration the four factors as required by section 169A(g)(1) of the CAA and 40 CFR 51.308(d)(1)(i)(A). For the stationary sources, the State relied on the analysis found in *Supplementary Information for Four-Factor Analyses for Selected Individual Facilities in Wyoming,* May 6, 2009, Revised Draft Report Prepared by EC/R Incorporated. For oil and gas sources, the State relied on the analysis found in *Supplementary Information for Four Factor Analyses by WRAP States,* May 4, 2009 (Corrected 4/20/10) Revised Draft Report Prepared by EC/R Incorporated (for a complete copy of the reports see Chapter 7 of the State's TSD). The analyses considered EPA's BART Guidelines as relevant to their reasonable progress evaluations, as well as EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program.*

In this action, EPA is proposing to approve the reasonable progress NO_X determinations submitted by the State for oil and gas sources and for Mountain Cement Company Laramie Plant kiln. EPA is proposing to disapprove the State's reasonable progress determinations and proposing to issue a reasonable progress determination NO_X FIP for PacifiCorp Dave Johnston Unit 1 and Unit 2. As with the BART EGUs, EPA is providing revised cost analyses and visibility improvement modeling for PacifiCorp Dave Johnston Unit 1 and 2. We are also providing the original reasonable progress analyses EPA relied on in its June 4, 2012 proposed rulemaking. EPA's rationale for disapproving the State's reasonable progress determination for these units, as well as EPA's reasonable progress FIP determination, can be found in section VIII.B of this notice.

A summary of the reasonable progress analysis and determination for each source/source category that we are proposing to approve is provided below.

i. Oil and Gas Sources

Background

Oil and gas exploration and production is occurring in numerous areas in Wyoming. The sources associated with oil and gas production mainly emit NO_X and VOCs; in this context, the State considered NO_X. Oil and gas production and exploration includes operation, maintenance, and servicing of production properties, including transportation to and from sites. EC/R evaluated reasonable progress control technologies for common sources in the oil and gas industry including compressor engines, turbines, process heaters, and drilling rig engines. The State's NO_X reasonable progress determination for oil and gas

[41] The State submitted a January 12, 2011 SIP submittal to address the requirements under 40 CFR 51.309, with the exception of the 40 CFR 51.309(g) requirements addressed in this SIP action.

sources can be found in Chapter 7.3.5 of the SIP.

NO_X Reasonable Progress Determination

For compressor engines, potential control options identified by the State include air-fuel ratio controls (AFRC), ignition timing retard, low-emission combustion (LEC) retrofit, SCR, SNCR, and replacement with electric motors. The State evaluated several control technologies for drilling rig engines including ignition timing retard, exhaust gas recirculation (EGR), SCR, replacement of Tier 2 engines with Tier 4 engines, and diesel oxidation catalyst. Potential controls for turbines identified by the State include water or steam injection, LNBs, SCR, and water or steam injection with SCR. NO_X emission control technologies identified by the State for process heaters include LNBs, ultra-low NO_X burners (ULNBs), LNBs with flue gas recirculation (FGR), SNCR, SCR, and LNBs installed in conjunction with SCR.

NO_X emissions vary based on the equipment and fuel source. Emissions from individual natural gas-fired turbines at production operations can be as high as 877 tpy of NO_X, while emissions from individual natural gas turbines at exploration operations can reach 131 tpy of NO_X. Individual gas reciprocating engines have comparable NO_X emissions with up to 700 tpy at production operations and 210 tpy at exploration operations. Diesel engine emissions can approach 46 tpy for production operations and 10 tpy for exploration operations.

Table 26 provides a summary of the reasonable progress NO_X analysis for oil and gas sources. Both the capital and annual costs for each technology is dependent on the engine size or on the process throughput; therefore, for most of the control technologies listed in Table 26, the State has provided cost estimate ranges. The lower end of the cost/ton estimates represent the cost per unit for larger or higher production units, while the higher end of the cost/ton estimates represent the cost per unit for the smaller or lower production units. The capital and annual cost figures are expressed in terms of the cost per unit of engine size or per unit of process throughput.

TABLE 26—SUMMARY OF REASONABLE PROGRESS NO_X ANALYSIS FOR OIL AND GAS EXPLORATION AND PRODUCTION EQUIPMENT

Source type	Control technology	Estimated control efficiency (%)	Pollutant controlled	Estimated capital cost ($/unit)	Annual cost ($/year/unit)	Units	Cost effectiveness ($/ton)
Compressor Engines	AFRC	10–40	NO_X	5.3–42	0.9–6.8	hp	68–2,500
	Ignition timing retard.	15–30	NO_X	N/A	1–3	hp	42–1,200
	LEC retrofit	80–90	NO_X	120–820	30–210	hp	320–2,500
	SCR	90	NO_X	100–450	40–270	hp	870–31,000
	SNCR	90–99	NO_X	17–35	3–6	hp	16–36
	Replacement with electric motors.	100	NO_X	120–140	38–44	hp	100–4,700
Drilling Rig Engines and Other Engines.	Ignition timing retard.	15–30	NO_X	16–120	14–66	hp	1,000–2,200
	EGR	40	NO_X	100	26–67	hp	780–2,000
	SCR	80–95	NO_X	100–2,000	40–1,200	hp	3,000–7,700
	Replacement of Tier 2 engines with Tier 4.	87	NO_X	125	20	hp	900–2,400
Turbines	Water or steam injection.	68–80	NO_X	4.4–16	2–5	1000 BTU	560–3,100
	LNB	68–84	NO_X	8–22	2.7–8.5	1000 BTU	2,000–10,000
	SCR	90	NO_X	13–34	5.1–13	1000 BTU	1,000–6,700
	Water or steam injection with SCR.	93–96	NO_X	13–34	5.1–13	1000 BTU	1,000–6,700
Process Heaters	LNB	40	NO_X	3.8–7.6	0.41–0.81	1000 BTU	2,100–2,800
	ULNB	75–85	NO_X	4.0–13	0.43–1.3	1000 BTU	1, 500–2,000
	LNB and FGR	48	NO_X	16	1.7	1000 BTU	2,600
	SNCR	60	NO_X	10–22	1.1–2.4	1000 BTU	4,700–5,200
	SCR	70–90	NO_X	33–48	3.7–5.6	1000 BTU	2,900–6,700
	LNB and SCR	70–90	NO_X	37–55	4–6.3	1000 BTU	2,900–6,300

Wyoming states that it would need up to two years to develop the necessary regulations to control oil and gas sources.[42] The State estimated that companies would require a year to procure the necessary capital to purchase the control equipment. The time required to design, fabricate, and install control technologies will vary based on the control technology selected and other factors.

The State determined that no additional controls for oil and gas sources were reasonable at this time. The State concluded that emissions from large stationary sources processing oil and gas in the WRAP region have been well quantified over the years, while smaller exploration and production sources that the State is evaluating for reasonable progress have not had the same degree of emission inventory development. The State points out that understanding the sources and volume of emissions at oil and gas production sites is necessary to recognizing the impact that these emissions have on visibility.

To better understand the emissions from stationary and mobile equipment

[42] For all reasonable progress sources, the time necessary to develop regulations is not a consideration under the time necessary for compliance factor. If regulations are needed to implement reasonable progress controls, the State must develop them as part of the regional haze SIP.

operated as part of oil and gas field operations, the WRAP has been working on developing an emission inventory to more fully characterize the oil and gas field operations emissions. The WRAP's development of a more comprehensive emission inventory is still in process (as of the date of the State's SIP submittal). The State determined it cannot complete the evaluation of oil and gas on visibility until the WRAP emission inventory study has been completed.

The State points out that in the case of compressor engines, many facilities have already installed control equipment.[43] For lean burn engines, oxidation catalysts are commonly installed, while SNCR with AFRC are commonly installed for rich burn engines. The State also points out that regulating drill rig engines can be problematic since drill rig engines are, for the most part, considered mobile sources and emission limits for mobile sources are set by the Federal government under section 202 of the CAA.

We disagree with the State's reasoning for not adopting reasonable progress controls for oil and gas sources. If the State determined that additional information was needed to potentially control oil and gas sources, the State should have developed the information. While we disagree with the State's reasoning for not requiring any controls under reasonable progress, we are proposing to approve the State's conclusion that no additional NO_X controls are warranted for this planning period. As shown by the four-factor analyses, the most reasonable controls are for compressor engines, which the State already controls through its minor source BACT requirements (see above). In addition, while the costs of some controls are within the range of cost-effectiveness values Wyoming, other states, and we have considered as reasonable in the BART context, they are not so low that we are prepared to disapprove the State's conclusion in the reasonable progress context. Therefore, we are proposing to approve the State's reasonable progress determination for oil and gas sources.

ii. Mountain Cement Company Laramie Plant—Kiln

Background

The Mountain Cement Company Laramie Plant cement kiln is a long dry kiln with a capacity of 1,500 tons of clinker per day. Assuming the plant runs 365 days of the year, the result is 547,500 tpy of clinker.

NO_X Reasonable Progress Determination

The kiln is currently uncontrolled for NO_X emissions. The State determined that indirect and direct firing of LNBs, biosolid injection, NOxOUT^{SM}, CemSTAR^{SM}, LoTOx™, SCR, SNCR (using urea), and SNCR (using ammonia) were technically feasible for controlling NO_X emissions from the kiln. The State did not identify any technically infeasible controls.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's NO_X reasonable progress analyses for the kiln is provided in Table 27 below. Baseline NO_X emissions for the kiln are 524 tpy based on 2002 actual emissions.

TABLE 27—SUMMARY OF MOUNTAIN CEMENT COMPANY KILN NO_X REASONABLE PROGRESS ANALYSIS

Control technology	Control efficiency (%)	Emission reduction (tpy)	Annualized costs	Cost effectiveness ($/ton)
LNB (indirect)	30–40	157–210	$205,000	$6,568–4,910
LNB (direct)	40	210	449,000	13,853
Biosolid Injection [44]	50	262	−127,000	1,324
NOxOUT^{SM}	35	183	507,000	8,023
CemSTAR^{SM} [45]	20–60	105–314	Unknown	Unknown
LoTOx™ [46]	80–90	419–472	Unknown	Unknown
SCR	80	419	7,553,000	82,535
SNCR (urea) [47]	35	183	Unknown	1,223
SNCR (ammonia)	35	183	Unknown	1,223

[44] A negative annual cost is given because cement kilns receive a credit for the biosolids tipping fee paid by facilities providing the biosolids to the cement plant. For the purposes of this analysis, the tipping fee is $5.00/ton.
[45] Cost effectiveness figures for the CemStar^{SM} process were not available for dry kilns.
[46] Cost effectiveness figures for LoTOx™ were not available for dry kilns.
[47] Capital and annual costs for SNCR have only been evaluated for preheater and precalcnier kilns. Only cost effectiveness figures were available for dry kilns.

The State estimated that it could potentially take seven years to install control equipment on the kiln. This estimate includes the two years that will be necessary for the State to implement new regulations and the one-year Mountain Cement will likely need to obtain the necessary capital for the purchase of new emission control technology. The State estimates the total time necessary for compliance will vary based on the control technology selected. For example, the State predicts that one and a half years will be required to design, fabricate, and install SCR or SNCR technology, while over two and a half years will be required to design, fabricate, and install LoTOx™ technology.

The State determined no controls were reasonable for reasonable progress for Mountain Cement Company Laramie Plant kiln. The State cited that the four-factor analysis was limited, in that no guidance was provided by EPA for identifying significant sources and EPA did not establish contribution to visibility impairment thresholds (a potential fifth factor for reasonable progress determinations).[48] The State further claims that the State cannot, per Wyoming Statute 35–11–202, establish emission control requirements except through State rule or regulation. Furthermore, the Wyoming statute requires the State to consider the

[43] Oil and gas sources are regulated by the State as part of its minor source BACT requirements in Wyoming Air Quality Standards and Regulations Chapter 6, Section 2.

[48] States must consider the four factors as listed above but can also take into account other relevant factors for the reasonable progress sources identified (see EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), p. 2–3, July 1, 2007).

character and degree of injury of the emissions involved. In this case, the State claims it would need to have visibility modeling that assessed the degree of injury caused by the emissions, which the State does not have. The State believes it has taken a strong and reasonable first step in identifying potential contributors to visibility impairment, and that the next step of creating an appropriate rule or regulation will be accomplished in the next SIP revision.

We disagree with the State's reasoning for not adopting reasonable progress controls for Mountain Cement Company Laramie Plant kiln. If the State determined that it needed to adopt a rule or perform modeling to adequately assess and, if warranted, require reasonable progress controls, the State should have completed these steps before it submitted its regional haze SIP. The RHR does not allow for commitments to potentially implement strategies at some later date that are identified under reasonable progress or for the State to take credit for such commitments. Nor does it allow the State to consider the time to promulgate regulations as part of the time for compliance.

While we disagree with the State's reasoning for not requiring any controls under reasonable progress, we are proposing to approve the State's conclusion that no additional NO_X controls are warranted for this planning period. While the costs of some controls (i.e., biosolid injection and SNCR) are within the range of cost-effectiveness values that Wyoming, other states, and EPA have considered as reasonable in the BART context, the costs are not so low that we are prepared to disapprove the State's conclusion in the reasonable progress context. In addition, these additional controls only afford relatively modest emission reductions.

3. Reasonable Progress Goals

40 CFR 51.308(d)(1) requires states to ''establish goals'' (in deciviews) that provide for reasonable progress towards achieving natural visibility conditions for each Class I area of the State. These RPGs are interim goals that must provide for incremental visibility improvement for the most impaired visibility days, and ensure no degradation for the least impaired visibility days. The RPGs for the first planning period are goals for the year 2018.

Wyoming relied on WRAP modeling to establish its RPGs for 2018. The primary tool WRAP relied upon for modeling regional haze improvements by 2018, and for estimating Wyoming's RPGs, was the CMAQ model. The CMAQ model was used to estimate 2018 visibility conditions in Wyoming and all western Class I areas, based on application of anticipated regional haze strategies in the various states' regional haze plans, including assumed controls on BART sources.

The Regional Modeling Center (RMC) at the University of California Riverside conducted the CMAQ modeling under the oversight of the WRAP Modeling Forum. The RMC developed air quality modeling inputs including annual meteorology and emissions inventories for: (1) A 2002 actual emissions base case; (2) a planning case to represent the 2000–2004 regional haze baseline period using averages for key emissions categories; (3) a 2018 base case of projected emissions determined using factors known at the end of 2005; and (4) a 2018 reasonable progress case to represent anticipated BART controls. All emission inventories were spatially and temporally allocated using the Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system. Each of these inventories underwent a number of revisions throughout the development process to arrive at the final versions used in CMAQ modeling.

The photochemical modeling of regional haze for the WRAP states for 2002 and 2018 was conducted on the 36-km resolution national regional planning organization domain that covered the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. The RMC examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The 2002 modeling efforts were used to evaluate air quality/visibility modeling for a historical episode, in this case, for calendar year 2002, to demonstrate the suitability of the modeling systems for subsequent planning, sensitivity, and emissions control strategy modeling. Model performance evaluation compares output from model simulations with ambient air quality data for the same time period to determine whether model performance is sufficiently accurate to justify using the model to simulate future conditions. Once the RMC determined that model performance was acceptable, it used the model to determine the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress. A more detailed description of the CMAQ modeling performed for the WRAP can be found in the Chapter 5 of the State's TSD.

The State determined that the WRAP 2018 projections represent significant visibility improvement and reasonable progress toward natural visibility based upon the State's consideration of the factors required for BART and reasonable progress. The State adopted the WRAPs 2018 projections as their RPG for each Class I area. Table 28 shows the URP and the 2018 RPGs adopted by the State.

TABLE 28—WYOMING'S URP AND RPGS FOR 2018

Wyoming Class I Areas	20% Worst days				20% Best days	
	2000–2004 Baseline (deciview)	2018 URP (deciview)	Reduction needed to reach URP goal (delta deciview)	2018 CMAQ modeling projection—State's RPG	2000–2004 Baseline (deciview)	2018 CMAQ modeling projection (deciview)
Yellowstone National Park, Grand Teton National Park, Teton Wilderness	11.8	10.5	0.7	11.2	2.6	2.4
North Absaroka Wilderness, Washakie Wilderness	11.5	10.4	0.6	11.0	2.0	2.0
Bridger Wilderness, Fitzpatrick Wilderness	11.1	10.0	0.6	10.6	2.1	2.0

Table 28 shows that the State's regional haze SIP is providing for improvement in visibility for the most-impaired days for the period ending in 2018 and allows for no degradation in visibility for the least-impaired days.

Table 28 also shows that Wyoming is not meeting the URP to meet natural visibility conditions by 2064. In this case, 40 CFR 51.308(d)(1)(ii) requires the State to demonstrate, based on the four factors in 51.308(d)(1)(i)(A), that the RPGs established in this SIP are reasonable for this planning period and that achieving the URP in this planning period is not reasonable. In its demonstration, the State cited many reasons why meeting the URP was not reasonable, including the following. First, emissions from natural sources greatly affect the State's ability to meet the 2018 URP. As discussed earlier, WEP data shows that emissions of OC, EC, $PM_{2.5}$, and PM_{10} come mainly from natural or non-anthropogenic sources, such as natural wildfire and windblown dust. The State has little or no control over OC, EC, $PM_{2.5}$, and PM_{10} emissions associated with natural fire and windblown dust. Second, emissions from sources outside the WRAP modeling domain also affect the State's ability to meet the 2018 URP. Sources outside of the modeling domain are the single largest source region contributor to sulfate and nitrate at the State's Class I areas. These sources are not under the control of Wyoming or the surrounding states.

Because the State is not meeting the URP, the State is required by 40 CFR 51.308(d)(1)(ii) to assess the number of years it would take to reach natural conditions if visibility improvement continues at the current rate of progress. The State has calculated the year and the length of time to reach natural visibility as follows: Yellowstone National Park, Grand Teton National Park, and Teton Wilderness: 2130 (126 years); North Absaroka Wilderness and Washakie Wilderness: 2136 (132 years); and Bridger Wilderness and Fitzpatrick Wilderness: 2165 (161 years).

EPA disagrees with the State's assessment that, based on the factors in 40 CFR 51.308(d)(1)(i)(a), all reasonable controls were implemented by the State for this first planning period of the regional haze program. In particular, as discussed in sections VIII.A and VIII.B. below, we find unreasonable the State's determination to not impose more stringent NO_X BART controls on certain sources or not to impose any reasonable progress controls at PacifiCorp Dave Johnston Units 1 and 2. As a result, EPA is proposing to disapprove the State's RPGs, and because we are proposing to disapprove Wyoming's RPGs, we are also proposing a FIP to replace them. See discussion in section VIII.C below.

E. Long Term Strategy

1. Emission Inventories

40 CFR 51.308(d)(3)(iii) requires that Wyoming document the technical basis, including modeling, monitoring, and emissions information, on which it relied to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. Wyoming must identify the baseline emissions inventory on which its strategies are based. 40 CFR 51.308(d)(3)(iv) requires that Wyoming identify all anthropogenic sources of visibility impairment it considered in developing its LTS. This includes major and minor stationary sources, mobile sources, and area sources.

In order to meet these requirements, Wyoming relied on the emission inventory developed by the WRAP. The State has provided an emission inventory for SO_2, NO_X, VOC, OC, EC, $PM_{2.5}$, PM_{10}, and NH_3. The inventory provides the baseline year 2002 emissions and provides projections of future emissions in 2018 based on expected controls, growth, and other factors. The following are the inventory source categories identified by the State: point, area, on-road mobile, off-road mobile, anthropogenic fire, natural fire, road dust, fugitive dust, area source oil and gas, and biogenic emissions. The emission inventories developed by the WRAP were calculated using best available data and approved EPA methods.[49] Following is a summary of the emission inventory for each pollutant by source.

SO_2

Sulfur dioxide emissions come primarily from coal combustion at EGUs, but smaller amounts come from natural gas combustion, mobile sources, and wood combustion.

[49] The methods WRAP used to develop these emission inventories are described in more detail in *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans* in the Supporting and Related Materials section of the docket.

TABLE 29—WYOMING SO_2 EMISSIONS—2002 AND 2018

Source category	Baseline 2002	Future 2018	Percent change
Point	119,717	96,809	−19
Area	16,689	23,093	38
On-Road Mobile	959	81	−92
Off-Road Mobile	5,866	65	−99
Oil & Gas	150	3	−98
Road Dust	0	0	0
Fugitive Dust	0	0	0
Windblown Dust	0	0	0
Anthropogenic Fire	173	109	−37
Natural Fire	2,286	2,286	0
Biogenic	0	0	0
Total	145,840	122,446	−16

The State expects a 16% reduction in SO_2 emissions by 2018 due to planned controls on existing sources, even with expected growth in generating capacity for the State.

NO_X

NO_X emissions in Wyoming come mostly from point sources and from on-road and off-road mobile sources.

TABLE 30—WYOMING NO_X EMISSIONS—2002 AND 2018

Source category	Baseline 2002	Future 2018	Percent change
Point	117,806	110,109	−7
Area	15,192	19,663	29
On-Road Mobile	38,535	9,728	−75
Off-Road Mobile	76,637	49,677	−35
Oil & Gas	14,725	34,142	132
Road Dust	0	0	0
Fugitive Dust	0	0	0
Windblown Dust	0	0	0
Anthropogenic Fire	782	484	−38
Natural Fire	8,372	8,372	0
Biogenic	15,925	15,925	0
Total	287,974	248,100	−14

The State expects NO_X emissions to decrease by 14% by 2018, primarily due to significant reductions in mobile source emissions. The State projects that off-road and on-road vehicles emissions will decline by more than 55,760 tpy from the baseline 2002 emissions of 115,172 tpy.

OC

A wide variety of sources contribute emissions to this pollutant, including diesel emissions and combustion byproducts from wood and agricultural burning.

TABLE 31—WYOMING OC EMISSIONS—2002 AND 2018

Source category	Baseline 2002	Future 2018	Percent change
Point	646	990	53
Area	2,000	1,975	−1
On-Road Mobile	304	249	−18
Off-Road Mobile	625	411	−34
Oil & Gas	0	0	0
Road Dust	20	26	30
Fugitive Dust	96	133	39
Windblown Dust	0	0	0
Anthropogenic Fire	1,709	886	−48
Natural Fire	23,793	23,793	0
Biogenic	0	0	0
Total	29,193	28,463	−3

OC emissions from all sources are expected to show a 3% decline. Natural fire is the largest source contributing to OC emissions. The State does not have the ability to predict future emissions from natural fires and thus, the State held this category constant in the inventory.

EC

EC is a byproduct of incomplete combustion. EC emissions mainly come from mobile sources and natural fires.

TABLE 32—WYOMING EC EMISSIONS—2002 AND 2018

Source category	Baseline 2002	Future 2018	Percent change
Point	104	180	73
Area	304	335	10
On-Road Mobile	443	86	−81
Off-Road Mobile	1,986	1,161	−42
Oil & Gas	0	0	0
Road Dust	2	2	0
Fugitive Dust	7	9	29
Windblown Dust	0	0	0
Anthropogenic Fire	298	153	−49
Natural Fire	4,922	4,922	0
Biogenic	0	0	0
Total	8,066	6,848	−15

The State predicts EC emissions to decrease approximately 15% by 2018. Reductions in manmade emissions of EC are largely due to mobile sources emission reductions resulting from new federal emission standards for mobile sources, especially for diesel engines.

$PM_{2.5}$

$PM_{2.5}$ emissions come mainly from agricultural and mining activities, windblown dust from construction areas, and emissions from unpaved and paved roads.

TABLE 33—WYOMING $PM_{2.5}$ EMISSIONS—2002 AND 2018

Source category	Baseline 2002	Future 2018	Percent change
Point	11,375	15,709	38
Area	1,601	1,756	10
On-Road Mobile	0	0	0
Off-Road Mobile	0	0	0
Oil & Gas	0	0	0
Road Dust	160	206	29
Fugitive Dust	2,082	2,882	38
Windblown Dust	5,838	5,838	0
Anthropogenic Fire	242	129	−47
Natural Fire	1,535	1,535	0
Biogenic	0	0	0
Total	22,833	28,055	23

The State predicts emissions of $PM_{2.5}$ to increase 23% by 2018. Emission increases are related to population growth and an increase in vehicle miles traveled.

PM_{10}

PM_{10} emissions come from many of the same sources as $PM_{2.5}$ emissions but other activities like rock crushing and processing, material transfer, open pit mining, and unpaved road emissions also can be prominent sources.

TABLE 34—WYOMING PM_{10} EMISSIONS—2002 AND 2018

Source category	Baseline 2002	Future 2018	Percent change
Point	24,751	30,619	24
Area	409	653	60
On-Road Mobile	171	165	−4
Off-Road Mobile	0	0	0
Oil & Gas	0	0	0
Road Dust	1,125	1,449	29
Fugitive Dust	18,030	25,144	39
Windblown Dust	52,546	52,546	0
Anthro Fire	259	109	−58
Natural Fire	5,369	5,369	0

TABLE 34—WYOMING PM_{10} EMISSIONS—2002 AND 2018—Continued

Source category	Baseline 2002	Future 2018	Percent change
Biogenic	0	0	0
Total	102,660	116,054	13

Overall, PM_{10} emissions are expected to increase by 13%. increases in coarse PM emissions are linked to population growth and vehicle miles traveled.

NH_3

NH_3 emissions come from a variety of sources including wastewater treatment facilities, livestock operations, fertilizer application, mobile sources, and point sources.

TABLE 35—WYOMING NH_3 EMISSIONS—2002 AND 2018

Source category	Baseline 2002	Future 2018	Percent change
Point	685	1,398	104
Area	29,776	29,901	0
On-Road Mobile	538	724	35
Off-Road Mobile	41	57	39
Oil & Gas	0	0	0
Road Dust	0	0	0
Fugitive Dust	0	0	0
Windblown Dust	0	0	0
Anthropogenic Fire	218	119	−45
Natural Fire	1,775	1,775	0
Biogenic	0	0	0
Total	33,033	33,974	3

NH_3 emissions are expected to increase by 3% by 2018. Increases in NH_3 emissions are linked to population growth and increased vehicular traffic.

2. Consultation and Emissions Reductions for Other States' Class I Areas

40 CFR 51.308(d)(3)(i) requires that Wyoming consult with another state if its emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area(s), and that Wyoming consult with other states if those other states' emissions are reasonably anticipated to contribute to visibility impairment at its Class I areas. The State participated in regional planning, coordination, and consultation with other states in developing emission management strategies through the WRAP. Through the WRAP consultation process, Wyoming has reviewed and analyzed contributions from other states that reasonably may cause or contribute to visibility impairment in Wyoming's Class I areas and analyzed Wyoming's impact on other states' Class I areas.

40 CFR 51.308(d)(3)(ii) requires that if Wyoming emissions cause or contribute to impairment in another state's Class I area, Wyoming must demonstrate that it has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPG for that Class I area. Section 51.308(d)(3)(ii) also requires that, since Wyoming participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As we state in the RHR, Wyoming's commitments to participate in WRAP bind it to secure emission reductions agreed to as a result of that process.

The State determined it did potentially impact Class I areas in South Dakota, Colorado, Utah, Idaho, Montana, and North Dakota (see Table 8.1.2.1–1 in the SIP). Wyoming accepted and incorporated the WRAP-developed visibility modeling into its regional haze SIP and the SIP includes the controls assumed in the modeling. Wyoming has satisfied the RHR requirements for consultation and included controls in the SIP sufficient to address the relevant requirements related to impacts on Class I areas in other states.

We are proposing to find that the State has met the requirements for consultation under 40 CFR 51.308(d)(3)(i) and 40 CFR 51.308(d)(3)(ii).

3. Mandatory Long-Term Strategy Requirements

40 CFR 51.308(d)(3)(v) requires that Wyoming, at a minimum, consider certain factors in developing its LTS. These are: (a) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (b) measures to mitigate the impacts of construction activities; (c) emissions limitations and schedules for compliance to achieve the reasonable progress goals; (d) source retirement and replacement schedules; (e) smoke management techniques for agricultural and forestry management purposes including plans that currently exist within the state for these purposes; (f) enforceability of emissions limitations and control measures; and (g) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS.

a. Reductions Due to Ongoing Air Pollution Programs

In addition to its BART and reasonable progress determinations, the State's LTS contains other reductions due to ongoing air pollution programs. The State's LTS contains numerous ongoing air pollution programs, including: (1) New Source Review Program, which is a permit program for

the construction of new sources and the modification of existing sources; (2) Prevention of Significant Deterioration Program, which protects visibility from proposed major stationary sources or major modifications to existing facilities; and (3) New Source Performance Standards, which the State incorporates by reference on an annual basis. For a complete listing of ongoing air pollution programs in Wyoming, see Chapter 8.2.1 of the SIP.

b. Measures To Mitigate the Impacts of Construction Activities

Chapter 3 of the Wyoming Air Quality Standards and Regulations (WAQSR) establishes limits on the quantity or concentration of emissions of air pollutants from numerous sources, including construction activities. Specifically, WAQSR Chapter 3, Section 2(f), prescribes measures to ensure the control of fugitive dust emissions during construction or demolition activities. WAQSR Chapter 3, Section 2(f) requires any person engaged in clearing or leveling of land, earthmoving, excavation, or movement of trucks or construction equipment over access haul roads or cleared land to take steps to minimize fugitive dust from such activities. Such control measures may include frequent watering and/or chemical stabilization. EPA approved WAQSR Chapter 3 into the SIP on July 28, 2004 (69 FR 44965).

c. Smoke Management

WAQSR Chapter 10 establishes restrictions and requirements on different types of burning in Wyoming. WAQSR Chapter 10, Section 2 regulates open burning, including refuse burning, open burning of trade wastes, open burning at salvage operations, open burning for firefighting training, and small vegetative material open burning (not exceeding 0.25 tons per day of PM). WAQSR Chapter 10, Section 3 regulates emissions from wood waste burners. EPA approved WAQSR Chapter 10, Section 2 and 3 into the SIP on July 28, 2004 (69 FR 44965). WAQSR Chapter 10, Section 4 was adopted by the State and submitted to EPA to meet the requirements for programs related to fire under 40 CFR 51.309(d)(6). Chapter 10, Section 4 seeks to minimize the impacts from private and prescribed burning on visibility in Class I areas and potentially affected populations. EPA is proposing approval of Chapter 10, Section 4 in a separate action.

d. Emission Limitations and Schedules for Compliance

Chapter 6.5 of the State's SIP contains the emission limitations and schedules for compliance for BART sources. Chapter 6.5 of the SIP requires the BART sources to install and demonstrate compliance with the State's BART determination as expeditiously as practicable, but no later than five years after EPA approval of the SIP. For some sources where controls have already been installed, the State specifies an earlier compliance deadline in Chapter 6.5 of the SIP. In addition, Chapter 8.3.3 of the SIP contains the emission limits and compliance schedule for LTS controls on Jim Bridger Units 1–4.

e. Source Retirement and Replacement Schedules

The State is not currently aware of any specific scheduled shutdowns, retirements in upcoming years, or replacement schedules, such as planned installation of new control equipment to meet other regulations. If such actions occur, the State will factor them into upcoming reviews.

f. Enforceability of Wyoming's Measures

As discussed in section VII.D of this notice, EPA is proposing to disapprove the State's SIP because it contains inadequate monitoring, recordkeeping, and reporting requirements, and we are proposing a FIP to address the enforceability of BART and reasonable progress controls.

g. Anticipated Net Effect on Visibility Due to Projected Changes

The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions during this planning period is addressed in section VI.D.3 of this notice.

4. Our Conclusions on Wyoming's Long-Term Strategy

We propose to partially approve and partially disapprove Wyoming's LTS. Because we are proposing to disapprove the NO_X BART determinations for PacifiCorp Dave Johnston Unit 3 and Unit 4, PacifiCorp Naughton Units 1 and 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3, we are also proposing to disapprove the corresponding emission limits and compliance schedules that Wyoming relied on as part of its LTS. Because we are proposing to disapprove the reasonable progress determination for PacifiCorp Dave Johnston Units 1 and 2, we are also proposing to disapprove the LTS because it does not include appropriate NO_X reasonable progress emission limits and compliance schedules for Dave Johnston Units 1 and 2. We are also proposing to disapprove the State's LTS because it does not contain the necessary monitoring, recordkeeping, and reporting requirements to make the BART and reasonable progress limits practically enforceable. Except for these elements, the State's LTS satisfies the requirements of 40 CFR 51.308(d)(3), and we are proposing to approve it.

F. Coordination of RAVI and Regional Haze Rule Requirements

Per 40 CFR 51.306(c), the State must provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the State must submit the first such coordinated LTS with its first regional haze SIP. The State did not provide for the coordination of their RAVI and regional haze LTS. We are proposing to disapprove the State's SIP as not meeting the requirements of 40 CFR 51.306(c). We are proposing a FIP as explained in section VIII.F of this notice to meet the coordination requirements of 40 CFR 51.306(c).

G. Monitoring Strategy and Other Implementation Plan Requirements

40 CFR 51.308(d)(4) requires that the SIP contain a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. As 40 CFR 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. 40 CFR 51.308(d)(4)(i) further requires the establishment of any additional monitoring sites or equipment needed to assess whether the RPGs for all mandatory Class I Federal areas within the state are being achieved.

Consistent with EPA's monitoring regulations for RAVI and regional haze, Wyoming states in Chapter 9 of the regional haze SIP that it will rely on the IMPROVE network for compliance purposes, in addition to any additional visibility impairment monitoring that may be needed in the future.

Section 51.308(d)(4)(ii) requires that states establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within Wyoming to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the state. The IMPROVE monitoring program is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. As 40 CFR 51.308(d)(4) indicates, Wyoming's participation in

the IMPROVE program constitutes compliance with this requirement.

40 CFR 51.308(d)(4)(iv) requires that the SIP provide for the reporting of all visibility monitoring data to the Administrator, at least annually, for each mandatory Class I Federal area in the state. To the extent possible, Wyoming should report visibility monitoring data electronically. 40 CFR 51.308(d)(4)(vi) also requires that the SIP provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We propose that Wyoming's participation in the IMPROVE network ensures that the monitoring data is reported at least annually and is easily accessible; therefore, such participation complies with this requirement. IMPROVE data are centrally compiled and made available to EPA, states and the public via various electronic formats and Web sites including IMPROVE (*http://vista.cira.colostate.edu/improve/*) and VIEWS (*http://vista.cira.colostate.edu/views/*).

40 CFR 51.308(d)(4)(v) requires that Wyoming maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The State must also include a commitment to update the inventory periodically. The State's emission inventory is discussed in section VI.F.1 of this notice. Wyoming states in Chapter 9 of the SIP that it intends to update the Wyoming statewide emissions inventories periodically and review periodic emissions information from other states and future emissions projections. We propose that this satisfies the requirement.

40 CFR 51.308(d)(4)(vi) requires that states provide for any additional reporting, recordkeeping, and measures necessary to evaluate and report on visibility. The State of Wyoming, in accordance with provisions of 40 CFR 51.308(d)(4)(vi), will track data related to regional haze for sources for which the State has regulatory authority, and will depend on the IMPROVE program and RPO sponsored collection and analysis efforts for monitoring and emissions inventory data, respectively. To ensure the availability of data and analyses to report on visibility conditions and progress toward Class I area visibility goals, the State of Wyoming will collaborate with members of a RPO to ensure the continued operation of the IMPROVE program and RPO sponsored technical support analysis tools and systems.

We propose to find that the State's SIP satisfies the requirements of 40 CFR 51.308(d)(4).

H. Consultation With FLMs

Although the FLMs are very active in participating in the RPOs, the RHR grants the FLMs a special role in the review of the regional haze SIPs, summarized in section V.H above. Under 40 CFR 51.308(i)(2), states are obligated to provide the FLMs with an opportunity for consultation, in person, and at least 60 days prior to holding a public hearing on the regional haze SIP. The State provided an opportunity for FLM consultation, in person and at least 60 days prior to holding any public hearing on the SIP. As required by 40 CFR Section 51.308(i)(3), the State has included FLM comments and State responses in Chapter 11 of the Wyoming TSD.

40 CFR 51.308(i)(3) requires that states provide in its regional haze SIP a description of how it addressed any comments provided by the FLMs. The FLMs formally commented on the Wyoming proposed SIP in November and December of 2010. The FLM comments provided support for the modeling approach used by the State in the BART determinations and complimented the State on thorough BART, reasonable progress, and area source analysis. The FLMs also recommended the State reevaluate costs and emission limits for some of the BART and reasonable progress sources. Chapter 11 of the State's TSD provides detailed information on the State's response to FLM comments.

Lastly, 40 CFR 51.308(i)(4) specifies the regional haze SIP must provide procedures for continuing consultation between a state and FLMs on the implementation of the visibility protection program required by 40 CFR 51.308. This includes development and review of implementation plan revisions and five-year progress reports and the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas. Pursuant to Chapter 11.2 of the SIP, the State will provide the FLMs an opportunity to review and comment on SIP revisions, the five-year progress reports, and other developing programs that may contribute to Class I visibility impairment.

We are proposing that the State's SIP satisfies the requirements of 40 CFR 51.308(i).

I. Periodic SIP Revisions and 5-Year Progress Reports

40 CFR 51.308(f) requires a state to revise and submit its regional haze SIP to EPA by July 31, 2018, and every ten years thereafter. Pursuant to Chapter 10 of the SIP, the State will provide this revision. In accordance with the requirements listed in 40 CFR 51.308(g), the State will submit a report on reasonable progress to EPA every five years following the initial submittal of the SIP. That report will be in the form of an implementation plan revision. The State's report will evaluate the progress made towards the RPGs for each mandatory Class I area located within the State and in each mandatory Class I area located outside the State, which have been identified as being affected by emissions from the State. The State will also evaluate the monitoring strategy adequacy in assessing RPGs.

Based on the findings of the five-year progress report, 40 CFR 51.308(h) requires a state to make a determination of adequacy of the current implementation plan. The State must take one or more of the actions listed in 40 CFR 51. 308(h)(1) through (4) that are applicable at the same time as the state submits a five-year progress report. Chapter 12 of the SIP requires the State to make an adequacy determination of the current SIP pursuant to 40 CFR 51.308(h)(1) through (4) at the same time a five-year progress report is due.

We propose to find the State's SIP satisfies the requirements of 40 CFR 51.308(f)–(h).

VIII. Federal Implementation Plan

EPA is proposing a FIP to address the deficiencies indentified in our proposed partial disapproval of Wyoming's regional haze SIP. In lieu of our proposed FIP, or a portion thereof, we will propose approval of a SIP revision as expeditiously as practicable if the State submits such a revision and the revision matches the terms of our proposed FIP. We will also review and take action on any regional haze SIP submitted by the state to determine whether such SIP is approvable, regardless of whether or not its terms match those of the FIP. We encourage the State to submit a SIP revision to replace the FIP, either before or after our final action.

A. Disapproval of the State's NO_X BART Determinations and Federal Implementation Plan for NO_X BART Determinations and Limits

As noted above, the State provided five-factor analyses that considered all factors, but we find that its

consideration of the costs of compliance and visibility improvement was inconsistent with regulatory and statutory requirements. In disapproving specific State BART determinations in our proposed rulemaking notice on June 4, 2012, we based our analysis on information provided by the State in their BART analyses, with the exception of visibility improvement modeling, and thus accepted the cost information provided by the State. In this proposed rulemaking, in addition to the other BART information in the State SIP submittal, we are basing our proposed BART determinations on cost analyses and visibility improvement modeling developed by EPA, as explained in section VII.C of this notice. EPA is proposing to disapprove the State's NO_X BART determinations, and we are proposing to issue a BART FIP, for the following units: PacifiCorp Dave Johnston Unit 3 and Unit 4, PacifiCorp Naughton Unit 1 and Unit 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3. EPA's rationale for disapproving the State's BART determinations for these units, as well as EPA's BART FIP determinations and emission limits, are discussed below.

We are also asking if interested parties have additional information or comments regarding the BART factors and EPA's proposed determinations, for example our weighing of average costs, incremental costs, visibility improvement, and timing of installation of such controls, and in light of such information, whether the interested parties think the Agency should consider another BART control technology option that could be finalized either instead of, or in conjunction with, BART as proposed. The Agency is also asking if interested parties have additional information or comments on the proposed timing of compliance when the challenge of coordinating the work our proposed SIP and FIP will require is considered.

The Agency will take the comments and testimony received, as well as any further SIP revisions submitted by the State, into consideration in our final promulgation. Supplemental information received may lead the Agency to adopt final SIP and/or FIP regulations that reflect a different BART control technology option, or impact other proposed regulatory provisions, which differ from this proposal.

1. Disapproval of the State's Basin Electric Laramie River Units 1–3 NO_X BART Determination and FIP to Address NO_X BART

Wyoming's NO_X BART Determination

During the 2001–2003 baseline, Basin Electric Laramie River Units 1–3 were all controlled with LNBs with a permit limit of 0.5 lbs/MMBtu (3-hour rolling average). The State determined that new LNBs, OFA, new LNBs and OFA, new SNCR/SCR hybrid [50], new LNBs and OFA with SNCR, and SCR were technically feasible for reducing NO_X emissions at Units 1–3. The State determined that natural gas re-burn was technically infeasible. The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's NO_X BART analysis is provided in Tables 36–38 below. As discussed above, the visibility improvement modeling results in these tables were developed by EPA because Wyoming did not properly follow the BART Guidelines. Baseline NO_X emissions are 6,320 tpy for Unit 1, 6,285 tpy for Unit 2, and 6,448 tpy for Unit 3 based on annual average heat input for 2001–2003 and an emission rate of 0.27 lb/MMBtu.

TABLE 36—SUMMARY OF WYOMING'S BASIN ELECTRIC LARAMIE RIVER UNIT 1 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park) EPA analysis
OFA	0.23	936	$625,000	$668	.....	0.08
New LNBs	0.23	936	1,360,000	1,453	.....	0.08
New LNBs with OFA	0.23	936	1,944,000	2,077	.....	0.08
SNCR/SCR Hybrid	0.20	1,639	7,429,000	4,534	.....	.....
New LNBs with OFA and SNCR	0.12	3,511	7,365,000	2,098	$2,105	0.32
SCR	0.07	4,681	15,787,000	3,372	7,198	0.44

TABLE 37—SUMMARY OF WYOMING'S BASIN ELECTRIC LARAMIE RIVER UNIT 2 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park) EPA analysis
OFA	0.23	931	$625,000	$671	.....	0.08

[50] A hybrid SNCR/SCR system combines the lower costs and higher ammonia slip of SNCR with the higher NOx reduction potential and lower ammonia slip of SCR. During operation, the SNCR system is allowed to inject higher amounts of reagent into the flue gas. The increased reagent flow brings about increased NOx reduction, but also causes increased ammonia slip which is then consumed by the SCR system. The use of the ammonia slip by the SCR system can reduce the size of the required SCR catalyst.

TABLE 37—SUMMARY OF WYOMING'S BASIN ELECTRIC LARAMIE RIVER UNIT 2 NO_X BART ANALYSIS—Continued

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park) EPA analysis
New LNBs	0.23	931	$1,360,000	$1,461	.....	0.08
New LNBs with OFA	0.23	931	1,944,000	2,088	.....	0.08
SNCR/SCR Hybrid	0.20	1,630	7,429,000	4,559	.....	.....
New LNBs with OFA and SNCR	0.12	3,492	7,365,000	2,109	$2,117	0.32
SCR	0.07	4,656	15,787,000	3,391	7,242	0.44

TABLE 38—SUMMARY OF WYOMING'S BASIN ELECTRIC LARAMIE RIVER UNIT 3 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park) EPA analysis
OFA	0.23	955	$625,000	$654	.....	0.08
New LNBs	0.23	955	1,360,000	1,424	.....	0.08
New LNBs with OFA	0.23	955	1,944,000	2,036	.....	0.08
SNCR/SCR Hybrid	0.20	1,672	7,429,000	4,444	.....	.....
New LNBs with OFA and SNCR	0.12	3,582	7,365,000	2,056	$2,064	0.33
SCR	0.07	4,777	15,787,000	3,305	7,054	0.44

The State eliminated the SNCR/SCR hybrid from further consideration because it has higher cost-effectiveness values and lower control efficiency compared to new LNBs plus OFA with SNCR.

Based on its consideration of the five factors, the State determined that new LNBs with OFA were reasonable for NO_X BART. The State determined that the NO_X BART emission limit for Laramie River Unit 1 is 0.23 lb/MMBtu (30-day rolling average). The State determined that the NO_X BART emission limit for Laramie River Unit 2 is 0.23 lb/MMBtu (30-day rolling average). The State determined that the NO_X BART emission limit for Laramie River Unit 3 is 0.23 lb/MMBtu (30-day rolling average).

The State's proposed SIP required additional NO_X emission reductions for Laramie River under its LTS. Based on the costs and visibility improvement for Laramie River Station Units 1, 2, and 3, the State proposed installation of two SCRs, or equivalent performing emission control systems, at any of the three units. The State proposed that the add-on NO_X control achieve an emission rate, on an individual unit basis, at or below 0.07 lb/MMBtu on a 30-day rolling average. The State proposed that the add-on controls be installed and operational on one of the Laramie River Station units by December 31, 2018 and on a second Laramie River Station unit by December 31, 2023.

On March 8, 2010, Basin Electric Power Cooperative appealed the additional controls proposed by the State under its LTS before the Wyoming Environmental Quality Council. The State entered into a settlement agreement on November 16, 2010 with Basin Electric Power Cooperative (a copy of the settlement agreement is included in the State's revised NO_X BART Analysis for Laramie River dated January 3, 2011). As part of the settlement agreement, the State agreed to remove the requirement for Basin Electric to install additional controls under the LTS. In return, Basin Electric agreed to additional NO_X emissions reductions under BART. Under the settlement agreement, Basin Electric agreed to a NO_X emission limit of 0.21 lb/MMBtu (30-day rolling average) on all three units. Basin Electric also agreed to a NO_X emission limit for Unit 1 and Unit 2 of 4,780 tpy and a NO_X emission limit for Unit 3 of 4,914 tpy, effectively capping emissions from all three units at 12,773 tpy. In the SIP adopted by the State, the State determined the emission limits in the settlement agreement were BART for Basin Electric Laramie River Units 1, 2, and 3.

EPA's Basin Electric Laramie River Units 1–3 NO_X BART Determination and FIP for NO_X BART

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. However, EPA disagrees with the State's baseline NO_X emissions estimates, as listed above, because the State based its estimate on annual average heat input for 2001–2003 at an emission rate of 0.07 lb/MMBtu and not actual annual averages. EPA's revised baseline NO_X emissions are 6,051 tpy for Unit 1, 6,293 tpy for Unit 2, and 6,375 tpy for Unit 3 based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 39–44 below.

TABLE 39—SUMMARY OF EPA'S LARAMIE RIVER UNIT 1 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Badlands)
New LNBs with OFA	0.19	1,556	$2,268,806	$1,458	.....	0.29
New LNBs with OFA and SNCR	0.15	2,445	5,880,822	2,395	$4,018	0.44
New LNBs with OFA and SCR	0.05	4,880	18,146,629	3,718	5,057	0.79

Laramie River Unit 1 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 40 below.

TABLE 40—LARAMIE RIVER UNIT 1: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SCR
Wind Cave	0.20	0.30	0.64
Rawah	0.10	0.16	0.32
Rocky Mountain	0.12	0.19	0.37

TABLE 41—SUMMARY OF EPA'S LARAMIE RIVER UNIT 2 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Badlands)
New LNBs with OFA	0.19	1823	$2,268,806	$1,244	.....	0.30
New LNBs with OFA and SNCR	0.15	2,717	5,884,257	2,166	$4,044	0.42
New LNBs with OFA and SCR	0.05	5,129	20,017,988	3,903	5,860	0.73

Laramie River Unit 2 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 42 below.

TABLE 42—LARAMIE RIVER UNIT 2: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SCR
Wind Cave	0.24	0.36	0.66
Rawah	0.10	0.16	0.29
Rocky Mountain	0.13	0.19	0.35

TABLE 43—SUMMARY OF EPA'S LARAMIE RIVER UNIT 3 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Badlands)
New LNBs with OFA	0.19	1789	$2,268,806	$1,268	.....	0.22
New LNBs with OFA and SNCR	0.15	2,706	5,933,791	2,192	$3,996	0.33
New LNBs with OFA and SCR	0.05	5,181	18,597,027	3,589	5,117	0.67

Laramie River Unit 3 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 44 below.

TABLE 44—LARAMIE RIVER UNIT 3: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SCR
Wind Cave	0.20	0.31	0.60
Rawah	0.10	0.15	0.29
Rocky Mountain	0.12	0.18	0.34

As noted above, under the settlement agreement terms incorporated into the SIP, Basin Electric agreed to a NO_X emission limit of 0.21 lb/MMBtu (30-day rolling average) on all three units, and thus eliminated other control options. We propose to find that Wyoming did not properly follow the requirements of the BART Guidelines in determining NO_X BART for these units.

Furthermore, as discussed in detail above, because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analyses of visibility improvement for the NO_X BART to be reasonable for the Laramie units. We propose to find that Wyoming's analyses for these units are inconsistent with the statutory and regulatory requirement that ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Therefore, EPA does not agree with the State's conclusion that a limit of 0.21 lb/MMBtu is consistent with the BART Guidelines and reasonable for BART for Laramie River Units 1, 2, and 3, which can be achieved with the installation and operation of new LNBs with OFA. Specifically, we propose to find that in negotiating the emission limit, Wyoming did not properly or reasonably ''take into consideration the costs of compliance.'' Thus, the State's BART analyses for Basin Electric Laramie River Units 1, 2, and 3 do not meet the requirements of the regional haze regulation, and we are proposing to disapprove those analyses and the State's NO_X BART determination. We are proposing a FIP for NO_X BART to fill the gap left by our disapproval, as explained below.

Our analysis follows our BART Guidelines. Because the Basin Electric Laramie River Units 1, 2, and 3 are similar, we are proposing a single BART analysis and determination that applies to each unit. With the exception of the NO_X emission limits, the visibility improvement analyses, and the cost-effectiveness analyses, EPA is proposing to find that the Wyoming regional haze NO_X BART analyses for Units 1, 2 and 3, fulfills all the relevant requirements of CAA Section 169A and the RHR. As discussed above in section VII.C.3.b., Wyoming's visibility improvement analyses for these units is inconsistent with the requirements found in the CAA and BART Guidelines. Furthermore, we are not relying on the State's costs due to the reasons described in section VII.C.3.a above.

In addition, the cost-effectiveness for new LNBs with OFA and SCR ranges from approximately $3,600/ton to $3,900/ton with significant visibility improvement at the most impacted Class I area of 0.79 dv for Unit 1, 0.73 dv for Unit 2, and 0.67 dv for Unit 3. SCR provides significant visibility improvement at other impacted Class I areas, with cumulative visibility improvements of 2.12 dv for Unit 1, 1.97 dv for Unit 2, and 2.29 dv for Unit 3. When considering the cost effectiveness and visibility improvement of new LNBs plus OFA and SCR, it is within the range of what EPA has found reasonable for BART in other SIP and FIP actions. We also propose to find that the incremental cost-effectiveness does not preclude the selection of new LNBs with OFA and SCR.

EPA's NO_X BART analyses and the visibility impacts for Units 1, 2 and 3 is summarized in Tables 39–44 above and detailed information can be found in the docket.[51] We propose to find that at an emission limit of 0.07 lb/MMBtu (30-day rolling average), which can be achieved by the installation of new LNBs with OFA plus SCR, is reasonable and consistent with the CAA and BART Guideline requirements for NO_X BART for Basin Electric Laramie River Units 1, 2, and 3. Consequently, we are proposing that the FIP NO_X BART emission limit for Basin Electric Laramie River Unit 1, Unit 2, and Unit

[51] Detailed supporting information for our cost and visibility improvement analyses can be found in the Docket (see Staudt memos and *EPA BART and RP Modeling for Wyoming,* respectively).

3 is 0.07 lb/MMBtu (30-day rolling average).

We propose that Basin Electric meet our proposed emission limit at Laramie River Units 1, 2, and 3, as expeditiously as practicable, but no later than five years after EPA finalizes action on our proposed FIP. This is consistent with the requirements of 40 CFR 51.308(e)(iv).

We are also asking if interested parties have additional information regarding the BART factors and EPA's proposed determination, for example our weighing of average costs, incremental costs, visibility improvement, and timing of installation of such controls, and in light of such information, whether the interested parties think the Agency should consider another BART control technology option that could be finalized either instead of, or in conjunction with, BART as proposed. The Agency will take the comments and testimony received, as well as any further SIP revisions submitted by the State, into consideration in our final promulgation. Supplemental information received may lead the Agency to adopt final SIP and/or FIP regulations that reflect a different BART control technology option, or impact other proposed regulatory provisions, which differ from this proposal.

2. Disapproval of the State's PacifiCorp Dave Johnston Unit 3 and Unit 4 NO_X BART Determinations and FIP To Address NO_X BART

Wyoming's NO_X BART Determination for Dave Johnston Unit 3

During the baseline period of 2001–2003, Dave Johnston Unit 3 was uncontrolled for NO_X and had emission limits of 0.75 lb/MMbtu (3-hour rolling) and 0.59 lb/MMbtu (annual). The State determined LNBs with advanced OFA, LNBs with advanced OFA and SNCR, and LNBs with advanced OFA and SCR were technically feasible for controlling NO_X emissions from Unit 3. The State did not identify any technically infeasible controls.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. Baseline NO_X emissions are 5,814 tpy for Unit 3 based on unit heat input rate of 2,500 MMBtu/hr and 7,884 hours of operation. A summary of the State's NO_X BART analysis and the visibility impacts is provided in Table 45 below. As discussed above, the visibility improvement modeling results in these tables were developed by EPA because Wyoming did not properly follow the BART Guidelines.

TABLE 45—SUMMARY OF WYOMING'S DAVE JOHNSTON UNIT 3 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta deciview for the maximum 98th percentile impact at Wind Cave National Park) EPA analysis
LNB with advanced OFA	0.28	2,723	$1,764,775	$648	.....	0.77
LNB with advanced OFA and SNCR	0.19	3,717	2,679,192	721	$920	0.94
LNB with advanced OFA and SCR	0.07	5,041	16,347,519	3,243	10,234	1.16

Based on its consideration of the five factors, the State determined LNBs with OFA were reasonable for NO_X BART. The State determined the cost of compliance (capital costs and annual operating and maintenance costs) were significantly higher for the addition of SCR. The State determined that the NO_X BART emission limit for Unit 3 is 0.28 lb/MMBtu (30-day rolling average).

EPA's Conclusions on Dave Johnston Unit 3 NO_X BART Determination and Proposed FIP for NO_X BART

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. We disagree with the State's estimate of baseline NO_X emissions (5,814 tpy) because it is based on a unit heat input rate of 2,500 MMBtu/hr and 7,884 hours of operation rather than an average of actual annual emissions. EPA finds that baseline NO_X emissions are 4,913 tpy for Unit 3 based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 46 and 47 below.

TABLE 46—SUMMARY OF EPA'S DAVE JOHNSTON UNIT 3 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park)
LNBs with OFA	0.22	2,837	$1,699,807	$599	.....	0.64
LNBs with OFA and SNCR	0.16	3,356	3,545,435	1,057	$3,555	0.76
LNBs with OFA and SCR	0.05	4,433	11,262,188	2,540	7,163	1.00

Dave Johnston Unit 3 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 47 below.

TABLE 47—DAVE JOHNSTON UNIT 3: VISIBILITY IMPROVEMENT MODELED AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA/SCR
Badlands	0.44	0.52	0.67
Mt. Zirkel	0.21	0.25	0.33
Rawah	0.24	0.29	0.38
Rocky Mountain	0.34	0.41	0.54

EPA does not agree with the State's conclusion that a limit of 0.28 lb/MMBtu, which can be achieved with the installation and operation of LNBs with OFA, is reasonable for NO_X BART for Dave Johnston Unit 3. We propose to find that Wyoming did not properly follow the requirements of the BART Guidelines in determining NO_X BART for this unit. Specifically, we propose to find that Wyoming did not properly or reasonably conduct certain requirements of the BART analysis.

As discussed in detail above, because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analysis of visibility improvement for the NO_X BART to be reasonable for Dave Johnston Unit 3. We propose to find that Wyoming's analysis for this Unit is inconsistent with the statutory and regulatory requirement that ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Also, we are not relying on the State's costs due to reasons stated in section VII.C.3.a. We propose to find that Wyoming did not properly or reasonably ''take into consideration the costs of compliance.'' Thus, the State's BART analysis for Dave Johnson Unit 3 does not meet the requirements of the CAA and the RHR, and we are proposing to disapprove the analysis and the State's NO_X BART determination. We are proposing a FIP for NO_X BART to fill the gap left by our disapproval, as explained below.

Our analysis follows our BART Guidelines. With the exception of the NO_X emission limits, the visibility improvement analyses, and the cost analyses, EPA is proposing to find that the Wyoming regional haze NO_X BART analysis for Dave Johnson Units 3 fulfills all the relevant requirements of CAA Section 169A and the Regional Haze Rule. As discussed above, Wyoming's visibility improvement analyses for these units is inconsistent with the requirements found in the BART Guidelines.

EPA's NO_X BART analysis and the visibility impacts for Dave Johnson Units 3 are summarized in Tables 46–47 above and detailed information can be found in the docket.[52] The cost-effectiveness for LNB with OFA and SCR at this unit is $2,540, with visibility improvement at the most impacted Class I area of 1.00 dv. SCR provides significant visibility improvement at other impacted Class I areas, with cumulative visibility improvements of 2.92 dv. We do not find that the incremental cost-effectiveness for LNBs with OFA and SCR precludes the selection of this technology for BART. The cost-effectiveness and visibility improvement are within the range that Wyoming in its SIP and EPA in other SIP and FIP actions have considered reasonable in the BART context.

Based on our examination of the cost estimates and the predicted visibility improvement (along with a consideration of the other BART factors), we propose to find that LNBs with OFA plus SCR at an emission limit of 0.07 lb/MMBtu (30-day rolling average) is reasonable and consistent with the CAA and BART Guideline requirements for NO_X BART for Dave Johnston Unit 3. We are proposing that the FIP NO_X BART emission limit for PacifiCorp Dave Johnston Unit 3 is 0.07 lb/MMBtu (30-day rolling average).

We propose that PacifiCorp meet our proposed emission limit at Dave Johnston Unit, as expeditiously as practicable, but no later than five years after EPA finalizes action on our proposed FIP, consistent with the requirements of 40 CFR 51.308(e)(iv).

We are also asking if interested parties have additional information regarding the BART factors and EPA's proposed determination, for example our weighing of average costs, incremental costs, visibility improvement, and timing of installation of such controls, and in light of such information, whether the interested parties think the Agency should consider another BART control technology option that could be finalized either instead of, or in conjunction with, BART as proposed. The Agency will take the comments and testimony received, as well as any further SIP revisions submitted by the State, into consideration in our final promulgation. Supplemental information received may lead the Agency to adopt final SIP and/or FIP regulations that reflect a different BART control technology option, or impact other proposed regulatory provisions, which differ from this proposal.

Wyoming's NO_X BART Determination for Dave Johnston Unit 4

Unit 4 is currently controlled with LNBs that were placed in operation in 1976. The State determined new LNBs with advanced OFA, new LNBs with advanced OFA and SNCR, and new LNBs with advanced OFA and SCR were technically feasible for controlling NO_X emissions for Unit 4. The State did not identify any technically infeasible controls.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. Baseline NO_X emissions are 8,566 tpy for Unit 4 based on unit heat input rate of 2,500 MMBtu/hr and 7,884 hours of operation. A summary of the State's NO_X BART analysis and the visibility impacts is provided in Table 48 below. As discussed above, the visibility improvement modeling results in these tables were developed by EPA because Wyoming did not properly follow the BART Guidelines.

[52] Detailed supporting information for our cost and visibility improvement analyses can be found in the Docket (see Staudt memos and *EPA BART and RP Modeling for Wyoming,* respectively).

TABLE 48—SUMMARY OF WYOMING'S DAVE JOHNSTON UNIT 4 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta deciview for the maximum 98th percentile impact at Wind Cave National Park) EPA analysis
New LNB with advanced OFA	0.15	6,142	$841,527	$137	.....	0.71
New LNB with advanced OFA and SNCR	0.12	6,626	2,141,786	323	$2,686	0.80
New LNB with advanced OFA and SCR	0.07	7,435	16,430,528	2,210	17,662	0.97

Based on its consideration of the five factors, the State determined new LNBs with advanced OFA was reasonable for NO_X BART for Dave Johnston Unit 4. The State determined the NO_X BART emission limit for Unit 4 is 0.15 lb/MMBtu (30-day rolling average).

EPA's Conclusions on Dave Johnston Unit 4 NO_X BART Determination and FIP for NO_X BART

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. We disagree with the State's estimate of baseline NO_X emissions (8,566 tpy) because it is based on a unit heat input rate of 2,500 MMBtu/hr and 7,884 hours of operation rather than an average of actual annual emissions. EPA finds that baseline NO_X emissions are 5,070 tpy for Unit 4 based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 49 and 50 below.

TABLE 49—SUMMARY OF EPA'S DAVE JOHNSTON UNIT 4 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park)
New LNBs with OFA	0.14	3,114	$767,342	$246	.....	0.84
New LNBs with OFA and SNCR	0.11	3,505	2,592,288	740	$4,665	0.95
New LNBs with OFA and SCR	0.05	4,377	13,021,894	2,975	11,951	1.2

Dave Johnston Unit 4 also impacts other Class I areas. The visibility improvement EPA modeled at other Class I areas is shown in Table 50 below.

TABLE 50—DAVE JOHNSTON UNIT 4: VISIBILITY IMPROVEMENT MODELED AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SCR
Badlands	0.54	0.57	0.73
Mt. Zirkel	0.28	0.32	0.37
Rawah	0.29	0.32	0.39
Rocky Mountain	0.45	0.51	0.63

EPA does not agree with the State's conclusion that a limit of 0.15 lb/MMBtu, which can be achieved with the installation and operation on new LNBs with OFA, is reasonable for NO_X BART for Dave Johnston Unit 4. We propose to find that Wyoming did not properly follow the requirements of the BART Guidelines in determining NO_X BART for this unit. Specifically, we propose to find that Wyoming did not properly or reasonably conduct certain requirements of the BART analysis.

As discussed in detail above, because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analysis of visibility improvement for the NO_X BART to be

reasonable for Dave Johnston Unit 4. We propose to find that Wyoming's analysis for this Unit is inconsistent with the statutory and regulatory requirement that ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Also, we are not relying on the State's costs due to reasons stated in section VII.C.3.b. We propose to find that Wyoming did not properly or reasonably ''take into consideration the costs of compliance.'' Thus, the State's BART analysis for Dave Johnson Unit 4 does not meet the requirements of the regional haze regulation, and we are proposing to disapprove the analysis and the State's NO_X BART determination. We are proposing a FIP for NO_X BART to fill the gap left by our disapproval, as explained below.

Our analysis follows our BART Guidelines. With the exception of the NO_X emission limits, the visibility improvement analyses, and the cost-effectiveness analyses, EPA is proposing to find that the Wyoming RH BART analysis of NO_X for Dave Johnson Units 4 fulfills all the relevant requirements of CAA Section 169A and the RHR. As discussed above, Wyoming's visibility improvement analyses for these units are inconsistent with the requirements found in the BART Guidelines.

EPA's NO_X BART analysis and the visibility impacts for Dave Johnson Unit 4 are summarized in Tables 49–50 above and detailed information can be found in the docket.[53] Additionally, the cost effectiveness and visibility improvement are within the range that Wyoming in its SIP and EPA in other SIP and FIP actions have considered reasonable and consistent with the BART Guidelines.

Based on our examination of the cost estimates and the predicted visibility improvement (along with a consideration of the other BART factors), we propose to find that new LNBs with OFA plus SNCR at an emission limit of 0.12 lb/MMBtu (30-day rolling average) is reasonable and consistent with the CAA and BART Guideline requirements for NO_X BART for Dave Johnston Unit 4. We are proposing that the FIP NO_X BART emission limit for PacifiCorp Dave Johnston Unit 4 is 0.12 lb/MMBtu (30-day rolling average).

We propose to eliminate the higher performing control option (i.e., new LNBs with advanced OFA plus SCR) because, although the average cost effectiveness and visibility improvement for SCR are within the range EPA has found reasonable in other SIP or FIP actions, we find that the incremental cost of SCR at $11,951/ton is high enough so that it precludes the selection of SCR.

We propose that PacifiCorp meet our proposed emission limit at Dave Johnston Unit 4, as expeditiously as practicable, but no later than five years after EPA finalizes action on our proposed FIP. This is consistent with the requirements of 40 CFR 51.308(e)(iv).

We are also asking if interested parties have additional information regarding the BART factors and EPA's proposed determination, for example our weighing of average costs, incremental costs, visibility improvement, and timing of installation of such controls, and in light of such information, whether the interested parties think the Agency should consider another BART control technology option that could be finalized either instead of, or in conjunction with, BART as proposed. The Agency will take the comments and testimony received, as well as any further SIP revisions submitted by the State, into consideration in our final promulgation. Supplemental information received may lead the Agency to adopt final SIP and/or FIP regulations that reflect a different BART control technology option, or impact other proposed regulatory provisions, which differ from this proposal.

3. Proposal in the Alternative for PacifiCorp Jim Bridger Units 1 and 2 NO_X BART

As noted above, EPA is seeking comment on a proposal (''first proposed approach'') to approve the regional haze plan submitted by the State for Jim Bridger Unit 1 and Unit 2. EPA also is seeking comment on another alternative approach (''second proposed approach'') that would determine that BART for Units 1 and 2 at Jim Bridger power plant is SCR, and would establish corresponding NO_X emission limits for these units that would have to be achieved within five years of our final action. This would have the effect of accelerating the installation of the SCR controls at these units that the State and source owner (PacifiCorp) had proposed to install later (in the 2021–2022 time-period). The State determined that BART for these units is LNB plus OFA, and selected the 2021–2022 time-period for SCR-based emission limits as a reasonable progress measure. The timeframe was based on the large number of actions PacifiCorp is undertaking (or helping to finance) at a large number of EGUs in Wyoming, Utah, Colorado, and Arizona that it owns and operates or co-owns.

Under our second proposed approach, EPA would propose that it does not agree with the State's conclusion that a limit of 0.26 lb/MMBtu is reasonable for BART for Jim Bridger Units 1 and 2, which can be achieved with the installation and operation on LNBs with OFA. In particular, the cost-effectiveness values that EPA calculated for LNBs with OFA and SCR at Unit 1 is $2,393 with a 0.96 deciview visibility improvement at the most impacted Class I area. The cost-effectiveness values that EPA calculated for LNBs with SOFA and SCR at Unit 2 is $2,492, with a 0.95 deciview visibility improvement at the most impacted Class I area. Under this approach, EPA would propose to find that the cost effectiveness values are reasonable and the visibility improvement significant for LNBs with SOFA plus SCR. In addition, the costs are within the range that Wyoming in its SIP and EPA in other SIP and FIP actions have considered reasonable in the BART context. We would propose in the alternative to find that it was unreasonable for the State not to determine that LNBs with OFA plus SCR was NO_X BART for Jim Bridger Units 1 and 2. Though the State is requiring the installation of SCR on Units 1 and 2 under its LTS, the compliance date for both installations is beyond the five-years allowed for BART sources by 40 CFR 51.308(e)(iv). Thus, we would propose to disapprove the State's NO_X BART determination for Jim Bridger Units 1 and 2 and propose a FIP for NO_X BART.

Based on our examination of the cost estimates and the predicted visibility improvement (along with a consideration of the other BART factors), for our second proposed approach we would propose to find that LNBs with SOFA plus SCR at an emission limit of 0.07 lb/MMBtu (30-day rolling average) is reasonable for NO_X BART for Jim Bridger Units 1 and 2. We would propose that the FIP NO_X BART emission limit for PacifiCorp Units 1 and 2 is 0.07 lb/MMBtu (30-day rolling average).

Under our second proposed approach, we would propose that PacifiCorp meet our proposed emission limit at Jim Bridger Unit 1 and 2, as expeditiously as practicable, but no later than five years after EPA finalizes action on our proposed FIP. This is consistent with

[53] Detailed supporting information for our cost and visibility improvement analyses can be found in the Docket (see Staudt memos and *EPA BART and RP Modeling for Wyoming,* respectively).

the requirements of 40 CFR 51.308(e)(iv).[54]

4. Disapproval of the State's PacifiCorp Naughton Units 1 and 2 NO_X BART Determinations and FIP to Address NO_X BART

Wyoming's NO_X BART Determination

During the baseline period of 2001–2003, NO_X emissions from Naughton Unit 1 and Unit 2 were controlled with good combustion practices with NO_X emission limits of 0.75 lb/MMBtu (3-hour block) per boiler, and 0.58 lb/MMBtu (annual) and 0.54 lb/MMBtu (annual), respectively. The State determined that new LNBs with OFA, new LNBs with OFA and SNCR, and new LNBs with OFA and SCR were all technically feasible for controlling NO_X emissions from Unit 1 and Unit 2. The State did not identify any technically infeasible options.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's NO_X BART analyses for Units 1 and 2 is provided in Tables 51 and 52 below. As discussed above, the visibility improvement modeling results in these tables were developed by EPA because Wyoming did not properly follow the BART Guidelines. Baseline NO_X emissions are 4,230 tpy for Unit 1 and 5,109 tpy for Unit 2 based on heat input rates of 1,850 MMBtu/hr and 2,400 MMBtu/hr, respectively, and 7,884 hours of operation.

TABLE 51—SUMMARY OF WYOMING'S NAUGHTON UNIT 1 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta deciview for the maximum 98th percentile impact at Bridger Wilderness Area) EPA Analysis
New LNBs with OFA	0.26	2,334	$993,248	$426	.....	0.79
New LNBs with OFA and SNCR	0.21	2,699	1,972,363	731	$2,683	0.80
New LNBs with OFA and SCR	0.07	3,720	10,231,210	2,750	8,089	1.07

TABLE 52—SUMMARY OF WYOMING'S NAUGHTON UNIT 2 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta deciview) (delta deciview for the maximum 98th percentile impact at Bridger Wilderness Area) EPA Analysis
New LNBs with OFA	0.26	2,649	$945,683	$357	.....	0.70
New LNBs with OFA and SNCR	0.21	3,122	2,260,957	724	$2,781	0.74
New LNBs with OFA and SCR	0.07	4,447	12,664,919	2,848	7,852	1.10

Based on its consideration of the five factors, the State determined new LNBs with OFA was reasonable for NO_X BART for Unit 1 and Unit 2. The State determined SNCR and SCR were not reasonable based on the high cost effectiveness and associated visibility improvement. The State determined that the NO_X BART emission limit for Naughton Unit 1 is 0.26 lb/MMBtu (30-day rolling average), and the NO_X BART emission limit for Naughton Unit 2 is 0.26 lb/MMBtu (30-day rolling average).

EPA's PacifiCorp Naughton Units 1 and 2 NO_X BART Determination and Proposed FIP for NO_X BART

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. We disagree with the State's estimate of baseline NO_X emissions of 4,230 tpy for Unit 1 and 5,109 tpy for Unit 2 because these estimates are based on heat input rates of 1,850 MMBtu/hr and 2,400 MMBtu/hr, respectively rather than an average of actual annual emissions. EPA finds that baseline NO_X emissions are 3,553 tpy for Unit 1 and 4,337 tpy for Unit 2 based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 53–56 below.

[54] The proposed regulatory language for this rulemaking only covers our first proposed approach. If EPA finalizes an action that differs from our first proposed approach for Jim Bridger Units 1 and 2, we will revise the regulatory language accordingly. If we finalize action on our first proposed approach, the regulatory language will reflect a compliance deadline of December 31, 2021 for Unit 2 and December 31, 2022 for Unit 1. If we finalize action on our second proposed approach, the regulatory language would be revised to require compliance at Unit 1 and Unit 2 no later than five years after we take final action.

TABLE 53—SUMMARY OF EPA'S NAUGHTON UNIT 1 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Bridger Wilderness Area)
New LNBs with OFA	0.21	2,100	$932,466	$444	.....	0.84
New LNBs with OFA and SNCR	0.16	2,463	2,258,826	917	$3,650	0.99
New LNBs with OFA and SCR	0.05	3,209	7,437,269	2,318	6,947	1.23

Naughton Unit 1 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 54 below.

TABLE 54—NAUGHTON UNIT 1: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA/SCR
Fitzpatrick	0.38	0.45	0.56
N. Absaroka	0.14	0.16	0.20
Washakie	0.20	0.23	0.29
Teton	0.25	0.29	0.36
Grand Teton	0.33	0.39	0.49
Yellowstone	0.28	0.32	0.41

TABLE 55—SUMMARY OF EPA'S NAUGHTON UNIT 2 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Bridger Wilderness Area)
New LNBs with OFA	0.21	2,586	$883,900	$342	.....	0.97
New LNBs with OFA and SNCR	0.16	3,024	2,510,049	830	$3,713	1.15
New LNBs with OFA and SCR	0.05	3,922	8,843,387	2,255	7,050	1.42

Naughton Unit 2 also impacts other Class I areas. The visibility improvement modeled by EPA at other Class I areas is shown in Table 56 below.

TABLE 56—NAUGHTON UNIT 2: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA/SCR
Fitzpatrick	0.43	0.51	0.64
N. Absaroka	0.18	0.21	0.26
Washakie	0.24	0.28	0.34
Teton	0.24	0.37	0.45
Grand Teton	0.48	0.56	0.70

TABLE 56—NAUGHTON UNIT 2: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS—Continued

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) new LNBs + OFA/SCR
Yellowstone	0.26	0.30	0.37

EPA does not agree with the State's conclusion that a limit of 0.26 lb/MMBtu, which can be achieved with the installation and operation of new LNBs with SOFA, is reasonable for BART for Naughton Units 1 and 2. We propose to find that Wyoming did not properly follow the requirements of the BART Guidelines in determining NOx BART for these units. Specifically, we propose to find that Wyoming did not properly or reasonably conduct certain requirements of the BART analyses.

As discussed in detail above, because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analysis of visibility improvement for the NO_X BART to be reasonable for Naughton Units 1 and 2. We propose to find that Wyoming's analyses for these Units are inconsistent with the statutory and regulatory requirement that ''the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.''

Also, we are not relying on the State's costs due to reasons stated in section VII.C.3.b. We propose to find that Wyoming did not properly or reasonably ''take into consideration the costs of compliance.'' Thus, the State's BART analyses for Naughton Units 1 and 2 do not meet the requirements of the CAA and RHR, and we are proposing to disapprove the analyses and the State's NO_X BART determinations. We are proposing a FIP for NO_X BART to fill the gaps left by our disapproval, as explained below.

Our analysis follows our BART Guidelines. With the exception of the NO_X emission limits, the visibility improvement analyses, and the cost effectiveness analyses, EPA is proposing to find that the Wyoming's regional haze NO_X BART analysis for Naughton Units 1 and 2, fulfills all the relevant requirements of CAA Section 169A and the RHR.

EPA's NO_X BART analysis and the visibility impacts for Naughton Units 1 and 2 are summarized in Tables 53–56 above and detailed information can be found in the docket.[55] EPA's cost analysis estimated the cost-effectiveness value for LNBs with OFA and SCR at Unit 1 is $2,318/ton with a 1.23 dv visibility improvement at the most impacted Class I area. The cost effectiveness value for LNBs with OFA and SCR at Unit 2 is estimated at $2,255/ton, with a 1.42 dv visibility improvement at the most impacted Class I area. In addition, the installation of SCR will also have substantial visibility benefits for other Class I areas, besides the most impacted area. The cumulative visibility improvement is 3.54 dv for Unit 1 and 4.18 dv for Unit 2. EPA followed the BART Guidelines in developing these cost-effectiveness values, which are reasonable and the visibility improvement is significant for new LNBs with OFA plus SCR. The costs and visibility improvements are within the range that Wyoming in its SIP and EPA in other SIP and FIP actions have considered reasonable in the BART context.

Based on our examination of the cost estimates and the predicted visibility improvement (along with a consideration of the other BART factors), we propose to find that new LNBs with OFA plus SCR at an emission limit of 0.07 lb/MMBtu (30-day rolling average) is reasonable and consistent with the CAA and BART Guidelines requirements for NO_X BART for Naughton Units 1 and 2. We are proposing that the FIP NO_X BART emission limit for PacifiCorp Naughton Units 1 and 2 is 0.07 lb/MMBtu (30-day rolling average).

We propose that PacifiCorp meet our proposed emission limit at Naughton Unit 1 and 2, as expeditiously as practicable, but no later than five years after EPA finalizes action on our proposed FIP. This is consistent with the requirements of 40 CFR 51.308(e)(iv).

We are also asking if interested parties have additional information regarding the BART factors and EPA's proposed determination, for example our weighing of average costs, incremental costs, visibility improvement, and timing of installation of such controls, and in light of such information, whether the interested parties think the Agency should consider another BART control technology option that could be finalized either instead of, or in conjunction with, BART as proposed. The Agency will take the comments and testimony received, as well as any further SIP revisions submitted by the State, into consideration in our final promulgation. Supplemental information received may lead the Agency to adopt final SIP and/or FIP regulations that reflect a different BART control technology option, or impact other proposed regulatory provisions, which differ from this proposal.

5. Disapproval of the State's PacifiCorp Wyodak Unit 1 NO_X BART Determination and FIP To Address NO_X BART

Wyoming's NO_X BART Determination

During the baseline period, Wyodak Unit 1 was controlled for NO_X emissions with early generation LNBs with emission limits of 0.70 lb/MMBtu (3-hour block) and 0.31 lb/MMbtu (annual). The State determined new LNBs with OFA, existing LNBs with ROFA, new LNBs with OFA plus SNCR, and new LNBs with OFA plus SCR were technically feasible for controlling NO_X emissions. The State did not identify any technically infeasible control options.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's NO_X BART analyses for Unit 1 is provided in Table 57 below. Baseline NO_X emissions are 5,744 tpy based on the unit heat input rate of 4,700 MMBtu/hr and 7,884 hours of operation per year. As discussed above, the visibility improvement modeling results in these tables were developed by EPA because Wyoming

[55] Detailed supporting information for our cost and visibility improvement analyses can be found in the Docket (see Staudt memos and *EPA BART and RP Modeling for Wyoming,* respectively).

did not properly follow the BART Guidelines.

TABLE 57—SUMMARY OF WYOMING'S WYODAK UNIT 1 NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (30-day rolling average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park) EPA analysis
LNBs with OFA	0.23	1,483	$1,306,203	$881	.....	0.25
LNBs with OFA and SNCR	0.18	2,409	2,306,728	958	$1,080	0.40
LNBs with OFA and SCR	0.07	4,447	18,910,781	4,252	8,147	0.72

Based on its consideration of the five factors, the State determined LNBs with OFA was reasonable for NO_X BART for Unit 1. The State determined other control technologies were not reasonable based on the high-cost effectiveness values and low visibility improvement. The State determined the NO_X BART emission limit for Wyodak Unit 1 is 0.23 lb/MMBtu (30-day rolling average).

EPA's Conclusions on Wyodak Unit 1 NO_X BART Determination and FIP for NO_X BART

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. We disagree with the State's estimate of baseline NO_X emissions of 5,744 tpy because these estimates are based on the unit heat input rate of 4,700 MMBtu/hr and 7,884 hours of operation per year rather than an average of actual annual emissions. EPA finds that baseline NO_X emissions are 4,615 tpy based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 58 and 59 below.

TABLE 58—SUMMARY OF EPA'S WYODAK'S NO_X BART ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park)
New LNBs with OFA	0.19	1,239	$1,272,427	$1,027	.....	0.24
New LNBs with OFA and SNCR	0.15	1,914	3,787,466	1,979	$3,725	0.38
New LNBs with OFA and SCR	0.05	3,735	14,386,417	3,852	5,822	0.71

Wyodak also impacts one other Class I area. The visibility improvement EPA modeled at the other Class I area is shown in Table 59 below.

TABLE 59—WYODAK: VISIBILITY IMPROVEMENT AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – new LNBs + OFA/SCR
Badlands	0.17	0.23	0.45

EPA does not agree with the State's conclusion that a limit of 0.23 lb/MMBtu is reasonable for NO_X BART for Wyodak Unit 1, which can be achieved with the installation and operation of new LNBs with OFA. We propose to find that Wyoming did not properly follow the requirements of the BART Guidelines in determining NOx BART for this unit. Specifically, we propose to find that Wyoming did not properly or reasonably conduct certain requirements of the BART analysis.

As discussed in detail above, because Wyoming relied on visibility modeling methodologies that are inconsistent with the statutory and regulatory requirements, we do not consider Wyoming's analysis of visibility improvement for the NO_X BART to be reasonable for Wyodak Unit 1. We propose to find that Wyoming's analysis for this Unit is inconsistent with the statutory and regulatory requirement that ''the degree of improvement in visibility which may reasonably be

anticipated to result from the use of such technology.''

Also, we are not relying on the State's costs due to reasons stated in section VII.C.3.b of this notice. We propose to find that Wyoming did not properly or reasonably ''take into consideration the costs of compliance.'' Thus, the State's BART analysis for Wyodak Unit 1 does not meet the requirements of the CAA and RHR, and we are proposing to disapprove the analysis and the State's NO_X BART determination. We are proposing a FIP for NO_X BART to fill the gap left by our disapproval, as explained below.

Our analysis follows our BART Guidelines. With the exception of the NO_X emission limits, the visibility improvement analyses, and the cost-effectiveness analyses, EPA is proposing to find that the Wyoming's regional haze NO_X BART analysis for Wyodak Unit 1 fulfills all the relevant requirements of CAA Section 169A and the RHR.

EPA's NO_X BART analysis and the visibility impacts for Wyodak Unit 1 are summarized in Tables 58–59 above and detailed information can be found in the docket.[56] In particular, the cost effectiveness value for new LNB with OFA plus SNCR at this unit is $1,979/ton with a visibility improvement at the most impacted Class I area of 0.38 deciviews. The costs are within the range that EPA in other SIP and FIP actions has considered reasonable and consistent with the BART Guidelines.

Based on our examination of the costs estimates, emission reductions, and the predicted visibility improvement, we propose to find that new LNBs with OFA plus SNCR at an emission limit of 0.17 lb/MMBtu (30-day rolling average) is reasonable and consistent with the CAA and BART Guideline requirements for NO_X BART for Wyodak Unit 1. We are proposing that the FIP NO_X BART emission limit for PacifiCorp Wyodak Unit 1 is 0.17 lb/MMBtu (30-day rolling average).

We have eliminated the highest performing option from consideration—new LNBs with OFA plus SCR. Although the cost-effectiveness and visibility improvement are within the range of other EPA FIP actions, we find that the cumulative visibility improvement of 1.16 deciviews for new LNBs with OFA plus SCR is low compared to the cumulative visibility benefits that will be achieved by requiring SCR at Dave Johnston Unit 3 (2.92 dv), Laramie River Unit 1 (2.12 dv), Laramie River Unit 2 (1.97 dv), Laramie River Unit 3 (2.29 dv), Naughton Unit 1 (3.54 dv), and Naughton Unit 2 (4.18 dv).

We propose that PacifiCorp meet our proposed emission limit at Wyodak Unit 1, as expeditiously as practicable, but no later than five years after EPA finalizes action on our proposed FIP. This is consistent with the requirements of 40 CFR 51.308(e)(iv).

We are also asking if interested parties have additional information regarding the BART factors and EPA's proposed determination, for example our weighing of average costs, incremental costs, visibility improvement, and timing of installation of such controls, and in light of such information, whether the interested parties think the Agency should consider another BART control technology option that could be finalized either instead of, or in conjunction with, BART as proposed. The Agency will take the comments and testimony received, as well as any further SIP revisions submitted by the State, into consideration in our final promulgation. Supplemental information received may lead the Agency to adopt final SIP and/or FIP regulations that reflect a different BART control technology option, or impact other proposed regulatory provisions, which differ from this proposal.

B. Disapproval of the State's NO_X Reasonable Progress Determinations and Federal Implementation Plan for NO_X Reasonable Progress Determinations and Limits

We are proposing to disapprove the State's reasonable progress determination for PacifiCorp Dave Johnston Unit 1 and Unit 2, and we are proposing a reasonable progress NO_X FIP for these units, as explained below. As noted above, the State provided four-factor analyses that evaluated the required factors. However, due to deficiencies in the control cost estimates, EPA conducted its own cost analyses for Dave Johnston Unit 1 and 2. The cost analysis was done in the same manner as described for BART sources in Section VII.C.

We concluded that it is also appropriate to consider a fifth factor for these units for evaluating potential reasonable progress control options—the degree of visibility improvement that may reasonably be anticipated from the use of the reasonable progress controls. Our reasonable progress guidance contemplates that states (or EPA in lieu of a state) may be able to consider other relevant factors for reasonable progress sources (see EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''Reasonable Progress Guidance''), pp. 2–3, July 1, 2007). We find it appropriate, in certain circumstances, to consider visibility improvement when evaluating potential reasonable progress controls. Thus, in the same manner as described for BART sources in Section VII.C, EPA conducted visibility improvement modeling for Dave Johnston Units 1 and 2.

1. PacifiCorp Dave Johnston—Units 1 and 2

Background

PacifiCorp's Dave Johnston power plant is comprised of four units burning pulverized subbituminous Powder River Basin coal. Units 3 and 4 are subject to BART, as described above. Units 1 and 2 are nominal 106 MW dry bottom wall-fired boilers. Unit 1 began operation in 1958 and Unit 2 in 1960.

Wyoming's NO_X Reasonable Progress Determinations

Unit 1 and Unit 2 are currently uncontrolled for NO_X emissions. The State determined that LNBs, LNBs with OFA, SNCR, and SCR were technically feasible for controlling NO_X emissions. The State did not identify any technically infeasible control options.

The State did not identify any energy or non-air quality environmental impacts that would preclude the selection of any of the controls evaluated, and there are no remaining-useful-life issues for this source. A summary of the State's NO_X reasonable progress analyses for Unit 1 and Unit 2, along with our visibility modeling results, are provided in Tables 60 and 61 below. Baseline NO_X emissions are 2,256 tpy for Unit 1 and 2,174 tpy for Unit 2 based on 2002 actual emissions. Wyoming did not provide controlled emission rates in their reasonable progress analysis.

[56] Detailed supporting information for our cost and visibility improvement analyses can be found in the Docket (see Staudt memos and *EPA BART and RP Modeling for Wyoming,* respectively.

TABLE 60—SUMMARY OF DAVE JOHNSTON UNIT 1 NO_X REASONABLE PROGRESS ANALYSIS

Control technology	Control efficiency (%)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park) EPA Analysis
LNBs	51	1,150	$631,000	$528	0.37
LNBs with OFA	65	1,466	962,000	632	0.49
SNCR	40	902	2,490,000	2,659	0.26
SCR	80	1,804	3,390,000	1,810	0.58

TABLE 61—SUMMARY OF DAVE JOHNSTON UNIT 2 NO_X REASONABLE PROGRESS ANALYSIS

Control technology	Control efficiency (%)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park) EPA Analysis
LNBs	51	1,108	$631,000	$538	0.38
LNBs with OFA	65	1,413	962,000	644	0.49
SNCR	40	869	2,490,000	2,709	0.28
SCR	80	1,739	3,390,000	1,844	0.58

The State estimated that it would take nearly five and a half years for NO_X reduction strategies to become effective. The State determined that roughly two years would be necessary for the State to develop the necessary regulations to implement the selected control measures. The State estimated that it would take up to a year for the source to secure the capital necessary to purchase emission control devices and approximately 18 months would be required for the company to design, fabricate, and install SCR or SNCR technology. Because there are two boilers being evaluated at Dave Johnston, the State determined an additional year may be required for staging the installation process.

The State determined that no controls were reasonable for this planning period. The State cited that the four-factor analysis was limited, in that no guidance was provided by EPA for identifying significant sources and EPA did not establish contribution to visibility impairment thresholds (a potential fifth factor for reasonable progress determinations).[57] The State further claims that the State cannot, per Wyoming Statute 35–11–202, establish emission control requirements except through state rule or regulation. Furthermore, the Wyoming statute requires the State to consider the character and degree of injury of the emissions involved. In this case, the State claims it would need to have visibility modeling that assessed the degree of injury caused by the emissions, which the State does not have. The State believes it has taken a strong and reasonable first step in identifying potential contributors to visibility impairment, and that the next step of creating an appropriate rule or regulation will be accomplished in the next SIP revision.

EPA's Conclusions on Dave Johnston Units 1 and 2 NO_X Reasonable Progress Determination and FIP for NO_X Reasonable Progress Controls

The EPA agrees with the State's analysis pertaining to energy or non-air quality environmental impacts and remaining-useful-life for this source. We disagree with the State's estimate of baseline NO_X emissions of 2,256 tpy for Unit 1 and 2,174 tpy for Unit 2, which were based on 2002 actual emissions. EPA's estimate of baseline NO_X emissions are 2,188 tpy for Unit 1 and 2,161 tpy for Unit 2 based on the actual annual average for the years 2001–2003. A summary of the EPA's NO_X BART analysis and the visibility impacts is provided in Tables 62–65 below.

[57] States must consider the four factors as listed above but can also take into account other relevant factors for the reasonable progress sources identified (see EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), p. 2–3, July 1, 2007).

TABLE 62—SUMMARY OF EPA'S DAVE JOHNSTON UNIT 1 NO_X REASONABLE PROGRESS ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park)
LNBs with OFA	0.20	1,226	$1,187,179	$968		0.31
LNBs with OFA and SNCR	0.15	1,466	2,087,189	1,423	$3,743	0.35
LNBs with OFA and SCR	0.05	1,947	6,417,536	3,296	9,004	0.44

Dave Johnston Unit 1 also impacts other Class I areas. The visibility improvement EPA modeled at other Class I areas is shown in Table 63 below.

TABLE 63—VISIBILITY IMPROVEMENT MODELED AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA/SCR
Badlands	0.17	0.16	0.25
Mt. Zirkel	0.06	0.08	0.13
Rawah	0.10	0.12	0.15
Rocky Mountain	0.13	0.16	0.22

TABLE 64—SUMMARY OF EPA'S DAVE JOHNSTON UNIT 2 NO_X REASONABLE PROGRESS ANALYSIS

Control technology	Emission rate (lb/MMBtu) (annual average)	Emission reduction (tpy)	Annualized costs	Average cost effectiveness ($/ton)	Incremental cost effectiveness	Visibility improvement (delta dv for the maximum 98th percentile impact at Wind Cave National Park)
LNBs with OFA	0.20	1,180	$1,188,797	$1,007		0.29
LNBs with OFA and SNCR	0.15	1,425	2,100,619	1,474	$3,718	0.33
LNBs with OFA and SCR	0.05	1,916	6,432,035	3,357	8,830	0.42

Dave Johnston Unit 1 also impacts other Class I areas. The visibility improvement EPA modeled at other Class I areas is shown in Table 65 below.

TABLE 65—VISIBILITY IMPROVEMENT MODELED AT OTHER CLASS I AREAS

Class I area	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA/SNCR	Visibility improvement (delta dv for the maximum 98th percentile impact) – LNBs + OFA/SCR
Badlands	0.14	0.17	0.24
Mt. Zirkel	0.06	0.09	0.12
Rawah	0.09	0.11	0.15
Rocky Mountain	0.13	0.16	0.21

We disagree with the State's reasoning for not adopting reasonable progress controls for Dave Johnston Unit 1 and Unit 2. If the State determined that it needed to adopt a rule or perform modeling to adequately assess and, if warranted, require reasonable progress controls, the State should have completed these steps before it submitted its regional haze SIP. The RHR does not allow for commitments to potentially implement strategies at some later date that are identified under reasonable progress or for the State to take credit for such commitments.

In addition, the cost effectiveness value for LNBs with OFA at Unit 1 is $968/ton and $1,007/ton at Unit 2. These values are very reasonable and far less than some of the cost effectiveness values the State found reasonable in making its BART determinations. Given predicted visibility improvement of approximately 0.30 deciviews per unit at the most impacted Class I area and the fact that Wyoming's reasonable progress goals will not meet the URP, we find that it was unreasonable for the State to reject these very inexpensive controls. Thus, we are proposing to disapprove the State's NO_X reasonable progress determination for Dave Johnston Unit 1 and Unit 2 and proposing a FIP for NO_X reasonable progress controls as explained below.

Based on our examination of the State's costs estimates, emission reductions, and the predicted visibility improvement, we propose to find that LNBs with OFA at an emission limit of 0.22 lb/MMBtu (30-day rolling average) is reasonable for NO_X reasonable progress controls for Dave Johnston Units 1 and 2. We are proposing that the FIP NO_X reasonable progress emission limit for PacifiCorp Dave Johnston Unit 1 and Unit 2 is 0.22 lb/MMBtu (30-day rolling average).

We propose that PacifiCorp meet our proposed emission limit at Dave Johnston Units 1 and 2 as expeditiously as practicable, but no later than July 31, 2018. This is consistent with the requirement that the SIP cover an initial planning period that ends July 31, 2018.

C. Reasonable Progress Goals

We are proposing to impose reasonable progress controls on Dave Johnston Units 1 and 2, as well as more stringent NO_X BART controls on PacifiCorp Dave Johnston Unit 3 and Unit 4, PacifiCorp Naughton Unit 1 and Unit 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3, than WRAP assumed in modeling Wyoming's RPGs.

We could not re-run the WRAP modeling due to time and resource constraints, but anticipate that the additional controls would result in an increase in visibility improvement during the 20% worst days. As noted in our analyses, many of our proposed controls would result in significant incremental visibility benefits when modeled against natural background. We anticipate that this would translate into measurable improvement if modeled on the 20% best days as well. While we expect our proposed controls will result in additional visibility improvement, we do not expect that these improvements will result in the State achieving the URP. For some of the reasons discussed in section VII.D.3, in particular, emissions from sources outside the WRAP modeling domain, along with our consideration of the statutory reasonable progress factors, we find it reasonable for the State to not achieve the URP during this planning period. We expect the State to quantify the visibility improvement in its next regional haze SIP revision.

For purposes of this action, we are proposing RPGs that are consistent with the additional controls we are proposing. While we would prefer to quantify the RPGs, we note that the RPGs themselves are not enforceable values. The more critical elements for our FIP are the emissions limits we are proposing to impose, which will be enforceable.

D. Federal Monitoring, Recordkeeping, and Reporting Requirements

The CAA requires that SIPs, including the regional haze SIP, contain elements sufficient to ensure emission limits are practically enforceable.[58] Other applicable regulatory provisions are contained in Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions.[59] We are proposing to find that the State's regional haze SIP does not contain adequate monitoring, recordkeeping and reporting requirements. Chapter 6.4, Section V of the SIP contains monitoring and reporting requirements that we find inadequate for numerous reasons, summarized as follows: (1) The State's language includes references to WAQSR Chapters that EPA has not approved as part of the SIP and are thus not federally enforceable. These references should be to the appropriate sections in the CFR; (2) Definitions have not been included; (3) The State's language allows for data substitution pursuant to 40 CFR part 75. The data substitution procedures of 40 CFR part 75 were never intended to apply to BART sources; (4) There are numerous language clarifications and rewordings needed; and (5) The State did not include appropriate recordkeeping language.[60]

EPA is proposing to disapprove the State's monitoring, recordkeeping, and reporting requirements in Chapter 6.4 of the SIP. EPA is proposing regulatory language as part of our FIP that specifies monitoring, recordkeeping, and reporting requirements for all BART and reasonable progress sources. For purposes of consistency, EPA is proposing to adopt language that is the same as we have adopted for other states in Region 8.

E. Federal Implementation Plan for the Long-Term Strategy

We are proposing regulatory language as part of our FIP that specifies NO_X emission limits and compliance schedules for the following sources: PacifiCorp Dave Johnston Units 1–4, PacifiCorp Jim Bridger Units 1 and 2, PacifiCorp Naughton Unit 1 and Unit 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3. We are also proposing monitoring, recordkeeping, and reporting requirements for all BART SIP and FIP sources and for Dave Johnston Units 1 and 2. We are proposing this regulatory language to fill the gap in the LTS that would be left by our proposed partial disapproval of the LTS.

F. Federal Implementation Plan for Coordination of RAVI and Regional Haze Long-Term Strategy

In response to EPA's RAVI rules, Wyoming adopted WAQSR Chapter 9, Section 2. EPA approved WAQSR Chapter 9, Section 2 as part of the SIP on July 28, 2004 (69 FR 44965). As discussed above, the State is required to coordinate the review of its RAVI and regional haze LTS and conduct the

[58] CAA Section 110(a)(2) states that SIPs ''shall (A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter; (C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter; (F) require, as may be prescribed by the Administrator—(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection''

[59] Appendix V part 51 states in section 2.2 that complete SIPs contain: ''(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels''; and ''(h) Compliance/enforcement strategies, including how compliance will be determined in practice.''

[60] On July 6, 2011, EPA sent an email to the State with detailed comments (that are summarized above) on the State's monitoring, recordkeeping, and reporting requirements in Chapter 6.4, Section V of the SIP. The July 6, 2011 email from Laurel Dygowski, EPA Region 8, to Tina Anderson, State of Wyoming, is included in the Supporting and Related Materials section of the docket.

reviews together. WAQSR Chapter 9, Section 2(f) requires the State to review its RAVI LTS every three years, which does not coordinate with the five-year review for the State's regional haze LTS. Thus, we are proposing to disapprove the State's SIP because it does not meet the requirements of 40 CFR 51.306(c). We are proposing a FIP in which EPA commits to coordinating the State's RAVI LTS review with the regional haze LTS review. Thus, EPA is committing to provide a review of the State's RAVI LTS every five years in coordination with the State's regional haze LTS review. EPA is proposing that our review of the State's RAVI LTS will follow those items as indicated by 40 CFR 51.306(c).

IX. EPA's Proposed Action

EPA is proposing to partially approve and partially disapprove a regional haze SIP revision submitted by the State of Wyoming on January 12, 2011. Specifically, we are proposing to disapprove the following:

- The State's NO_X BART determinations for PacifiCorp Dave Johnston Unit 3 and Unit 4, PacifiCorp Naughton Unit 1 and Unit 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3.
- The State's NO_X reasonable progress determination for PacifiCorp Dave Johnston Units 1 and 2.
- Wyoming's RPGs.
- The State's monitoring and recordkeeping requirements in Chapter 6.4 of the SIP.
- Portions of the State's LTS that rely on or reflect other aspects of the regional haze SIP we are proposing to disapprove.
- The provisions necessary to meet the requirements for the coordination of the review of the RAVI and the regional haze LTS.

We are proposing to approve the remaining aspects of the State's January 12, 2011, SIP submittal. We are also seeking comment on an alternative proposal related to the State's NO_X BART determination for PacifiCorp Jim Bridger Units 1 and 2.

We are proposing the promulgation of a FIP to address the deficiencies in the Wyoming regional haze SIP that we have identified in this proposal. The proposed FIP includes the following elements:

- NO_X BART determinations and limits for PacifiCorp Dave Johnston Unit 3 and Unit 4, PacifiCorp Naughton Unit 1 and Unit 2, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2, and 3.
- NO_X reasonable progress determination and limits for PacifiCorp Dave Johnston Units 1 and 2.
- RPGs consistent with the SIP limits proposed for approval and the proposed FIP limits.
- Monitoring, record-keeping, and reporting requirements applicable to all BART and reasonable progress sources for which there is a SIP or FIP emissions limit.
- LTS elements pertaining to emission limits and compliance schedules for the proposed BART and reasonable progress FIP limits.
- Provisions to ensure the coordination of the RAVI and regional haze LTS.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). As discussed in section C below, the proposed FIP applies to only five facilities. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. Burden is defined at 5 CFR 1320.3(b). Because the proposed FIP applies to just five facilities, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The Regional Haze FIP that EPA is proposing for purposes of the regional haze program consists of imposing federal controls to meet the BART requirement for NO_X emissions on specific units at five sources in Wyoming, and imposing controls to meet the reasonable progress requirement for NO_X emissions at one additional source in Wyoming. The net result of this FIP action is that EPA is proposing direct emission controls on selected units at only five sources. The sources in question are each large electric generating plants that are not owned by small entities, and therefore are not small entities. The proposed partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. *See Mid-Tex Electric Cooperative, Inc. v. FERC,* 773 F.2d 327 (D.C. Cir. 1985)

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section

205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any one year. In addition, this proposed rule does not contain a significant federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the State not fully meeting its obligation to prohibit emissions from interfering with other states measures to protect visibility established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

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

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

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of NO_X, SO_2, and PM, the rule will have a beneficial effect on children's health by reducing air pollution.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

We have determined that this proposed action, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule limits emissions of NO_X from five facilities in Wyoming.

The partial approval of the SIP, if finalized, merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 23, 2013.

Shaun L. McGrath,

Regional Administrator Region 8.

40 CFR part 52 is proposed to be 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 ZZ—Wyoming

■ 2. Add section 52.2636 to read as follows:

§ 52.2636 Federal implementation plan for regional haze.[61]

(a) *Applicability.* This section applies to each owner and operator of the following emissions units in the State of Wyoming for which EPA proposes to approve the State's BART determination:

FMC Westvaco Trona Plant Units NS–1A and NS–1B (PM and NO_X);

TATA Chemicals Partners (previously General Chemical) Boilers C and D (PM and NO_X);

Basin Electric Power Cooperative Laramie River Station Units 1, 2, and 3 (PM);

PacifiCorp Dave Johnston Power Plant Unit 3 (PM);

PacifiCorp Dave Johnston Power Plant Unit 4 (PM);

PacifiCorp Jim Bridger Power Plant Units 1, 2, 3, and 4 (NO_X and PM);

PacifiCorp Naughton Power Plant Unit 3 (PM and NO_X);

PacifiCorp Naughton Power Plant Unit 1 and Unit 2 (PM); and

PacifiCorp Wyodak Power Plant Unit 1 (PM).

This section also applies to each owner and operator of the following emissions units in the State of Wyoming for which EPA proposes to disapprove the State's BART determination and issue a NO_X BART Federal Implementation Plan:

Basin Electric Power Cooperative Laramie River Station Units 1, 2, and 3;

PacifiCorp Dave Johnston Power Plant Unit 3;

PacifiCorp Dave Johnston Power Plant Unit 4;

PacifiCorp Naughton Power Plant Unit 1 and Unit 2; and

PacifiCorp Wyodak Power Plant Unit 1.

This section also applies to each owner and operator of the following emissions units in the State of Wyoming for which EPA proposes to disapprove the State's reasonable progress determinations and issue a reasonable progress determination NO_X Federal Implementation Plan: PacifiCorp Dave Johnston Power Plant Units 1 and 2.

(b) *Definitions.* Terms not defined below shall have the meaning given them in the Clean Air Act or EPA's regulations implementing the Clean Air Act. For purposes of this section:

(1) *BART* means Best Available Retrofit Technology.

(2) *BART unit* means any unit subject to a Regional Haze emission limit in Table 1 and Table 2 of this section.

(3) *CAM* means Compliance Assurance Monitoring as required by 40 CFR part 64.

(4) *Continuous emission monitoring system or CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of NO_X emissions, diluent, or stack gas volumetric flow rate.

(5) *FIP* means Federal Implementation Plan.

(6) *Lb/hr* means pounds per hour.

(7) *Lb/MMBtu* means pounds per million British thermal units of heat input to the fuel-burning unit.

(8) *NO_X* means nitrogen oxides.

(9) *Operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the BART or RP unit. It is not necessary for fuel to be combusted for the entire 24-hour period.

(10) The *owner/operator* means any person who owns or who operates, controls, or supervises a unit identified in paragraph (a) of this section.

(11) *PM* means filterable total particulate matter.

(12) *RP unit* means any Reasonable Progress unit subject to a Regional Haze emission limit in Table 3 of this section.

(13) *Unit* means any of the units identified in paragraph (a) of this section.

(c) *Emissions limitations.*

(1) The owners/operators of emissions units subject to this section shall not emit, or cause to be emitted, PM or NO_X in excess of the following limitations:

TABLE 1—EMISSION LIMITS FOR BART UNITS FOR WHICH EPA PROPOSES TO APPROVE THE STATE'S BART DETERMINATION

Source name/BART unit	PM Emission limits	NO_X Emission limits
	lb/MMBtu	lb/MMBtu
FMC Westvaco Trona Plant/Unit NS–1A	0.05	0.35
FMC Westvaco Trona Plant/Unit NS–1B	0.05	0.35
TATA Chemicals Partners (General Chemical) Green River Trona Plant/Boiler C	0.09	0.28
TATA Chemicals Partners (General Chemical) Green River Trona Plant/Boiler D	0.09	0.28
Basin Electric Power Cooperative Laramie River Station/Unit 1	0.03	N/A
Basin Electric Power Cooperative Laramie River Station/Unit 2	0.03	N/A
Basin Electric Power Cooperative Laramie River Station/Unit 3	0.03	N/A
Pacificorp Dave Johnston Power Plant/Unit 3	0.015	N/A
Pacificorp Dave Johnston Power Plant/Unit 4	0.015	N/A

[61] The proposed regulatory language only reflects our proposed action. If EPA's final action differs from our proposed action, the regulatory language will be amended, as necessary, to reflect the Agency's final decision.

TABLE 1—EMISSION LIMITS FOR BART UNITS FOR WHICH EPA PROPOSES TO APPROVE THE STATE'S BART DETERMINATION—Continued

Source name/BART unit	PM Emission limits	NO_X Emission limits
	lb/MMBtu	lb/MMBtu
Pacificorp Jim Bridger Power Plant/Unit 1	0.03	0.07
Pacificorp Jim Bridger Power Plant/Unit 2	0.03	0.07
Pacificorp Jim Bridger Power Plant/Unit 3	0.03	0.07
Pacificorp Jim Bridger Power Plant/Unit 4	0.03	0.07
Pacificorp Naughton Power Plant/Unit 1	0.04	N/A
Pacificorp Naughton Power Plant/Unit 2	0.04	N/A
Pacificorp Naughton Power Plant/Unit 3	0.015	0.07
Pacificorp Wyodak Power Plant/Unit 1	0.015	N/A

TABLE 2—EMISSION LIMITS FOR BART UNITS FOR WHICH EPA PROPOSES TO DISAPPROVE THE STATE'S BART DETERMINATION AND IMPLEMENT A FIP

Source name/BART unit	NO_X Emission limit (lb/MMBtu)
Basin Electric Power Cooperative Laramie River Station/Unit 1	0.07
Basin Electric Power Cooperative Laramie River Station/Unit 2	0.07
Basin Electric Power Cooperative Laramie River Station/Unit 3	0.07
Pacificorp Dave Johnston Power Plant/Unit 3	0.07
Pacificorp Dave Johnston Power Plant/Unit 4	0.12
PacifiCorp Naughton Power Plant/Unit 1	0.07
PacifiCorp Naughton Power Plant/Unit 2	0.07
Pacificorp Wyodak Power Plant/Unit 1	0.17

TABLE 3—EMISSION LIMITS FOR RP UNITS FOR WHICH EPA PROPOSES TO DISAPPROVE THE STATE'S RP DETERMINATION AND IMPLEMENT A FIP

Source name/RP unit	NO_X Emission limit (lb/MMBtu)
Pacificorp Dave Johnston Power Plant/Unit 1	0.22
Pacificorp Dave Johnston Power Plant/Unit 2	0.22

(2) These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.

(d) *Compliance date.*

(1) The owners and operators of PacifiCorp Jim Bridger Unit 3 and Unit 4 shall comply with the emission limitations and other requirements of this section by December 31, 2015, for Unit 3 and December 31, 2016, for Unit 4.

(2) The owners and operators of the other BART and RP sources subject to this section shall comply with the emissions limitations and other requirements of this section within five years of the effective date of this rule.

(e) *Compliance determinations for NO_X.*

(1) For all BART and RP units other than Trona Plant units:

(i) *CEMS.* At all times after the compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure NO_X, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(ii) *Method.*

(A) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average NO_X concentration in lb/MMBtu and lb/hr at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu and lb/hr from the arithmetic average of all valid hourly emission rates from the CEMS for the current operating day and the previous 29 successive operating days.

(B) An hourly average NO_X emission rate in lb/MMBtu or lb/hr is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by both the pollutant concentration monitor (NO_X) and the diluent monitor (O_2 or CO_2).

(C) Compliance with tons-per-year emission limits shall be calculated on a rolling 12-month basis. At the end of each calendar month, the owner/operator shall calculate and record a new 12-month rolling average emission rate from the arithmetic average of all valid hourly emission rates from the CEMS for the current month and the previous 11 months and the report the result in tons.

(D) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

(2) For all Trona Plant BART units:

(i) *CEMS.* At all times after the compliance date specified in paragraph

(d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 60, to accurately measure NO_X, diluent, and stack gas volumetric flow rate from each unit, including the CEMS quality assurance requirements in appendix F of 40 CFR part 60. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(ii) *Method.*

(A) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average NO_X concentration in lb/MMBtu and lb/hr at the CEMS in accordance with the requirements of 40 CFR part 60. At the end of each operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu and lb/hr from the arithmetic average of all valid hourly emission rates from the CEMS for the current operating day and the previous 29 successive operating days.

(B) An hourly average NO_X emission rate in lb/MMBtu or lb/hr is valid only if the minimum number of data points, as specified in 40 CFR part 60, is acquired by both the pollutant concentration monitor (NO_X) and the diluent monitor (O_2 or CO_2).

(C) Compliance with tons-per-year emission limits shall be calculated on a rolling 12-month basis. At the end of each calendar month, the owner/operator shall calculate and record a new 12-month rolling average emission rate from the arithmetic average of all valid hourly emission rates from the CEMS for the current month and the previous 11 months and report results in tons.

(f) *Compliance determinations for particulate matter.*

Compliance with the particulate matter emission limit for each BART and RP unit shall be determined from annual performance stack tests. Within 60 days of the compliance deadline specified in section (d), and on at least an annual basis thereafter, the owner/operator of each unit shall conduct a stack test on each unit to measure particulate emissions using EPA Method 5, 5B, 5D, or 17, as appropriate, in 40 CFR part 60, Appendix A. A test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. Results shall be reported in lb/MMBtu and lb/hr. In addition to annual stack tests, the owner/operator shall monitor particulate emissions for compliance with the BART emission limits in accordance with the applicable Compliance Assurance Monitoring (CAM) plan developed and approved by the State in accordance with 40 CFR part 64.

(g) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(1) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(2) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 75. Or, for Trona Plant units, records of quality assurance and quality control activities for emissions measuring systems including, but not limited to appendix F of 40 CFR part 60.

(3) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(4) Any other CEMS records required by 40 CFR part 75. Or, for Trona Plant units, any other CEMs records required by 40 CFR part 60.

(5) Records of all particulate stack test results.

(6) All data collected pursuant to the CAM plan.

(h) *Reporting.* All reports under this section shall be submitted to the Director, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8, Mail Code 8ENF–AT, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

(1) The owner/operator of each unit shall submit quarterly excess emissions reports for NO_X BART and RP units no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted. The owner/operator shall also submit reports of any exceedances of tons-per-year emission limits.

(2) The owner/operator of each unit shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments. The owner/operator of each unit shall also submit results of any CEMS performance tests required by 40 CFR part 75. Or, for Trona Plant units, the owner/operator of each unit shall also submit results of any CEMs performance test required appendix F of 40 CFR part 60 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by sections (h)(1) and (2) above.

(4) The owner/operator of each unit shall submit results of any particulate matter stack tests conducted for demonstrating compliance with the particulate matter BART limits in section (c) above, within 60 calendar days after completion of the test.

(5) The owner/operator of each unit shall submit semi-annual reports of any excursions under the approved CAM plan in accordance with the schedule specified in the source's title V permit.

(i) *Notifications.*

(1) The owner/operator shall submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_X emission limits in paragraph (c) of this section.

(2) The owner/operator shall submit semi-annual progress reports on construction of any such equipment.

(3) The owner/operator shall submit notification of initial startup of any such equipment.

(j) *Equipment operation.* At all times, the owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(k) *Credible Evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

■ 3. Add section 52.2637 to read as follows:

§ 52.2637 Federal implementation plan for reasonable attributable visibility impairment long-term strategy.

As required by 40 CFR 41.306(c), EPA will ensure that the review of the State's reasonably attributable visibility

impairment long-term strategy is coordinated with the regional haze long-term strategy under 40 CFR 51.308(g). EPA's review will be in accordance with the requirements of 40 CFR 51.306(c).

[FR Doc. 2013–13611 Filed 6–7–13; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 770

Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products; Formaldehyde Emissions Standards for Composite Wood Products; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2011–0380; FRL–9342–4]

RIN 2070–AJ44

Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Formaldehyde Standards for Composite Wood Products Act (Title VI of the Toxic Substances Control Act (TSCA)) establishes formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard (composite wood products) and directs EPA to promulgate implementing regulations by January 1, 2013. Pursuant to the requirements of TSCA Title VI, EPA is proposing a framework for a TSCA Title VI Third-Party Certification Program for composite wood products. Under the framework, third-party certifiers (TPCs) would be accredited by EPA-recognized accreditation bodies (ABs) so that TPCs may certify composite wood product panel producers under TSCA Title VI. This proposed rule identifies the roles and responsibilities of the TPCs and ABs involved, as well as the criteria for participation in the TSCA Title VI Third-Party Certification Program. The Agency is proposing the TSCA Title VI Third-Party Certification Program framework prior to the rest of the TSCA Title VI implementing regulations in order to allow interested parties an opportunity to comment and to begin identifying the business practices and infrastructure that may need to be modified or developed in order to effectively participate in the program.

DATES: Comments must be received on or before August 9, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0380, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Docket ID Number EPA–HQ–OPPT–2011–0380.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2011–0380. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
- *Instructions:* Direct your comments to docket ID number EPA–HQ–OPPT–2011–0380. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The 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 regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

For technical information contact: Erik Winchester, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6450; email address: *winchester.erik@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be affected by this action if you certify domestic or international composite wood products. Potentially affected entities may include, but are not limited to:

- Reconstituted wood product manufacturing (NAICS code 321219).
- Engineering services (NAICS code 541330).
- Testing laboratories (NAICS code 541380).
- Administrative management and general management consulting services (NAICS code 541611).
- All other professional, scientific, and technical services (NAICS code 541990).
- All other support services (NAICS code 561990).
- Business associations (NAICS code 813910).
- Professional organizations (NAICS code 813920).

This list is not intended to be exhaustive, but rather provides a guide for readers likely to be affected by this action. To determine whether you, your business, or your agency is affected, you should carefully examine this proposed rule and the TSCA Title VI (Ref. 1). If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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. Background

A. Executive Summary

1. *Purpose of the regulatory action.* EPA is proposing a framework for a TSCA Title VI Third-Party Certification Program for composite wood products. Under the framework, TPCs would be accredited by EPA-recognized ABs so that TPCs may certify composite wood product panel producers under TSCA Title VI, 15 U.S.C. 2697. TSCA Title VI gives EPA the authority to promulgate regulations relating to ''third-party testing and certification'' and ''auditing and reporting of third-party certifiers'' with regards to composite wood products. EPA believes that third-party certification is an essential component in ensuring compliance with the TSCA Title VI emission standards for composite wood products.

2. *Summary of the major provisions.* This proposal provides a framework for the TSCA Title VI Third-Party Certification Program. It lists the qualifications for ABs that wish to participate in the program, the process for applying to participate in the program, and the responsibilities of participating ABs. It also lists the qualifications for TPCs that wish to become TSCA Title VI accredited, the process for applying to become TSCA Title VI accredited, and the responsibilities of TSCA Title VI accredited TPCs.

3. *Costs and impacts.* EPA has prepared an analysis of the potential costs and impacts associated with this rulemaking. This analysis is summarized in greater detail in Unit VI.A. The following chart provides a brief outline of the costs and impacts of this proposal:

Category	Description
Costs	The annualized costs of this proposed rule are estimated at approximately $34,000 per year using either a 3% discount rate or a 7% discount rate.
Small Entity Impacts	This rule would impact an estimated 9 small entities, of which 8 are expected to have impacts of less than 1% of revenues or expenses, and 1 is expected to have impacts between 1% and 3%.
Effects on State, Local, and Tribal Governments	Government entities are not expected to be subject to the rule's requirements, which apply to third-party certifiers and accreditation bodies. The rule does not have a significant intergovernmental mandate, significant or unique effect on small governments, or have Federalism implications.

B. What action is the agency taking?

Title VI of TSCA directs EPA to promulgate implementing regulations by January 1, 2013 (Ref. 1). EPA is issuing this proposed rule under TSCA Title VI to establish a framework for a TSCA Title VI Third-Party Certification Program whereby TPCs are accredited by ABs so that they may certify composite wood product panel producers under TSCA Title VI. This proposed rule identifies the roles and responsibilities of the groups involved in the TPC process (EPA, ABs, and TPCs), as well as the criteria for participation in the program. This proposal contains general requirements for TPCs, such as conducting and verifying formaldehyde emission tests, inspecting and auditing panel producers, and ensuring that panel producers' quality assurance and quality control procedures comply with the regulations set forth in this proposed rule. In a subsequent document, EPA will propose additional requirements including the frequency of testing, means for showing test method equivalence, and other implementing provisions as required under TSCA Title VI, such as labeling, chain of custody requirements, sell-through provisions, recordkeeping, and enforcement.

C. What is the agency's authority for taking this action?

EPA is issuing this proposed rule pursuant to the Formaldehyde Standards for Composite Wood Products Act (Ref. 1), which provides authority for the Administrator to ''promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).'' This provision includes authority to promulgate regulations relating to ''third-party testing and certification'' and ''auditing and reporting of third-party certifiers.''

D. Formaldehyde Sources and Health Effects

Formaldehyde is a colorless, flammable gas at room temperature and has a strong odor. It is found in resins used in the manufacture of composite wood products (e.g., hardwood plywood, particleboard, and medium-density fiberboard). It is also found in household products such as glues, permanent press fabrics, carpets, antiseptics, medicines, cosmetics, dishwashing liquids, fabric softeners, shoe care agents, lacquers, plastics, and

paper product coatings. It is a by-product of combustion and certain other natural processes. Examples of sources of formaldehyde gas inside homes include cigarette smoke, unvented, fuel-burning appliances (gas stoves, kerosene space heaters), and composite wood products made using formaldehyde-based resins (Ref. 2).

Formaldehyde is both an irritant and a known human carcinogen (Ref. 3). Depending on concentration, formaldehyde can cause eye, nose, and throat irritation, even when exposure is of relatively short duration. In the indoor environment, sensory reactions and various symptoms resulting from mucous membrane irritation are potential effects. There is also evidence that formaldehyde may be associated with changes in pulmonary function and increased risk of asthma in children (Ref. 2).

The Integrated Risk Information System (IRIS) Program of EPA's Office of Research and Development (ORD) recently completed a draft assessment of the potential cancer and non-cancer health effects that may result from chronic inhalation exposure to formaldehyde (Ref. 4). This draft IRIS assessment was peer reviewed by the National Academy of Sciences (NAS) (Ref. 5). EPA is currently considering the peer review comments. Both the National Toxicology Program (Ref. 3) and the International Agency for Research on Cancer (Ref. 6) have concluded that formaldehyde is a known human carcinogen. However, in revising the draft IRIS assessment, EPA is following the 2011 recommendation of the National Research Council to evaluate the weight of evidence for specific cancer types in multiple organs, including specific respiratory tract sites and specific lymphohematopoietic cancer subtypes. This analysis will be used to derive a unit risk estimate in the revised draft that reflects more recent data and an updated review of the cancer hazard in humans and animals.

E. History of This Action

1. *Legislative history.* On July 7, 2010, President Obama signed into law the Formaldehyde Standards for Composite Wood Products Act (Ref. 1). This legislation adds Title VI to TSCA and establishes formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard. These emission standards are identical to the California Air Resources Board's (CARB) Airborne Toxic Control Measure (ATCM) Phase II standards (Ref. 7). Title VI of TSCA directs EPA to promulgate implementing regulations by January 1, 2013, that address: Labeling, chain of custody requirements, sell-through provisions, ultra low-emitting formaldehyde (ULEF) resins, no-added formaldehyde-based (NAF) resins, finished goods, third-party testing and certification, auditing and reporting of third-party certifiers, recordkeeping, enforcement, laminated products, and products containing *de minimis* amounts of composite wood.

This proposed rule establishes a framework for a TSCA Title VI Third-Party Certification Program to help ensure that regulated composite wood products consistently meet the TSCA Title VI formaldehyde emission standards. EPA will issue a separate proposed rule at a later date that includes the rest of the TSCA Title VI implementing regulations. That separate proposed rule will include specific testing responsibilities of TPCs.

2. *The CARB ATCM.* The CARB ATCM establishes emission standards for composite wood products sold, offered for sale, supplied, used, or manufactured for sale in California (Ref. 7). It includes requirements for manufacturers of composite wood products, distributors, importers, fabricators, retailers, and TPCs with provisions on sell-through dates, labeling, recordkeeping, testing, and certification. It also includes special provisions for manufacturers of composite wood products with ULEF and NAF resins.

Under the CARB ATCM, manufacturers of composite wood products must have their compliance with the emission standards certified by a TPC approved by CARB (Ref. 8). The CARB ATCM defines a third-party certifier as ''an organization or entity approved by the Executive Officer that: (A) Verifies the accuracy of the emission test procedures and facilities used by manufacturers to conduct formaldehyde emission tests, (B) monitors manufacturer quality assurance and quality control programs, and (C) provides independent audits and inspections.'' In order to become a CARB approved TPC, prospective certifiers must submit an application to the CARB Executive Officer containing:

a. Evidence of actual field experience in the verification of laboratories and wood products, to demonstrate how the applicant will be able to competently perform the TPC requirements under the CARB ATCM.

b. Evidence of the ability to properly train and supervise inspectors.

c. Evidence of a current ''product accreditation body'' accreditation issued by a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA).

d. A list of the composite wood products that the applicant is applying to verify and evidence that the applicant is qualified to verify these products (Ref. 9).

If the TPC's application is approved, the CARB Executive Officer issues a CARB Executive Order with a duration of 2 years. Upon the expiration date of the CARB Executive Order, a TPC may apply for re-accreditation by submitting an updated application. The CARB Executive Officer may, ''for good cause,'' modify or revoke a CARB Executive Order approving a TPC after giving the TPC the opportunity for a hearing.

Under the CARB ATCM, CARB approved TPCs are required to verify that composite wood product manufacturers are complying with the quality assurance and quality control requirements, verify formaldehyde emission test results, work with manufacturers to establish quality control limits for each product type and production line, provide independent inspections and audits of manufacturers and records, use laboratories that are certified by an AB that is a signatory to the ILAC MRA, maintain records for 2 years; and provide an annual report to CARB. CARB maintains a list of approved TPCs on its Web site (Ref. 8). The annual report must include:

- A list of manufacturers certified by the TPC during the previous calendar year, including the resins used by the manufacturers and the average and range of formaldehyde emissions.
- A list of any non-complying events by manufacturers.
- Certified laboratories and primary or secondary test methods utilized by the TPC.
- Results of inter-laboratory testing comparisons for laboratories used by the TPC.

3. *Recent activities related to this proposed rule.* On March 24, 2008, 25 organizations and approximately 5,000 individuals petitioned EPA under section 21 of TSCA to use its authority under section 6 of TSCA to adopt the CARB ATCM nationally (Ref. 10). The petitioners asked EPA to assess and reduce the risks posed by formaldehyde emitted from hardwood plywood, particleboard, and medium-density fiberboard by exercising its authority under TSCA section 6 to adopt and apply nationwide the CARB formaldehyde emissions regulation for these composite wood products. In addition, petitioners requested EPA to extend this regulation to include composite wood products used in

manufactured homes. The petitioners expressed particular concern over the levels of formaldehyde found in emergency housing provided for persons displaced from their homes by Hurricane Katrina and noted that there are no Federal regulations on formaldehyde emissions from composite wood products other than the Department of Housing and Urban Development's (HUD) regulations for manufactured housing at 24 CFR 3280.308.

On June 27, 2008, EPA issued a notice explaining the Agency's decision to grant in part and deny in part the petitioners' request (Ref. 11). EPA denied the petitioners' request to immediately pursue a TSCA section 6 rulemaking, stating that the available information at the time was insufficient to support an evaluation of whether formaldehyde emitted from hardwood plywood, particleboard, and medium-density fiberboard presents or will present an unreasonable risk to human health (including cancer and non-cancer endpoints) under TSCA section 6. As discussed in detail in the **Federal Register** notice announcing EPA's response to the petition, EPA's evaluation of the data provided by the petitioners revealed significant information gaps that would have needed to be filled to support an evaluation of whether use of formaldehyde in these products presents or will present an unreasonable risk under TSCA section 6. However, EPA did agree to initiate a proceeding to investigate whether and what type of regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from pressed wood products.

Accordingly, on December 3, 2008, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) that announced EPA's intention to investigate whether and what regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from the products covered by the CARB ATCM as well as other pressed wood products (Ref 12). To help inform EPA's decision on the best ways to address risks posed by formaldehyde emissions from pressed wood products, the Agency requested public comments and held six half-day public meetings in Research Triangle Park, NC; Portland, OR; Chicago, IL; Dallas, TX; Washington, DC; and New Orleans, LA. EPA received and reviewed comments submitted during the ANPR comment period which can be found at regulations.gov under docket number EPA–HQ–OPPT–2008–0627.

F. Objectives of the Framework for the Third-Party Certification Program

EPA believes that the TSCA Title VI Third-Party Certification Program must be impartial and applicable uniformly to composite wood products ''sold, supplied, offered for sale, or manufactured in the United States'' regardless of origin, whether domestic or international. TSCA section 601(b)(1). This proposed rule aims to ensure that these objectives are met, along with ensuring the consistent application of the TPC requirements of TSCA Title VI, by requiring the use of voluntary consensus standards for the TSCA Title VI Third-Party Certification Program, and by leveraging the expertise of international ABs. Additionally, this proposed rule is intended to be as consistent as practicable with the TPC requirements under the CARB ATCM. By aligning itself with the existing CARB ATCM requirements, EPA seeks to avoid differing or duplicative regulatory requirements that would result in an increased burden on the regulated community.

Qualified and experienced TPCs are essential to ensuring that domestic and foreign panel producers supplying products to the United States have quality assurance and quality control procedures, are having their products tested to determine that they are compliant with formaldehyde emissions standards, and are otherwise acting in manner that is consistent with the requirements of TSCA Title VI. The TSCA Title VI formaldehyde emissions standards apply to hardwood plywood, particleboard, and medium-density fiberboard sold, supplied, offered for sale, or manufactured (including imported) in the United States. Because TSCA defines ''manufacture'' to include ''import into the customs territory of the United States'' the standards are applicable regardless of whether the composite wood product is manufactured domestically or imported from abroad.

There are a substantial number of panel producers and TPCs that operate solely outside of the United States. Currently, 27 of the 36 CARB-approved TPCs are based outside the United States (Ref. 8). To ensure that oversight of TPCs is as strong abroad as it is domestically, EPA believes a TSCA Title VI Third-Party Certification Program framework should include internationally operating ABs to overcome potential logistical limitations that may hinder regular and rigorous inspection of TPCs operating outside the United States. Many ABs have a global reach, preexisting infrastructure, and experience working in foreign countries, which EPA believes makes them ideal for evaluating the qualifications of TPC candidates. Under EPA's proposed TSCA Title VI Third-Party Certification Program framework, ABs would review, accredit, oversee, audit, and inspect both domestic and foreign TPCs—activities that would enable EPA to ensure the legitimacy of both TPCs and panel producers in the United States and abroad. The ABs' oversight and auditing functions verify that TPCs are fulfilling their regulatory obligations uniformly across the global marketplace. EPA would retain its statutorily delegated roles in program design, establishing the standards, enforcement, and oversight; and utilize ABs to strengthen performance of TPCs.

G. What background information was used to develop the framework for a third-party certification program?

Effective and successful implementation of EPA's TSCA Title VI Third-Party Certification Program requires that panel producers have in place formaldehyde emissions testing programs and quality assurance and quality control programs for product manufacturing. To achieve these outcomes, EPA is proposing to require the use of voluntary consensus standards for those participating as a TPC in the TSCA Title VI Third-Party Certification Program. In developing this proposed rule, EPA reviewed established voluntary consensus standards that are relied on by industries around the world as a means of ensuring the competency of third-parties in particular fields of technical activity such as testing, instrument calibration, and product performance certification. In addition to reviewing existing voluntary consensus standards, EPA reviewed other successful third-party certification programs that use voluntary consensus standards to determine if such programs could be used as models for the TSCA Title VI Third-Party Certification Program.

Third-party certification involves a process by which a product, process, or service is reviewed by a reputable and qualified independent third-party to verify that a set of norms, criteria, claims, practices, or standards are being met. Third-party certification has been widely and successfully used for decades by a number of industries such as engineering, electronics, energy, software, automotive, and food and consumer products. The standards used in third-party certification are typically voluntary consensus standards developed by nationally or internationally recognized standards-

producing organizations or industry groups. Voluntary consensus standards establish uniform engineering or technical criteria, methods, processes, and practices for an industry practice or product, and are developed by experts in the relevant field through a process that allows input by all persons interested and affected by the scope or provisions of the standard. Parties in that industry then choose to accept and voluntarily abide by the consensus standards. Otherwise, the existence of multiple and non-harmonized standards for similar products, processes, and services in different countries or regions can create barriers to trade.

1. *Voluntary consensus standards.* In order for EPA to ensure that the Third-Party Certification Program under TSCA Title VI is effective in ensuring compliance with the emission standards, impartial in its operations, and applicable both domestically and internationally, the Agency proposes requiring the use of voluntary consensus standards as the basis for operating the TSCA Title VI Third-Party Certification Program. EPA specifically proposes using International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) voluntary consensus standards and guides as general requirements for third-party certifications. In addition to industry experts, international organizations—both governmental and non-governmental—work in cooperation with ISO and IEC to develop their consensus standards. In the field of conformity assessment, the ISO Committee on Conformity Assessment (CASCO) is responsible for the development of international standards and guides.

The appropriate ISO/IEC standards and guide that EPA proposes requiring are:

- ISO/IEC Guide 65:1996(E), General Requirements for Bodies Operating Product Certification Systems. This is the international voluntary consensus standard that specifies general requirements for a third-party operating a product certification program (Ref. 13). These general requirements would help ensure that the TPC is competent and reliable in certifying compliant composite wood products.
- ISO/IEC 17011:2004(E), Conformity Assessments—General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies. This international voluntary consensus standard offers the general requirements for ABs assessing and accrediting conformity assessment bodies (CABs). It is also appropriate as a requirement document for the peer evaluation process for mutual recognition arrangements between ABs (Ref. 14). These general requirements would help ensure that the ABs are competent and reliable in accrediting TPCs.
- ISO/IEC 17025:2005(E), General Requirements for the Competence of Testing and Calibration Laboratories. This international voluntary consensus standard specifies the general requirements for competence in carrying out tests and/or calibrations, including sampling (Ref. 15). EPA believes that requiring TPCs to use laboratories that follow these requirements would help ensure that reliable and accurate test results are obtained.
- ISO/IEC 17020:1998(E), General Criteria for the Operation of Various Types of Bodies Performing Inspections. This international voluntary consensus standard specifies general criteria for the competence of impartial bodies performing inspection. It is intended for use by inspection bodies and their accreditation bodies (Ref. 16).

EPA believes that requiring TPCs to follow these requirements would help ensure greater homogeneity of the inspection process among the TPCs recognized by EPA.

The appropriate use of each guide and standard and a description of the party responsible under the proposed TPC framework for ensuring compliance with the standard are detailed in Unit III. The use of the guide and standards furthers the goal of the National Technology Transfer and Advancement Act (NTTAA), as discussed in Unit VI. These ISO standards and guide will be made available for viewing in the EPA/DC Public Reading Room and, during the public comment period. Online access to the ISO standards will also be available to the public free of charge during the comment period through the ANSI Web site at *http://webstore.ansi.org/EPA/Download.aspx.* A user account, which may be created through the ANSI Web site, is required to access the standards.

2. *International accreditation and inspection oversight organizations.* In the profession of conformity assessment (i.e., the process of ensuring an organization responsible for implementing a consensus standard does so in conformance with the standard) oversight of conformity assessment bodies, such as TPCs, is done by organizations known as ABs. An AB provides an impartial verification of the competency of conformity assessment bodies such as TPCs. The ABs themselves also have oversight typically performed by an association or cooperative of conformity experts and other ABs through a peer evaluation process. Because the proposed TPC framework is international in scope and will employ the use of internationally accepted consensus standards, EPA reviewed the structure and functions of well known international organizations that were established decades ago to specifically provide oversight of ABs.

The two international AB oversight bodies that EPA examined for this proposed rule are the International Accreditation Forum, Inc. (IAF) and ILAC. EPA believes that using a system where an AB's qualifications are verified by international oversight bodies such as these and in which the ABs in turn assess the conformity of TPCs to international voluntary consensus standards would ensure that the requirements of TSCA Title VI are met. The specific details of how EPA proposes to leverage this system to ensure compliance with the TSCA Title VI are detailed in Unit III.

The IAF is an association of conformity assessment bodies and other bodies. IAF requires its member ABs to comply with appropriate international conformity assessment standards. The IAF Multilateral Recognition Arrangement (MLA) is an agreement between AB members of the IAF whereby the ABs conduct regular evaluations of each other to assure the equivalence of their accreditation programs. This MLA agreement allows companies with an accredited conformity assessment certification in one part of the world to have that certification recognized everywhere else in the world, thereby facilitating international trade (Ref. 17). The MLA certification provides documentation that a person or an organization has been accredited to a specific standard or scheme by an IAF MLA signatory AB. In addition, IAF through its MLA ensures that all ABs who are capable of accrediting product certification bodies, such as TPCs, are in conformance with ISO/IEC Guide 65:1996(E). By requiring a TPC to be accredited to ISO/IEC Guide 65:1996(E) by a qualified AB that has an IAF endorsement through level 3 of the IAF Scope, or is a member of an equivalent oversight body, EPA believes that the TPC will be in conformance with ISO/IEC Guide 65:1996(E), the voluntary consensus standard used to ensure proper product certification. Level 3 of the IAF Scope is the level of accreditation which needs to be accomplished by a Product AB under that program to ensure that the Product AB is qualified to accredit the TPC.

The ILAC is an international cooperation of laboratory and inspection ABs formed to help remove technical

barriers to trade. ABs around the world, which have been evaluated by peers as competent, have signed an MRA that enhances the acceptance of products and services across national borders (Ref. 18). By requiring a TPC's emissions testing laboratory, or its contract laboratory, to be accredited by an AB that is a signatory to the ILAC MRA or equivalent oversight body, EPA believes that there will be a greater assurance of compliance with ISO/IEC 17025:2005(E), the voluntary consensus standard that is critical to ensuring adequate verification of performance for TSCA Title VI required laboratory formaldehyde emissions testing.

3. *Other third-party certification programs that were evaluated.* As mentioned in Unit II.F., EPA aims to develop a TSCA Title VI Third-Party Certification Program that incorporates lessons learned from other third-party certification programs. In addition, EPA is particularly interested in harmonizing, to the extent practicable, with the CARB's third-party certification program to avoid differing or duplicative regulatory requirements.

In developing the TSCA Title VI Third-Party Certification Program framework as presented in this proposed rule, EPA started with a review of CARB's program, as described in Unit II.E. This included meeting with CARB, the composite wood industry, and CARB-approved TPCs.

EPA also reviewed other EPA and Federal programs that have elements relevant to EPA's goals for this proposed program, such as the use of voluntary consensus standards and/or a third-party product certification process. The following EPA and Federal programs were reviewed during development of the proposed TSCA Title VI Third-Party Certification Program framework:

a. *National Lead Laboratory Accreditation Program.* EPA established the National Lead Laboratory Accreditation Program (NLLAP) in 1992, to provide protocols, criteria, and minimum performance standards for analysis of lead in paint, dust, and soil, as required under TSCA section 405 (Ref. 19). Section 405 of TSCA further directs EPA, in consultation with the Department of Health and Human Services (HHS), to develop a program to certify qualified lead testing laboratories. The NLLAP provides the public with a list of qualified laboratories that have met EPA criteria and demonstrated the capability to accurately analyze paint chip, dust, and soil samples for lead. EPA ensures that laboratories comply with these EPA criteria by having them evaluated and accredited by third-party laboratory ABs according to ISO/IEC performance consensus standards. In order to assure the public that a Laboratory AB is capable of performing an adequate assessment of participating laboratories, EPA enters into a recognition agreement with the AB in recognition of its capability to perform adequate laboratory assessments.

For a laboratory to qualify for recognition under the NLLAP, it must pass on-site audits conducted by one of the four laboratory ABs with which EPA has a recognition agreement. The Laboratory ABs recognize NLLAP laboratories in conformance with ISO/IEC 17025:2005(E). Laboratories recognized under the NLLAP must also successfully perform, on a continuing basis, in the Environmental Lead Proficiency Analytical Testing (ELPAT) Program. The ELPAT is a proficiency testing program that is designed to evaluate the analytical performance of laboratories by providing the laboratory with standardized test samples on a quarterly basis and evaluating their results against consensus results from a set of reference laboratories.

The NLLAP has successfully demonstrated over the years that EPA recognized laboratories are capable of accurately analyzing for lead in paint chips, dust wipes, and soil samples. Therefore, EPA believes that the third-party processes employed by the NLLAP, which include the use of third-party laboratory ABs that accredit laboratories by using voluntary consensus standards, along with additional specified laboratory testing protocols, demonstrate that a similar third-party certification program can be used successfully under TSCA Title VI.

b. *National Voluntary Conformity Assessment System Evaluation Program.* Another program that EPA reviewed is the National Voluntary Conformity Assessment System Evaluation (NVCASE) Program at the Department of Commerce's National Institute of Standards and Technology (NIST). NIST, through its Standards Services Division, offers this voluntary program to evaluate and recognize organizations which support third-party conformity assessment activities. The NVCASE Program includes activities related to third-party laboratory testing, third-party product certification, and quality system registration. After an NVCASE Program evaluation, NIST provides recognition to qualified U.S. organizations that effectively demonstrate conformance with established criteria. The ultimate goal is to help U.S. manufacturers satisfy applicable product requirements mandated by foreign or U.S. regulatory authorities through conformity assessment procedures. Under the NVCASE Program, NIST accepts requests from only domestic TPCs for domestic and international accreditation. The use of NIST's NVCASE Program in the United States would significantly hamper the ability of foreign TPC candidates to receive and maintain accreditation and would not allow EPA to meet its goal of providing testing and certification and auditing and reporting of all TPCs, domestic as well as international.

c. *Other EPA programs.* EPA also considered the product certification components of EPA's WaterSense and Energy Star programs. WaterSense is an EPA-sponsored partnership program launched in 2006 that seeks to protect the future of our nation's water supply by promoting water efficiency and enhancing the market for water-efficient products, programs, and practices. WaterSense helps consumers identify products and programs that meet WaterSense water efficiency and performance criteria. Energy Star is a joint program of the EPA and the Department of Energy (DOE) designed to help the consumers save money and protect the environment through the use of energy efficient products and practices. In 1992, EPA introduced Energy Star as a voluntary labeling program designed to identify and promote energy-efficient products to reduce greenhouse gas emissions.

Both the WaterSense and Energy Star certification programs specify the minimum criteria that EPA licensed product ABs must observe when certifying product conformance to specifications and when authorizing the use of the program's labels. These programs provide specific criteria for the application of ISO/IEC Guide 65:1996(E) in order to satisfy the criteria for certification of Energy Star and WaterSense products. They also provide the basis for consistent application of voluntary consensus standards by licensed ABs. The ISO/IEC Guide 65:1996(E) has been successfully used in these two programs for auditing, certifying, and reporting of the status of certification. The Energy Star and WaterSense programs' use of ABs who certify under voluntary consensus standards for product certification also demonstrates the utility and workability of this approach.

Each of the aforementioned programs informed EPA's decision on how to develop an appropriate and credible third-party certification program for TSCA Title VI. EPA is proposing a framework under TSCA Title VI that incorporates elements of the CARB

third-party certification program, the use of recognition agreements with ABs (e.g., as in NLAAP), and a product certification system element such as those used in the WaterSense and Energy Star programs.

III. What does this proposed rule do?

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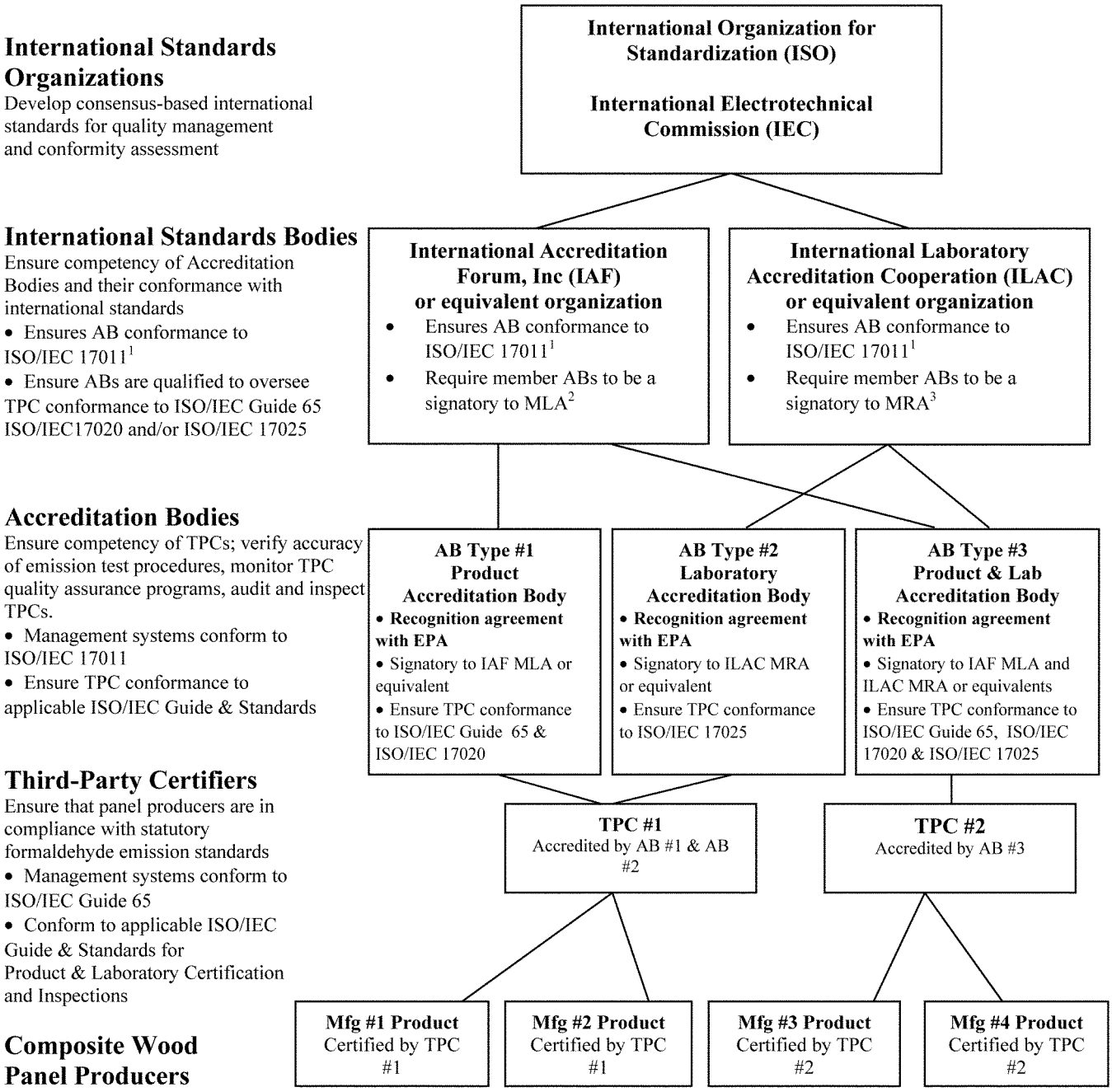
Illustration 1: TSCA Title VI Proposed Third-Party Certification Framework



[1] ISO/IEC 17011:2004(E) – Conformity Assessments--General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies.

[2] MLA – IAF's Multilateral Recognition Arrangement requires AB signatories to demonstrate they are capable of accrediting product certification bodies in conformance with ISO/IEC Guide 65:1996(E) – General Requirements for Bodies Operating Product Certification Systems and ISO/IEC 17020:1998(E) – General Criteria for the Operation of Various Types of Bodies Performing Inspections.

[3] MRA – ILAC's Mutual Recognition Arrangement requires AB signatories to demonstrate they are capable of accrediting testing laboratories in conformance with ISO/IEC 17025:2005(E) – General Requirements for the Competence of Testing and Calibration Laboratories.

EPA is proposing a framework which it believes would enable implementation of a credible third-party certification program that ensures that TPCs are impartial and operate at the highest standards of competence. Although EPA's proposed TSCA Title VI Third-Party Certification Program framework, including the underlying requirements and implementation process, are based on, or are the same as, CARB's third-party certification program, EPA is proposing to also use qualified, internationally recognized ABs in implementing the program to establish a globally uniform process. Under EPA's proposed TSCA Title VI Third-Party Certification Program framework, ABs, recognized by EPA through recognition agreements, would accredit TPCs based on the requirements for TPCs established by EPA through this proposed rule. Like CARB, EPA would require that TPCs provide evidence of competency in four key areas:

- Experience and ability to verify the accuracy of formaldehyde emission testing of composite wood products.
- Experience in the composite wood product industry.
- Ability to monitor panel producer quality assurance programs for composite wood products.
- Ability to conduct auditing and inspection of panel producer activities and products.

However, unlike the CARB system, under which CARB evaluates and accredits TPCs without the input of ABs, ABs would conduct the evaluation and determine if the TPCs are competent in these four areas. Based on the results of ABs' evaluations that would be conducted according to EPA's requirements, including the standards for ABs in ISO/IEC Guide 65:1996(E) (which includes inspection accreditation based on compliance with ISO/IEC 17020:1998(E)) and laboratory accreditation based on compliance with ISO/IEC 17025:2005(E), the ABs would accredit TPCs that meet the requirements. The ABs would also be required to participate in oversight activities, including recordkeeping, reporting to EPA, and auditing of TSCA Title VI accredited TPCs and their formaldehyde emissions testing laboratories. EPA would exercise authority to conduct independent oversight and actions, including the authority to review the determinations of ABs, and approve or revoke a TPC's TSCA Title VI accreditations based on the criteria laid out in this proposed rule.

While the AB component of EPA's proposed TSCA Title VI Third-Party Certification Program framework differs from the CARB program, EPA believes it will enhance the implementation of TSCA Title VI. The proposed TSCA Title VI Third-Party Certification Program framework is otherwise generally consistent with CARB's current third-party certification program requirements. Furthermore, EPA will work with CARB to help promote compatibility and consistency within the programs and to harmonize the third-party certification programs wherever practicable. EPA believes that compliance with the proposed the TSCA Title VI Third-Party Certification Program would not require substantial changes to procedures TPCs, laboratories, and panel producers currently use to conduct their TPC activities under the CARB ATCM (Ref. 7).

A. Requirements for Accreditation Bodies

Based on EPA's understanding of how the international consensus standards oversight industry is structured, EPA envisions that two types of ABs could be involved in implementation of the proposed TPC framework. The first type of AB is the ''Product AB.'' The Product AB would be responsible for accrediting the TPCs, recordkeeping and ensuring that a TPC is in conformance with ISO/IEC Guide 65:1996(E) (involving product certification systems) and ISO/IEC 17020:1998(E) (involving general criteria for inspections). The second type of AB is the ''Laboratory AB.'' The Laboratory AB would be responsible for ensuring that the TPC's formaldehyde emissions testing laboratory (or its contracted laboratory) is of the highest quality and is in conformance with ISO/IEC 17025:2005(E) (involving the general requirements for laboratories conducting testing and/or calibrations, including sampling and calibration). EPA recognizes it is also possible that a single AB may have the ability to accredit both product certification and emissions testing, and therefore can accredit conformance to ISO/IEC Guide 65:1996(E), ISO/IEC 17020:1998(E), and ISO/IEC 17025:2005(E). In such cases, a single AB would be considered qualified to accredit TPCs for their product certification capabilities and also accredit the TPC laboratories for conducting formaldehyde emissions testing, and only that AB would need to be involved in accepting and reviewing TPC applications and implementing the ABs' roles under the proposed TSCA Title VI Third-Party Certification Program framework.

1. *Necessary qualifications of ABs to be candidates for participation in the EPA's Title VI Third-Party Certification Program*—a. *Necessary qualifications of Product ABs.* To ensure that Product ABs are qualified to accredit TPC's for conformance with ISO/IEC Guide 65:1996(E) and ISO/IEC 17020:1998(E), the Product AB would have to be a signatory to the IAF MLA, or a member of an equivalent oversight body. AB members of IAF are admitted to the IAF MLA only after a highly stringent evaluation of their operations by an IAF peer evaluation team which is charged with ensuring that the applicant member complies fully with both the international standards and IAF requirements. Additionally, once an AB is a signatory to the IAF MLA, it is required to recognize the certificates issued by conformity assessment bodies accredited by all other signatories of the IAF MLA, with the appropriate scope (i.e., levels 1 through 3). The IAF MLA structure has 5 levels, and EPA would require the Product AB to be endorsed by IAF through level 3. Level 1 endorsement ensures that an AB is in conformity with ISO/IEC 17011:2004(E) and maintains that conformity; level 2 endorsement ensures that the AB has demonstrated basic competence to perform accreditation activities for product certification according to ISO/IEC Guide 65:1996(E) and ISO/IEC 17020:1998(E); and level 3 ensures that the AB has policies and procedures in place in their operations and management plans to accredit a TPC for product certification in conformance with ISO/IEC Guide 65:1996(E). In order to participate in the TSCA Title VI Third-Party Certification Program, a Product AB would have to provide EPA with documentation verifying its IAF endorsement that states the level of accreditation the AB received from IAF, or with confirmation that the AB is a member of an equivalent organization with an equivalent scope.

b. *Necessary qualifications of Laboratory ABs.* To ensure that the Laboratory ABs are qualified to accredit TPC laboratories, the proposed TPC framework would require that the Laboratory AB is a signatory to the ILAC MRA, or a member of an equivalent organization. To be a signatory to the ILAC MRA, an AB must pass an intensive evaluation carried out by peers and in accordance with the relevant rules and procedures contained in several ILAC publications. Once a signatory to the ILAC MRA, each Laboratory AB agrees to abide by its terms and conditions, and according to the ILAC evaluation procedures shall:

i. Maintain conformance with the ISO/IEC 17011:2004(E), related ILAC

guidance documents, and any ILAC supplementary requirements.

ii. Ensure that all laboratories that they accredit comply with ISO/IEC 17025:2005(E) and related ILAC policy and guidance documents. Under the proposed TPC framework, a TPC would be required to work with its Laboratory AB to provide the Product AB with documentation verifying the Laboratory AB's endorsement and scope of accreditation from ILAC, or documentation of membership in an equivalent organization.

EPA understands that not all ABs are signatories to either IAF or ILAC. EPA requests comment on what other oversight bodies or other organizations are equivalent to IAF and ILAC. An equivalent organization would provide a process of review and evaluation with a level of scrutiny and assessment of an AB's capabilities to ensure that an AB is qualified to accredited organizations based on the relevant ISO/IEC standards and guide.

2. *Recognition agreement process and relationship between EPA and ABs.* Under this proposed rule, the Product ABs and Laboratory ABs that are interested in participating in the TSCA Title VI Third-Party Certification Program would be required to submit an application to EPA to be formally recognized by EPA. Once EPA has reviewed the AB's credentials and deemed that the AB is qualified, EPA proposes to enter into a recognition agreement with Product and Laboratory ABs that want to offer services to accredit TPCs according to EPA's requirements. The recognition agreement would serve as a mechanism for EPA to formally recognize either a Product AB or a Laboratory AB (or both) as qualified to implement their respective roles under the TSCA Title VI program. The recognition agreement with the Product AB would designate it as the recipient of applications from candidate TPCs that want to participate in the TSCA Title VI Third-Party Certification Program. As discussed in Unit II.G.3., similar recognition agreement approaches have been successfully used in a number of EPA programs. The recognition agreement is a signed agreement between EPA and each Product AB or Laboratory AB that would state:

a. The regulatory requirements that have been and must continue to be met to be an EPA recognized AB.

b. The roles and responsibilities of the AB under the TSCA Title VI Third-Party Certification Program.

c. EPA's role and interactions with the AB during implementation of the TSCA Title VI Third-Party Certification Program.

d. Criteria and processes for revoking the recognition agreement if either the Product AB or Laboratory AB fails to adhere to the conditions of the regulations.

All of the requirements and actions stated in the recognition agreement between EPA and each type of AB would be derived from the final rule requirements. If the AB applying to EPA for recognition is qualified to perform as both a Product AB and a Laboratory AB, then that AB would include both sets of credentials in its application package and would be recognized by EPA in the recognition agreement as performing both accreditation roles. The recognition agreement would be effective for 3 years, provided the AB continues to meet all of the regulatory requirements. After 3 years, the recognition agreement would be eligible for renewal.

In order to facilitate communication between EPA and ABs, EPA is proposing to require ABs to designate an agent in United States in their applications. Any information provided by an AB or EPA to the designated agent would be equivalent to providing that information directly to the AB. The designated agent could not be a mailbox, answering machine, or other service where the agent is not physically present. The agent would need to be capable of accepting service of notices and processes made in administrative and judicial proceedings. EPA believes requiring a designated agent in the United States would help ensure compliance with the formaldehyde emission standards by facilitating the ability to enforce TSCA Title VI and its implementing regulations, which in turn encourages the regulated entities to fulfill their obligations under the statute and regulations. EPA requests comment on this proposed requirement.

EPA would designate an EPA Recognition Agreement Implementation Officer as a point of contact for ABs to consult with on implementation of the recognition agreement. EPA would be responsible for directly notifying participating ABs of changes in the TSCA Title VI Third-Party Certification Program. EPA would maintain a public list of all ABs with which EPA has a recognition agreement. The list would be posted on EPA's Web site and regularly updated.

3. *Proposed requirements once an AB is recognized.* Once EPA has entered into a recognition agreement with an AB, that AB becomes ''recognized'' by EPA as a Product AB, Laboratory AB, or both.

a. *Responsibilities of Product ABs in the TPC application process.* The Product AB's key TSCA Title VI TPC application review responsibilities would include:

i. Receiving and acting on TPC applications for their participation in the TSCA Title VI Third-Party Certification Program and thereby ensuring that the TPC is accredited to ISO/IEC Guide 65:1996(E) and ISO/IEC 17020:1998(E).

ii. Transmitting copies of TPC applications and supporting documentation requested in the application based on the TSCA Title VI implementing regulations to EPA.

iii. Assigning the TPC a unique number.

b. *General responsibilities of ABs after TPC accreditation into the TSCA Title VI Third-Party Certification Program.* The EPA recognized Product AB would be responsible for:

i. Ensuring the TPC has a process in place to verify the accuracy of the formaldehyde emission tests conducted by the TPC laboratory (including any contract laboratory that the TPC would use for formaldehyde testing under TSCA Title VI) and the formaldehyde quality control tests conducted by the producers of regulated composite wood products.

ii. Ensuring the TPC has a process in place to monitor panel producer quality assurance programs.

iii. Ensuring the TPC has a process in place to conduct independent audits and inspections of panel producers and their quality control testing facilities.

iv. Conducting audits of TPCs and their laboratories.

v. Recordkeeping.

The EPA recognized Laboratory ABs would be responsible for verifying that the TPC laboratory is experienced and capable of conducting formaldehyde emissions tests according to the requirements of TSCA Title VI and its implementing regulations. The Laboratory ABs' key responsibilities would include:

- Ensuring the laboratory's conformance to the regulatory requirements, including ISO/IEC 17025:2005(E).
- Verifying the accuracy of the formaldehyde emissions tests conducted by the TPC laboratory through an inter-laboratory comparison or proficiency testing program.
- Conducting audits of the laboratory.
- Recordkeeping.

EPA proposes to require TPCs to participate in an EPA recognized inter-laboratory comparison program. If standard reference material is developed, EPA would consider

requiring TPCs to participate in an EPA recognized proficiency testing program. In order to reduce duplicative requirements, EPA proposes that it would utilize the preexisting CARB-administered inter-laboratory comparison program to the extent feasible. EPA requests comment on ways it might integrate with CARB's inter-laboratory comparison program and on what criteria should be used to determine the adequacy of performance. EPA also requests comment on how participating Laboratory ABs could administer an inter-laboratory comparison program or proficiency testing program for the TPCs that it accredits. EPA would like information on the costs of such a program and whether such an activity presents conflict of interest issues for Laboratory ABs.

4. *Revocation of EPA's recognition of an AB.* EPA is proposing that it may suspend, revoke, or modify the recognition of an AB, if the AB is not complying with the requirements promulgated for ABs under TSCA Title VI. If an AB is removed or withdraws from the TSCA Title VI Third-Party Certification Program, that AB would be responsible for promptly notifying EPA and all TPCs that receive its accreditation services. If an AB is removed or withdraws from the TSCA Title VI Third-Party Certification Program for reasons other than fraud or providing false or misleading statements related to a particular TPC or TPCs, or other than a reason that implicates a particular TPC or TPCs in a violation of TSCA Title VI or its implementing regulations, EPA proposes to allow the TPCs that were accredited by that AB to have 365 days, or 180 days if less than 365 days were left on their 3-year accreditation period, to be accredited again by another EPA recognized AB. While it is seeking accreditation from an alternate AB, a TPC would need to continue to comply with all other aspects of TSCA Title VI and its implementing regulations, and the TPC would remain subject to inspection by EPA. If an AB is removed from the TSCA Title VI Third-Party Certification Program due to fraud or providing false or misleading statements with respect to a particular TPC, or for any other reason that implicates a particular TPC in a violation of TSCA Title VI or its implementing regulations, that TPC would not be allowed to provide any TSCA Title VI certification services until it has been accredited by an alternate AB. Should this situation occur, EPA would provide notifications to the affected TPCs at the time it commences formal action against the AB. Any action EPA would take against an AB would not preclude an enforcement action against a TPC. EPA believes it is appropriate to be more stringent in these situations because the AB's nonperformance or altered status under the recognition agreement may call into question the legitimacy of the TPC's underlying accreditation. EPA requests comment on whether it has provided adequate time for a TPC to seek an alternate AB's accreditation under this proposed rule. Issues related to the de-accreditation of a TPC and the amount of time a panel producer has to seek a new TPC are discussed in Unit III.B.4.

B. Requirements for Third-Party Certifiers of Composite Wood Products

1. *Requirements to apply for participation in the TSCA Title VI Third-Party Certification Program.* EPA is proposing that the TPC must apply to an EPA recognized Product AB to certify composite wood products pursuant to TSCA Title VI. In its application to an EPA recognized Product AB, the TPC would be required to demonstrate experience and competency in certain areas that EPA believes are important in ensuring the TPC's ability to conduct audits, testing, and certification of composite wood products. The application would be reviewed by the Product AB, who would provide EPA with a copy of each application. TPC applications would provide information to document:

a. Experience in performing or verifying formaldehyde emissions testing on composite wood products.

b. That its laboratory or contract laboratory has been accredited by an EPA recognized Laboratory AB in conformance with ISO/IEC 17025:2005(E).

c. The TPC laboratory's or contract laboratory's experience with test method ASTM E 1333–96 (Reapproved 2002) (Ref. 20) or successor standards and experience evaluating correlation between test methods.

d. Experience or ability in product certification and complying with ISO/IEC Guide 65:1996(E).

e. Experience in the composite wood product industry.

f. The ability to inspect and properly train and supervise inspectors according to ISO/IEC 17020:1998(E).

The application would also specify which composite wood products the applicant is applying to certify and evidence that the applicant is qualified to certify these products. EPA is proposing that TPCs would be required to renew their applications every 3 years. EPA requests comment on the costs and benefits of a 3-year renewal period as compared to a 2-year renewal period (as under the CARB ATCM). The EPA also requests comment on whether the proposed requirement for EPA-recognized ABs to audit TPCs and laboratories used by TPCs every 2 years should be extended to every 3 years to align with the proposed 3-year TPC accreditation period.

In order to facilitate communication between EPA and TPCs, EPA is proposing to require TPCs to designate an agent in United States in their applications. Any information provided by an AB or EPA to the designated agent would be equivalent to providing that information directly to the TPC. The designated agent could not be a mailbox, answering machine, or other service where the agent is not physically present. The agent would need to be capable of accepting service of notices and processes made in administrative and judicial proceedings. EPA believes requiring a designated agent in the United States would help ensure compliance with the emission standards by facilitating the ability to enforce TSCA Title VI and its implementing regulations, which in turn encourages the regulated entities to fulfill their obligations under the statute and regulations. EPA requests comment on this proposed requirement.

Title VI of TSCA requires that compliance with the formaldehyde emission standards be measured by quarterly testing using ASTM E1333–96 (Reapproved 2002) (Ref. 20) or under certain circumstances, ASTM D6007–02 (Reapproved 2008) (Ref. 21). For quality control testing, the statute requires use of ASTM D6007–02 (Reapproved 2008), ASTM D5582–00 (Reapproved 2006) (Ref. 22), or other test methods established by EPA through rulemaking. If a test method other than ASTM E1333–96 (Reapproved 2002) is used for either quarterly testing or quality control testing, TSCA Title VI requires a demonstration of equivalence by means established by EPA. Therefore, EPA is proposing that a TPC laboratory or contract laboratory must have experience with formaldehyde testing using ASTM E1333–96 (Reapproved 2002) or its successor standards as well as experience evaluating correlations between different test methods. EPA intends to propose the means of showing test method equivalence in a subsequent proposal with other implementation provisions as required under TSCA Title VI.

EPA is proposing to require that accredited TPCs conduct the quarterly tests required by TSCA Title VI. The

statute requires these tests to be performed using ASTM E1333–96 (Reapproved 2002) or, under some circumstances ASTM D6007–02 (Reapproved 2008). Section 601(d)(5) of TSCA allows EPA to substitute, after public notice and an opportunity for comment, a test method referenced in TSCA Title VI with its successor version. The version of ASTM E1333–96 (Reapproved 2002) referenced in TSCA Title VI is not the most current version. In this proposed rule, EPA is proposing to incorporate the current version, ASTM E1333–10 (Ref. 23), into the testing requirements in this proposed rule in place of ASTM E1333–96 (Reapproved 2002) referenced in the statute. EPA notes that there are only relatively minor differences between ASTM E1333–96 (Reapproved 2002) and ASTM E1333–10. For example, referenced standards have been updated to cite the most recent version of the standards. In addition, under Apparatus, *Make-up Air,* 6.1.2.2, a new requirement has been added, specifying that the dry gas test meter or other airflow rate measuring device be ''permanently placed in the chamber air intake duct.'' A new loading ratio was added for ''low density particleboard door core'' and a note specifying that ''Panel grades are defined in the ANSI standards referenced in 2.3.'' Under 9.2 *Conditioning,* a note was added stating ''Test specimens with low levels of formaldehyde may absorb formaldehyde from the air when the air formaldehyde content exceeds that of the text [sic] specimen. Consideration should be taken to avoid such air conditions during storage and conditioning.'' In addition, the following requirement was added: ''Circulation of the conditioning air shall be achieved by fans that direct air flow horizontally in the direction parallel to the primary surface of the test specimens.'' Under *Test Procedure for Materials,* 10.1.3, the following phrase was deleted: ''as measured by a totalizing dry gas meter permanently placed in the chamber air intake duct.'' Under note 9, the following clarifying phrase was added: ''unless testing is extended and chamber concentrations in air and emission rates are obtained for the tested product at multiple chamber air exchange rates or multiple product loading ratios, or both.'' Under *Report the Following Information,* 12.1.7, the following was added: ''and the air circulation conditions (for example, air velocity or air exchange rate.'' Under (Nonmandatory Information) X1. Reagents, Materials, and Equipment Found Suitable for Use, footnotes specifying where apparatuses are available have been deleted. In addition, X1.3.2 Sulfuric Acid, has been changed from ''concentrated reagent grade. Nitrate concentration shall be less than 10 ppm.'' to ''ACS grade. Nitrate concentration shall be no greater than 0.2 ppm.'' EPA requests comment on whether ASTM E1333–10 should be incorporated into the testing requirements under TSCA Title VI in place of ASTM E1333–96 (Reapproved 2002).

EPA intends to propose the means of showing test method equivalence for other test methods as well as the number and frequency of tests required to demonstrate compliance with the formaldehyde emission standards in a subsequent proposal along with the rest of the TSCA Title VI implementing regulations. EPA is proposing here that TPC laboratories be responsible for conducting quarterly tests, verifying quality control tests, and evaluating test method equivalence.

EPA is proposing that TPCs must have experience operating or using laboratories that follow ISO/IEC 17025:2005(E). This international voluntary consensus standard specifies the general requirements for the competence to carry out tests and/or calibrations, including sampling. EPA believes that requiring TPCs to use laboratories that follow these requirements would help ensure that reliable and accurate test results are obtained.

EPA is proposing that TPCs must have experience or ability in product certification and in complying with ISO/IEC Guide 65:1996(E) because certifying compliant composite wood products would be one of the main functions of a TSCA Title VI accredited TPC. ISO/IEC Guide 65:1996(E) is an international voluntary consensus standard that specifies general requirements for a third-party operating a product certification system. These general requirements would help ensure that the TPC is competent and reliable in certifying compliant composite wood products.

EPA is proposing that the TPC must have experience in conducting inspections of the manufacturers in conformity with ISO/IEC 17020:1998(E). This international voluntary consensus standard specifies general criteria for the operation of various types of bodies performing inspections. EPA is also proposing that TPCs must have the ability to properly train and supervise inspectors pursuant to conformity with ISO/IEC 17020:1998(E). Inspections by TPCs would be an important function of a TPC in helping ensure compliance with the regulations under TSCA Title VI.

EPA is proposing that TPCs must have experience in the composite wood products industry because EPA believes that understanding the processes used by panel producers to produce composite wood products is crucial for the TPC to adequately inspect and audit panel producers. Experience in the composite wood products industry would help ensure that the TPC would know what to inspect and areas on which to focus during inspections and audits of the panel producers. In addition, EPA is proposing to require TPCs to have experience with the specific type of composite wood product(s) that it would certify. EPA believes that certain steps in the manufacture of composite wood products are likely important in maintaining low formaldehyde emissions and that because manufacturing processes are different for the different types of regulated composite wood products, it is important for a TPC to have knowledge and experience in the manufacture of the specific type of composite wood product(s) that it would certify. EPA requests comment on whether EPA should require that the TPC have experience with the specific type of composite wood product that it would certify or if experience with one type of product is sufficient to certify all types of composite wood product.

2. *Denied TPC Applicants.* If an AB denies a TPC's application for accreditation for failure to submit a complete application, the AB would be required to notify the TPC or TPC laboratory in writing of the legal and factual basis for the denial, actions, if any, which the affected TPC or TPC laboratory may take to receive accreditation in the future, and the opportunity and method for requesting a hearing with EPA. ''Failure to submit a complete application'' would not include failure to pay any accreditation fee or reach a fee agreement.

3. *Proposed requirements once a TPC is accredited.* EPA is proposing that once an applicant is accredited as a TPC under TSCA Title VI, the TPC must:

a. Verify that panel producers have adequate quality assurance controls and are complying with any quality assurance and quality control requirements that EPA promulgates pursuant to TSCA Title VI.

b. Verify quality control test results compared with ASTM E1333–10 test results by having laboratories conduct quarterly tests and evaluate test method equivalence pursuant to testing

requirements promulgated under TSCA Title VI.

c. Review applications from panel producers for reduced testing or third-party certification requirements.

d. Establish quality control limits in consultation with panel producers, and, if applicable, shipping quality control or other limits for each product type and production line.

e. Inform panel producers of the process that will be used to determine if product lots are exceeding the applicable quality control limit.

f. Inspect and audit panel producers and their records at least quarterly.

g. Use a testing laboratory or laboratories that comply with ISO/IEC 17025:2005(E).

h. Certify composite wood product types that comply with requirements under TSCA Title VI following ISO/IEC Guide 65:1996(E).

i. Follow ISO/IEC 17020:1998(E) in the carrying out of their inspections of the panel producers.

j. Provide approved TPC number (supplied by the accrediting AB) to the panel producer for labeling and recordkeeping.

k. Use laboratories that participate in an inter-laboratory comparison or proficiency testing program.

l. Maintain records in electronic form for 3 years.

m. Provide an annual report to EPA and the AB(s) that provided it with its accreditation.

n. Inform the AB(s) that provided it with its accreditation of any changes in key personnel qualifications, procedures, or laboratories used by the TPC that could affect the TPC's ability to fulfill its obligations under this unit.

One of the main functions of TPCs under this proposed rule would be to help ensure that panel producers have adequate quality control of their manufacturing process, are following appropriate quality assurance procedures, and are complying with any quality assurance requirements that EPA may implement under TSCA Title VI. Under the CARB ATCM, manufacturers are required to implement specific quality assurance procedures as described in Appendix 2 of the ATCM. EPA anticipates promulgating quality assurance requirements for panel producers under TSCA Title VI in a subsequent proposal with other implementation provisions as required under TSCA Title VI. EPA is proposing to use TPCs to help ensure compliance with quality control and quality assurance procedures.

EPA is proposing to require TPCs to verify quality control tests that measure formaldehyde emissions by having laboratories conduct quarterly testing.

Under TSCA Title VI, EPA intends to promulgate specific formaldehyde testing requirements. The subsequent proposal may also provide for reduced testing for specified products such as those made with NAF or ULEF resins. In this proposed rule, EPA is proposing to require TPCs to review and approve, when appropriate, applications from panel producers for reduced testing and third-party certification requirements according to EPA's implementing regulations. The CARB ATCM allows for reduced testing for products manufactured with NAF and ULEF resins, and CARB reviews and approves NAF and ULEF applications. EPA is proposing to instead require TPCs to review these applications because EPA believes they are best suited to determine whether the panel producers will be able to consistently comply with the emission standards even with reduced testing requirements. EPA intends to further specify requirements for reduced testing in a subsequent proposal with other implementation provisions as required under TSCA Title VI.

EPA is proposing to require TPC laboratories (including contract laboratories) to establish quality control limits in consultation with panel producers and, if applicable, shipping quality control or other limits for each product type and production line to ensure compliance with the emission standards. A quality control limit would be established if test methods other than ASTM E1333–10 are being used to make it easier for the panel producer to determine whether any products are likely to exceed the emission standards. A quality control limit would be the value from a test other than ASTM E1333–10 that is the correlative equivalent to the applicable standard. A TPC may also establish a limit to account for process and testing variation to help ensure that the emission for a product would not exceed the applicable standard. EPA is proposing to require TPCs to inform panel producers of the process that the TPC would use to determine if product lots are exceeding the applicable quality control limit. In the broader TSCA Title VI implementing regulations, EPA intends to describe these limits in more detail as well as implications and procedures for cases where tests exceed the limits in a subsequent proposal with other implementation provisions as required under TSCA Title VI.

EPA is proposing to require that TPCs inspect and on-site audit panel producers and their records at least quarterly and comply with ISO/IEC 17020:1998(E) when conducting their inspections. Quarterly inspections and on-site audits are consistent with requirements under the CARB ATCM, and EPA believes that requiring inspections quarterly should be sufficiently frequent to allow TPCs to observe and mitigate any potential violations. However, under certain circumstances, a TPC could determine that more frequent inspections and on-site audits are necessary to ensure compliance. EPA requests comment on whether enhanced testing or inspection requirements should be required where a TPC finds that a panel producer has failed quality control or quarterly tests at a certain frequency, or upon other circumstances. In addition to failed test results, circumstances that EPA envisions possibly warranting increased TPC inspections and audits include a panel producer failing to comply with its quality control manual or inconsistencies in records.

EPA is proposing to require that TPCs use laboratories for formaldehyde testing that comply with ISO/IEC 17025:2005(E). As discussed in Unit II.G.1., this international voluntary consensus standard specifies the general requirements for the competence to carry out tests and/or calibrations, including sampling. EPA believes that requiring TPCs to use laboratories that follow these requirements would help ensure that TPCs obtain reliable and accurate test results.

EPA is proposing to require that TPCs participate in an EPA-recognized inter-laboratory comparison studies or proficiency testing, if developed. The inter-laboratory comparisons would involve the participation of laboratories that are provided composite wood product samples to test for formaldehyde; each laboratory would test the sample using the same test method (e.g., ASTM E1333–10), and the results from all of the laboratories would be compared. If a standard reference material for formaldehyde emissions is developed, EPA proposes to require annual proficiency testing. The CARB ATCM requires laboratories to participate in an inter-laboratory comparison during the first year that the laboratory is used by a TPC, followed by participation in inter-laboratory comparisons every 2 years. EPA believes that evaluating the performance of laboratories used by the TPC by inter-laboratory comparisons or proficiency testing is vital to ensuring that laboratories are performing the formaldehyde testing properly, and EPA is therefore proposing that this be an annual requirement. EPA requests

comment on whether inter-laboratory comparisons should take place more or less frequently. EPA is also seeking comment on criteria to use in evaluating performance in inter-laboratory comparisons.

EPA is proposing to require TPCs to follow ISO/IEC Guide 65:1996(E) to certify composite wood product types that comply with requirements under TSCA Title VI. As discussed in Unit II.G.1., ISO/IEC Guide 65:1996(E) is an international voluntary consensus standard that specifies general requirements for a third-party operating a product certification system. EPA believes that requiring TPCs to follow these general requirements for certifying products would help ensure that the TPC is properly certifying only compliant composite wood products.

A TPC would be supplied with a TPC identification number by the Product AB once it has been accredited for TSCA Title VI purposes. EPA is proposing to require that the TPC provide this number to panel producers so that they can include the TPC number on the label of their certified products and include it in their records.

EPA is proposing to require TPCs to maintain records in electronic form for 3 years. TSCA Title VI directs EPA to address recordkeeping requirements in its implementing regulations and EPA believes that certain records will greatly assist the EPA in monitoring compliance with the emissions standards and other provisions. These records would be:

- A list of panel producers and their respective product types, including resins used, that the TPC has certified.
- Results of inspections, audits, and emission tests conducted for and linked to each panel producer and product type.
- A list of laboratories used by the TPC, test methods, including test conditions and conditioning time, and test results.
- Methods and results for establishing test method correlations and equivalence.

EPA is proposing to require TPCs to submit an annual report to EPA and the AB that accredits the TPC. The annual report would include:

- A list of panel producers and their products that the TPC has certified during the previous year, including resins used and the average and range of formaldehyde emissions by panel producer, resin, and product type.
- List of any non-complying products or events by panel producers.
- A list of laboratories and test methods used by the TPC.
- Results of inter-laboratory comparison or proficiency testing for the laboratories used by the TPC.

EPA is proposing to require that the TPC inform the AB(s) that accredit the TPC of any changes in key personnel qualifications, procedures, or laboratories used that could affect the TPC's ability to fulfill its obligations under this unit. EPA believes such changes could impact the TPC's ability to properly verify formaldehyde emissions, inspect and audit, and certify compliant composite wood products. EPA is proposing that the AB review the changes to determine whether the changes would impact the TPC's ability to perform its duties.

4. *Removal and reaccreditation of third-party certifiers.* EPA is proposing to exercise the authority to revoke the TSCA Title VI accreditation of a TPC or its laboratory, after notice and an opportunity for a hearing, if the TPC or its laboratory: Fails to meet any of the applicable requirements promulgated under TSCA Title VI (such as by failing to comply with ISO/IEC Guide 65:1996(E), ISO/IEC 17020:1998(E), or ISO/IEC 17025:2005(E)); makes false or misleading statements on its application, records, or reports; or makes changes to key personnel qualifications, procedures, or laboratories that would make it unable to perform its duties. ABs would also be able to revoke an accreditation of a TPC, subject to an opportunity for a hearing with EPA. A TPC whose accreditation has been revoked may reapply to an AB to be reaccredited as a TPC.

If a TPC loses its accreditation or discontinues participation in the TSCA Title VI Third-Party Certification Program for any reason, it would be responsible for promptly notifying EPA and all panel producers that it provides TSCA Title VI certification services to. If a TPC loses its accreditation or discontinues participation in the program for reasons other than fraud or providing false or misleading statements, or other than a reason that implicates a particular panel producer in a violation of TSCA Title VI or its implementing regulations, the panel producers that used the TPC to certify their products would need to enlist another TPC to certify their products within 3 months (90 days). In these cases, the panel producers would not be required to recall or recertify their products merely because the certifying TPC lost its accreditation. During the time a panel producer is seeking a new TPC, it would need to continue to comply with all other requirements of TSCA Title VI and its implementing regulations, including quality control testing. During this period the panel producer would remain subject to inspection by EPA. If the panel producer is unable to comply with all other aspects of TSCA Title VI and its implementing regulations, the panel producer would not be permitted to sell, offer for sale, or supply its products in the United States until its products are recertified as compliant. If a TPC loses its accreditation due to fraud or providing false or misleading statements with respect to a particular panel producer, or for any other reason that implicates a particular panel producer in a violation of TSCA Title VI or the regulations promulgated thereunder, that panel producer would not be permitted to offer regulated composite wood products for sale in the United States until its composite wood products have been recertified by another TPC. If such a situation does occur, EPA would notify affected panel producer at the time it commences action against the TPC. EPA believes it is appropriate to be more stringent in these situations because the TPC's behavior may call into question the legitimacy of the manufacture's product certification. Any action EPA would take against a TPC would not preclude an enforcement action against a panel producer. EPA requests comment on whether it has provided adequate time for a panel producer to seek an alternate certification.

C. Enforcement, Suspension, Revocation, and Modification

1. *Enforcement under TSCA sections 15–17.* EPA may conduct inspections of participating TPCs and ABs and issue subpoenas according to the requirements for accreditation and recognition and/or pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with TSCA Title VI and the regulations promulgated thereunder. Enforcement issues related to manufacturers, importers, distributors, and retailers will be covered in a subsequent proposal.

EPA would exercise the authority to withdraw from a recognition agreement with an AB and pursue penalties under TSCA section 15 (15 U.S.C. 2614) for any violation of TSCA Title VI or the regulations promulgated thereunder. In addition to an administrative or judicial finding of violation, grounds for withdrawing from a recognition agreement and/or pursuing an enforcement action against an AB include if the AB:

- Submits false or misleading information to EPA;

• Fails to maintain or falsifies required records; or

• Or otherwise fails to comply with TSCA Title VI or the regulations promulgated thereunder.

2. *Suspension, revocation and modification.* EPA would exercise the authority to suspend, revoke, or modify a TPC's TSCA Title VI accreditation, with or without the participation of the AB that provided the accreditation, if the TPC fails to comply with TSCA Title VI or the regulations promulgated thereunder. Any violation of TSCA Title VI or the regulations promulgated thereunder would also be a prohibited act under TSCA section 15. Grounds for suspending, modifying, or revoking a TPC's accreditation include if the TPC:

a. Submits false or misleading information to EPA or its AB;

b. Fails to maintain or falsifies required records; or

c. Fails to comply with TSCA Title VI or regulations promulgated thereunder.

The ISO/IEC standards and guide that are referenced in this proposed rule require that policies and procedures be in place to identify and remedy nonconformities with the implementation of those standards (ISO/IEC 17025:2005(E), section 4.9; ISO/IEC 17011:2004(E), section 5.5; ISO/IEC 17020:1998(E), section 7.8; ISO/IEC Guide 65:1996(E), section 47). Should a TPC or AB identify a nonconformity or discrepancy with its implementation of one of the ISO standards via an internal audit or other means, that entity must take remedial action within the timeframe specified by the AB or the time specified in the TPC's quality management plan in order to avoid the possibility of an enforcement action.

Prior to withdrawal from a recognition agreement with an AB, or the suspension, revocation, or modification of a TPC's accreditation, EPA would provide notification to the affected AB or TPC of:

• The legal and factual basis for the proposed action.

• The anticipated commencement date and duration of any suspension, revocation, modification, or other action.

• What actions, if any, the affected entity may take to avoid suspension, revocation, modification, or otherwise continue participation in the program.

• The opportunity and method for requesting a hearing prior to the final action.

If an individual or organization requests a hearing, EPA would:

• Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.

• Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

The Presiding Officer would conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing. The Presiding Officer would consider all relevant evidence, explanations, comments, and arguments submitted and notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.

If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the recognition of an AB or the accreditation of a TPC prior to the opportunity for a hearing, it would notify the affected AB or TPC of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

Any notice, decision, or order issued by EPA in response to a hearing, any transcript or other verbatim record of oral testimony, and any documents filed in response to a hearing would be available to the public, except as otherwise provided by TSCA section 14. Any such hearing at which oral testimony is presented would be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under TSCA section14.

D. Status of CARB Approved TPCs

EPA intends to propose that the formaldehyde emissions standards in TSCA Title VI become effective 365 days after the promulgation of the TSCA Title VI implementing regulations (which are required by TSCA Title VI to be promulgated no later than January 1, 2013). EPA proposes that CARB approved TPCs would have 365 days after the promulgation of the TSCA Title VI implementing regulations to become accredited by an AB with which EPA has entered into a recognition agreement. In order to determine which TPCs are CARB approved, EPA will consult the listing of TPC's that CARB maintains on its Internet site. EPA believes that 365 days is a sufficient period of time for EPA to enter into recognition agreements with ABs and for TPCs to seek accreditation from EPA recognized ABs, ensuring no interruption in a TPC's services. During the transition period between when the final TSCA Title VI implementing regulations are promulgated and the date 365 days after promulgation, the CARB approved TPCs may carry out certification activities under TSCA Title VI provided that they are compliant with all other aspects of TSCA Title VI and the regulations promulgated thereunder. TPCs that are certifying products as compliant with TSCA Title VI are subject to inspection by EPA and enforcement actions for any violations of TSCA Title VI or the regulations promulgated thereunder. To reduce burden on existing CARB approved TPCs, the EPA requests comment on ways to better synchronize the timing for the TSCA Title VI accreditation period for existing CARB approved TPCs. For example, one option might be to extend the allowable time period for acquiring accreditation from 1 to 2 years. Another option might be to align the TSCA Title VI accreditation requirement for CARB approved TPCs with their existing CARB accreditation renewal, such that they could use the same information to be accredited by EPA and CARB at the same time. Alternatively, the TPCs could be required to obtain accreditation from an EPA-recognized AB no later than 1 year after the first EPA-recognized AB enters into a recognition agreement with the EPA under the TSCA Title VI. EPA expects to communicate with CARB regarding its third-party certification program and to collaborate, where possible, in order to promote the mutual acceptance of TPCs.

E. Transparency

EPA has a commitment to uphold the values of transparency and openness in conducting EPA operations (Ref. 24). Transparency promotes accountability and provides information for citizens about what their government is doing (Ref. 25). EPA would support its commitment by making documentation of recognized ABs, TPCs, and panel producers available to the public. EPA is proposing to make the following information publically available on the Internet:

1. The names and addresses of all ABs that EPA has a recognition agreement with and the status of that recognition agreement.

2. A list of all accredited TPCs with their TPC number and accreditation status.

3. Annual reports from ABs.

4. A list of panel producers approved for reduced testing and reduced third-party certification requirements.

EPA requests comment on what, if any, additional information should be made publically available (e.g., annual reports from TPCs and other required notifications) and on whether there are other ways EPA might improve program transparency. EPA requests comment on whether making the following information available publically on the Internet would be useful to the public or present challenges for regulated entities:

- A list of panel producers and their products that each TPC has certified, including resins used and the average and range of formaldehyde emissions by panel producer, resin, and product type.
- A list of any non-complying products or events by panel producer.
- A list of laboratories and test methods used by each TPC.
- The results of inter-laboratory comparison or proficiency testing for the laboratories used by TPCs.

EPA requests comment on whether such information might contain CBI. EPA is considering requiring some information to be reported into a publicly viewable database, should such a database be developed. Generally, EPA is considering requiring electronic reporting of the information proposed to be reported. In particular, EPA requests comment on whether the data elements in the ABs' and TPCs' annual reports, and the required notifications should be reported into a publicly viewable database.

EPA is proposing a 3 year record retention period for all TSCA Title VI AB and TPC record keeping requirements. While EPA is proposing a 3 year record retention period as is common under the Paperwork Reduction Act, EPA requests comments on ways to reduce the burden and costs of hard-copy record keeping over multiple years on the regulated community, such as by requiring that the entities regulated under this rule be allowed to keep required records electronically and make them available to the Agency and others via their business Web site, or other electronic media.

Under the proposed rulemaking, composite wood products would be regulated starting with the manufacture (including import) of panels, through their incorporation into component parts and finished goods, the distribution of those products, and the retail sale of those products. This can be a lengthy process and the amount of time composite wood panels are held in inventory and the amount of time before they are incorporated into finished goods is variable. This variability can result from prevailing economic conditions, the complexity of the individual products, the origin of the products, and other factors. This point was illustrated by the fact that CARB had to extend its ''sell-through dates'' multiple times. CARB found that these extensions were necessary because the recession increased the amount of time manufacturers needed to clear preexisting inventory. As CARB found that items remained in inventory for extended periods, it is possible that an issue could arise with a particular composite wood item several years after it was manufactured. Learning the source of the item may be important in order to identify and correct a problem. Because retail companies receive composite wood items from many sources and the third party certifier could vary with each item, retaining records for 3 years would help assure that problems can be identified and corrected.

Third party certifiers of compliance with formaldehyde emissions from composite wood products would need to maintain certain records long enough to assure that their oversight role in the system is operating properly to protect human health. An adequate record retention period is essential to fair and efficient enforcement of the regulatory requirements and allows EPA and interested downstream consumers to be assured that finished goods are made from compliant composite wood panels. EPA seeks to avoid the situation where records surrounding the certification of regulated products that remain available for retail sale in the United States have already been disposed of because of the passage of time. To that end, EPA requests comment on the length of time composite wood panels may take to reach their end user, whether incorporated into a finished good or not.

EPA also requests comment on the amount of time ABs and TPCs, during their ordinary course of business, typically retain records of their accreditation or certification activities and whether this is due to any external factors such as, industry standards, customer demand, customary business practices, or other.

F. Electronic Reporting

The Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, provides that, when practicable, Federal organizations use electronic forms, electronic filings, and electronic signatures to conduct official business with the public. EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR part 3), published in the **Federal Register** on October 13, 2005 (70 FR 59848) (FRL–7977–1), provides that any requirement in title 40 of the Code of Federal Regulations (CFR) to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions once the Agency publishes a regulation that an electronic document submission process is available for that requirement.

EPA is considering requiring information reported to EPA from TPCs and ABs be reported electronically through EPA's Central Data Exchange (CDX). CDX provides the capability for submitters to access their data through the use of web services. For more information about CDX, go to *http://epa.gov/cdx.*

Should EPA adopt a mandatory electronic reporting requirement, submitters would be required to register with EPA's CDX, complete an electronic signature agreement, and to prepare a data file for submission. To submit electronically to EPA via CDX, individuals must first register with that system at, *http://cdx.epa.gov/epa_home.asp.* To register in CDX, the CDX registrant agrees to the Terms and Conditions, provides information about the submitter and organization, selects a user name and password, and follows the procedures outlined in the guidance document for CDX available at *https://cdx.epa.gov/TSCA/eTSCA-Registration Guide.pdf.* The registrant would also select a role and complete an electronic signature agreement either through electronic validation using the LexisNexis services or through wet ink signature. Once registration and the electronic signature agreement are complete, the user would prepare a submission.

Most of the information requested in the reporting requirements of these collections is not of a confidential nature. Nonetheless, the application would be designed to support TSCA CBI needs by providing a secure environment that meets Federal standards.

EPA is considering requiring mandatory electronic reporting requirement because such a requirement would streamline the reporting process and reduce the administrative costs associated with information submission and recordkeeping. The effort to eliminate paper-based submissions in favor of CDX reporting is part of broader government efforts to move to modern, electronic methods of information gathering. Electronic reporting allows for more efficient data transmittal and a reduction in errors with the built-in validation procedures. EPA believes the adoption of electronic reporting reduces the reporting burden for submitters by

reducing the cost and time required to review. EPA requests comment on whether it should require mandatory electronic reporting. For more information on how a TSCA Title VI electronic reporting application would function and the burdens and benefits associated with electronic reporting please see Ref. 27.

IV. Request for Comment

In addition to the areas on which EPA has specifically requested comment, EPA requests comment on all other aspects of this proposed rule.

V. References

As indicated under **ADDRESSES**, a docket has been established for this rulemaking under docket ID number EPA–HQ–OPPT–2011–0380. The following is a listing of the documents that are specifically referenced in this action. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Public Law 111–199, Title VI—Formaldehyde Standards for Composite Wood Products Act, enacted July 7, 2010. (TSCA section 601(d), 15 U.S.C. 2601 *et seq.*)
2. Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological Profile for Formaldehyde and 2010 Addendum to the Profile. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.
3. National Toxicology Program, U.S. Department of Health and Human Services (HHS), 12th Report on Carcinogens, June 10, 2011.
4. EPA, ORD. Integrated Risk Information System (IRIS) Program. IRIS Toxicological Review of Formaldehyde-Inhalation Assessment (2010 External Review Draft). Available online at: *http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=223614.*
5. National Academy of Sciences (NAS). Review of the Environmental Protection Agency's Draft IRIS Assessment of Formaldehyde. 2011. Available online at: *http://www.nap.edu/catalog.php?record_id=13142.*
6. International Agency for Research on Cancer (June 2006). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans Volume 88 (2006): Formaldehyde, 2-Butoxyethanol and 1-tert-Butoxypropan-2-ol.
7. California Environmental Protection Agency Air Resource Board. *CARB Airborne Toxic Control Measure.* April 26, 2007. Available online at: *http://www.arb.ca.gov/toxics/compwood/compwood.htm.*
8. California Environmental Protection Agency Air Resources Board, Composite Wood Products ATCM, List of CARB Approved Third-party Certifiers (Accessed August, 2011). Available online at: *http://www.arb.ca.gov/toxics/compwood/listoftpcs.htm.*
9. California Environmental Protection Agency Air Resources Board, Application to be a Third-party Certifier (TPC) of Composite Wood Products. Available online at: *http://www.arb.ca.gov/toxics/compwood/tpc/tpcapplication.pdf.*
10. Sierra Club. Citizen Petition to EPA Regarding Formaldehyde in Wood Products. March 20, 2008. Available online at: *http://www.epa.gov/opptintr/chemtest/formaldehyde/index.html.*
11. EPA. Formaldehyde Emissions from Composite Wood Products; Disposition of TSCA Section 21 Petition. **Federal Register**. (73 FR 36504, June 27, 2008) (FRL–8371–5).
12. EPA. Formaldehyde Emissions from Composite Wood Products; Advanced notice of proposed rulemaking and notice of public meetings. **Federal Register**. (73 FR 73620, December 3, 2008) (FRL–8386–3).
13. ISO/IEC Guide 65:1996(E), General Requirements for Bodies Operating Product Certification Systems (First Edition) 1996.
14. ISO/IEC 17011:2004(E), Conformity Assessments—General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies (Corrected Version), February 15, 2005.
15. ISO/IEC 17025:2005(E), General Requirements for the Competence of Testing and Calibration Laboratories (Second Edition), May 15, 2005.
16. ISO/IEC 17020:1998(E), General Criteria for the Operation of Various Types of Bodies Performing Inspections (First Edition) November 15, 1998.
17. International Accreditation Forum. Available online at: *http://www.iaf.nu/.*
18. International Laboratory Accreditation Cooperation. Available online at: *http://www.ilac.org.*
19. EPA. National Lead Laboratory Accreditation (NLLAP). Available at: *http://www.epa.gov/lead/pubs/nllap.htm.*
20. ASTM E1333–96 (Reapproved 2002). Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.
21. ASTM D6007–02 (Reapproved 2008), October 1, 2008. Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber.
22. ASTM D5582–00 (Reapproved 2006), October 1, 2006. Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator.
23. ASTM E1333–10 (May 1, 2010). Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.
24. EPA. Memorandum from Lisa Jackson to EPA Employees (April 23, 2009). Available online at: *http://www.epa.gov/Administrator/operationsmemo.html.*
25. Memorandum from President Barack Obama to the Heads of Executive Departments and Agencies. January 21, 2009. Available online at: *http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.*
26. EPA. Economic Analysis of the Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products Act Proposed Rule (Economic Analysis). May 2013.
27. EPA. Information Collection Request (ICR) for the Formaldehyde Emissions From Composite Wood Products, Third-Party Certification Framework, Recordkeeping and Reporting; Proposed Rule, (RIN 2070–AJ44). EPA ICR No. 2441.01 and OMB No. 2070–[NEW]. May 2013.
28. EPA. Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule Implementing the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI). April 4, 2011.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this is a ''significant regulatory action'' because it may raise novel legal or policy issues related to the establishment of a new regulatory program as mandated by a new statutory amendment. Accordingly, EPA submitted this proposed rule to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011), and any changes made in response to OMB recommendations are documented in the docket for this proposed rule.

EPA prepared an analysis of the potential costs and benefits associated with this action. A copy of this Economic Analysis (Ref. 26) is available in the docket for this proposed and the analysis is briefly summarized here.

This proposed rule would require ABs to submit an application and enter into a recognition agreement with EPA, provide notifications and annual reports, and maintain records. A typical AB is estimated to incur an annualized cost of nearly $800 per year. For the purposes of cost estimation EPA assumes that eight organizations in the United States will become ABs in the TSCA Title VI Third-Party Certification Program, so total costs to U.S. ABs are estimated to be approximately $6,300 per year.

This proposed rule would require TPCs to submit an application, submit notifications and annual reports, and maintain records. These requirements are estimated to cost an average TPC about $1,100 per year. The proposed rule also would require TPCs to be

accredited for certain ISO/IEC guide and standards. Most potential TPCs that are likely to participate in the TSCA Title VI Third-Party Certification Program are expected to already have all the necessary accreditations, but some TPCs are assumed to need an additional accreditation at a cost of $25,000 in the first year and $5,000 per year in subsequent years. For the purposes of cost estimation EPA assumes that there will be nine U.S. TPCs under this proposed rule. Total costs to U.S. TPCs due to the proposed rule are estimated to be approximately $94,000 in the first year and $24,000 to $28,000 per year in subsequent years. Annualized costs to U.S. TPCs are $27,000 and $28,000 per year, using a 3% and 7% discount rate, respectively.

The combined total cost for accreditation bodies and TPCs is estimated to be $107,000 in the first year. Annualized costs are estimated at approximately $34,000 per year using either a 3% or7% discount rate.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR No. 2441.01.

This proposed rule would require TPCs to provide EPA and ABs with pertinent information necessary for accreditation. Also, this proposed rule would require ABs to provide EPA with necessary information through a recognition agreement in order to qualify them to function as an AB pursuant to the regulations. EPA has therefore prepared and submitted to OMB an ICR document entitled ''Formaldehyde Emissions From Composite Wood Products, Third-Party Certification Framework, Recordkeeping and Reporting; Proposed Rule (RIN 2070–AJ44),'' identified under EPA ICR No. 2441.01 and OMB Control No. 2070–[NEW], which is also available for review in the docket for this proposed rule (Ref. 27). The ICR describes the information collection activities and the estimated burden hours and costs, which are briefly summarized here.

Because the approval requirements for information collection requests under PRA is not limited to U.S. entities, the reporting and recordkeeping burden of the proposed rule is calculated for both foreign and domestic entities.

The average reporting and recordkeeping burden for ABs is estimated at approximately 21 hours per year. EPA assumes that 8 U.S. ABs and 17 foreign ABs will participate in the TSCA Title VI program, so the annual burden for ABs is estimated to be 500 hours. The average reporting and recordkeeping burden for TPCs is estimated at approximately 25 hours per year. EPA assumes there will be nine domestic TPCs and 27 foreign TPCs that participate in the TCA Title VI program, so the annual burden for ABs is estimated at approximately 900 hours. Total respondent burden for ABs and TPCs combined is estimated at approximately 1,400 hours per year. The total cost to United States and foreign TPCs that need to obtain additional accreditation is estimated to average $140,000 per year. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number, or is otherwise required to submit the specific information by a statute. The OMB control numbers for EPA's regulations codified in title 40 of the Code of Federal Regulations, after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes this ICR, under docket ID number EPA–HQ–OPPT–2011–0380. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** at the beginning of this proposed rule for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW., Washington, DC 20503, ATTN: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 10, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by July 10, 2013. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

C. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553, or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as:

1. A small business, as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201. The SBA's definitions typically are based upon either a sales or an employment level, depending on the nature of the industry.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Since the regulated community does not include small governmental jurisdictions, the Agency's analysis focuses on small businesses and small non-profits organizations.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The Agency's basis is briefly summarized here and is detailed in the Economic Analysis (Ref. 26).

EPA evaluated two factors in its analysis of the proposed rule's requirements on small entities, the number and type of small entities potentially affected, and the extent of the rule's potential economic impact on those entities as measured by the cost-to-revenue ratio for businesses and the cost-to-expenses ratio for non-profit organizations. This ratio is a good measure of entities' ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues or expenses provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of economic activity. Where regulatory costs represent a small fraction of a typical entity's revenues or expenses, the financial impacts of the regulation on such entities may be considered as not significant. The impact ratios were calculated using annualized costs, because these costs are more representative of the continuing costs entities would face to comply with this proposed rule.

EPA assumed that 5 small non-profit organizations and 4 small businesses in the United States will participate as ABs or TPCs in the TSCA Title VI program. All of the small non-profit organizations are expected to have cost impacts below the 1% level. Three of the small businesses are expected to have cost impacts below the 1% level, and one is expected to have cost impacts between 1% and 3%. So of the 9 total small entities assumed to be affected by the final rule, 8 are expected to have impacts under 1%, and 1 is expected to have impacts between 1% and 3%.

In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency. EPA solicits comments specifically about the potential economic impacts that this proposed rule may impose on small entities.

Although not required by RFA to convene a Small Business Advocacy Review (SBAR) Panel for this particular proposed rule because EPA has determined that this proposal would not have a significant economic impacts on a substantial number of small entities, EPA convened a SBAR Panel to obtain advice and recommendations from small entities representatives potentially subject to the proposed rule's requirements. The SBAR Panel covered the proposed regulations and the broader TSCA Title VI implementing regulations proposal which will follow. The SBAR Panel was convened by EPA's Small Business Advocacy Chairperson on February 3, 2011. In addition to the chairperson, the Panel consisted of the Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, the Administrator of the Office of Information and Regulatory Affairs within OMB, and the Chief Counsel for Advocacy of the SBA.

Seventeen potentially impacted small entities served as Small Entity Representatives (SERs), representing a broad range of small entities from diverse geographic locations and five association representatives. EPA hosted two meetings with the SERs to obtain feedback. During the Pre-Panel Outreach Meeting on January 6, 2011, and the Panel Outreach Meeting on February 17, 2011, EPA reviewed the major areas of regulation, including options for the proposed framework of the TSCA Title VI Third-Party Certification Program, with the SBAR Panel and the SERs. The SBAR Panel solicited comments from the SERs on the options presented by EPA, their experiences with the CARB ATCM, any additional concerns they might have, and the costs of regulatory options. Several SERs submitted written comments to EPA following the meetings. The Panel evaluated the assembled materials and small entity comments on issues related to the elements of an IRFA. A copy of the SBAR Panel report is included in the docket for this proposed rule (Ref. 28). As a result of its deliberations, the Panel made a number of recommendations. With regards to the proposed TSCA Title VI Third-Party Certification Program, the Panel recommended that EPA continue to explore how it can capitalize on the expertise of international ABs, while at the same time maintaining control over the design and implementation of its certification system.

D. Unfunded Mandates Reform Act (UMRA)

Title II of UMRA, 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. No State, local, or tribal governments currently acts as accreditation bodies or TPCs, and none are anticipated to do so in the future, so the proposed rule would not result in expenditures by these government bodies. The costs of the proposed rule to the private sector are expected to be approximately $100,000 in the first year, and significantly less costly in subsequent years. Thus, this proposed rule is not subject to the requirements of UMRA sections 202 or 205. This proposed rule is also not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments. Since no State, local, or tribal governments are expected to act as accreditation bodies or TPCs.

E. Executive Order 13132: Federalism

This action does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). No States are expected to act as accreditation bodies or TPCs, and EPA would administer these requirements not the States. The proposed rule would not impose substantial direct compliance costs on States. Furthermore, the proposed rule would not preempt State or local law. Thus, Executive Order 13132 does not apply to this action. Nonetheless, since California also has a program to regulate formaldehyde emissions from composite wood products, EPA held numerous consultations with representatives of the California Air Resources Board while developing this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed action from State and local officials.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). No Tribes are expected to act as accreditation bodies or TPCs, and EPA would administer these requirements not Tribes. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045, because it would not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy affects because it sets up a framework for a TSCA Title VI Third-Party Certification Program, and does not require any action related to the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of NTTAA, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule involves technical standards. EPA proposes to use voluntary consensus standards. The proposed framework of this TSCA Title VI Third-Party Certification Program is based on the ability of ABs to review TPCs for their conformity to ISO/IEC Guide 65:1996(E), ISO/IEC 17025:2005(E), and ISO/IEC 17020:1998(E). Both Product ABs and Laboratory ABs would be required to maintain their conformity to ISO/IEC 17011:2004(E).

EPA welcomes comments on this aspect of the proposed rule, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the final rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule would establish a system whereby ABs accredits TPCs, and TPCs certify composite wood products in order to ensure compliance with the emissions standards in TSCA Title VI. This proposed rule does not relax a pollution control measure and therefore will not cause emissions increases.

List of Subjects in 40 CFR Part 770

Environmental protection, Composite wood products, Formaldehyde, Reporting and recordkeeping, Third-party certification.

Dated: May 23, 2013.

Bob Perciasepe,

Acting Administrator.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended by adding a new part 770 to read as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

Subpart A—General Provisions

Sec.
770.1 Scope and applicability.
770.2 Effective dates.
770.3 Definitions.

Subpart B—TSCA Title VI Third-Party Certification Program

770.7 Third-party certification.
770.9 Prohibited Acts.

Subpart C—[Reserved]

Subpart D—Incorporation by Reference

770.99 Incorporation by reference.

Authority: 15 U.S.C. 2697(d).

Subpart A—General Provisions

§ 770.1 Scope and applicability.

(a) This subpart applies to:

(1) Laboratory Accreditation Bodies (ABs) and Product ABs that are accrediting third-party certifiers (TPCs) for TSCA Title VI (15 U.S.C. 2697(d)) purposes and those that wish to commence accrediting third-party certifiers for TSCA Title VI purposes. (2) TPCs that are certifying composite wood products for TSCA Title VI compliance and those that wish to commence certifying composite wood products for TSCA Title VI compliance.

(b) [Reserved]

§ 770.2 Effective dates.

(a) Laboratory and Product ABs that wish to accredit TPCs for TSCA Title VI purposes may apply to EPA to become recognized beginning on [*date of publication of the final rule in the* **Federal Register**]. Laboratory and Product ABs must be recognized by EPA before they begin providing TSCA Title VI accreditation services.

(b) TPCs that wish to provide TSCA Title VI certification services must meet all the requirements of this subpart before they commence providing TSCA Title VI certification services.

(c) Notwithstanding any other provision of this subpart, TPCs that are approved by the California Air Resources Board to certify composite wood products have until [*date 1 year after date of publication of the final rule in the* **Federal Register**] to become accredited pursuant to the requirements of this subpart. During the year following [*date of publication of the final rule in the* **Federal Register**], the California Air Resources Board-approved TPCs may carry out certification activities under TSCA Title VI, provided that they are compliant with all other aspects of TSCA Title VI and the regulations promulgated thereunder. Third-party certifiers that are certifying products as compliant with TSCA Title VI are subject to enforcement actions for any violations of TSCA Title VI or the regulations promulgated thereunder.

§ 770.3 Definitions.

For purposes of this part:

Accreditation Body or *AB* means an organization that provides an impartial verification of the competency of conformity assessment bodies such as TPCs.

Composite wood product means hardwood plywood, medium-density fiberboard, and particleboard.

EPA Recognized Laboratory Accreditation Body or *EPA Recognized Laboratory AB* means a Laboratory AB that has a recognition agreement with EPA under the TSCA Title VI Third-Party Certification Program.

EPA Recognized Product Accreditation Body or *EPA Recognized Product AB* means a Product AB that has a recognition agreement with EPA under the TSCA Title VI Third-Party Certification Program.

Laboratory Accreditation Body or *Laboratory AB* means an accreditation body that accredits laboratories to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99).

Panel producer means a manufacturing plant or other facility that manufactures (excluding imports) hardwood plywood, particle board, or medium density fiberboard.

Product Accreditation Body or *Product AB* means an accreditation body that accredits conformity assessment bodies to ISO/IEC Guide 65:1996(E) (incorporated by reference, see § 770.99) and ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99).

TSCA Title VI Accredited Third-Party Certifier or *TSCA Title VI Accredited*

TPC means an organization or entity that is accredited by an EPA recognized Product AB and an EPA recognized Laboratory AB pursuant to § 770.7(c)(1).

Subpart B—TSCA Title VI Third-Party Certification Program

§ 770.7 Third-party certification.

(a) *Product ABs*—(1) *Qualifications.* To apply to be recognized by EPA as a Product AB, a candidate Product AB must:

(i) Be a signatory to the International Accreditation Forum, Inc.'s (IAF) Multilateral Recognition Arrangement (MLA) through level 3, or an equivalent organization.

(ii) Be in conformance with ISO/IEC 17011:2004(E) (incorporated by reference, see § 770.99) and maintain that conformity.

(iii) Demonstrate basic competence to perform accreditation activities for product certification according to ISO/IEC Guide 65:1996(E) (incorporated by reference, see § 770.99).

(iv) Demonstrate competence to perform accreditation activities for inspection certification according to ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99).

(2) *Recognition.* To be recognized by EPA, a Product AB must apply to EPA by fulfilling the requirements in the paragraphs (a)(2)(i) through (ii) of this section:

(i) Submitting an application to the EPA with the following information:

(A) Name, address, telephone number, and email address of primary contact.

(B) Documentation of its IAF MLA signatory status, or equivalent.

(C) If not a domestic entity, name and address of an agent for service located in the United States. Service on this agent constitutes service on the AB or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(D) Description of any other qualifications related to its experience in performing product accreditation of conformity assessment bodies or TPCs of manufactured products.

(ii) Entering into a recognition agreement with EPA that describes the Product AB's responsibilities under this subpart.

(A) Each recognition agreement will be valid for 3 years.

(B) To renew a recognition agreement for additional 3 year periods, the Product AB must submit an application for renewal (before the 3 year period of the recognition agreement lapses) that indicates any changes from the Product AB's initial application.

(C) If a Product AB fails to submit an application for renewal prior to the expiration of the previous recognition agreement, its recognition will lapse and the Product AB may not provide TSCA Title VI accreditation services.

(D) If the Product AB does submit an application for renewal prior to the expiration of the previous recognition agreement, it may continue to provide TSCA Title VI accreditation services under the terms of its previous recognition agreement until EPA has taken action on its application for renewal of the recognition agreement.

(3) *Responsibilities.* EPA recognized Product ABs must fulfill the requirements in paragraphs (a)(3)(i) through (xiv) of this section:

(i) Receive and act on applications for accreditation from TPCs.

(ii) Assign a unique number to each accredited TPC.

(iii) Forward a copy of a TPC's application for TSCA Title VI accreditation to EPA at the address identified in the recognition agreement within 90 days of the date of receipt.

(iv) Perform an in-depth systems audit, as described in this unit, on each TPC applicant who submits a complete application at the time of initial application. The systems audit must include the components described in paragraphs (a)(3)(iv)(A) through (F) of this section:

(A) An on-site assessment by the Product AB to determine whether the TPC applicant's program requirements are consistent with ISO/IEC Guide 65:1996(E) and ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99). The Product AB must develop a checklist that lists all of the key conformity elements of ISO/IEC Guide 65:1996(E) and ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99) and the Product ABs must use the checklist for each on-site assessment.

(B) A review of the approach that the TPC applicant will use to verify the accuracy of the formaldehyde emissions tests conducted by the TPC laboratory or contract laboratory and the formaldehyde quality control tests conducted by the panel producers producing composite wood products that are subject to the requirements of TSCA Title VI.

(C) A review of the approach that the TPC applicant will use for evaluating a panel producer's quality assurance and quality control processes, the qualifications of the panel producer's quality assurance and quality control personnel, the required elements of a panel producer's quality assurance and quality control manual, and sufficiency of on-site testing facilities as applicable.

(D) A review of the approach that the TPC applicant's laboratory will use for establishing correlation or equivalence between alternative formaldehyde test methods and ASTM E1333–10 (incorporated by reference, see § 770.99).

(E) A review of the approach that the TPC applicant will use for evaluating the process for sample selection, handling, and shipping procedures, if applicable, that the panel producer will use for quality control testing.

(F) A review of the accreditation credentials of the laboratory that the TPC applicant will use. The review must ensure that the laboratory has been accredited to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) by a Laboratory AB that is a signatory to the ILAC MRA or equivalent.

(v) Upon request, allow EPA representatives to accompany its assessors during an on-site assessment to observe the audit of a TPC.

(vi) Accredit TPCs that submit a complete application as described in § 770.7(c)(1)(i) and that meet the requirements of § 770.7(c).

(vii) Conduct a follow-up systems audit, including an on-site assessment, of each TPC that the AB has accredited at least every 2 years.

(viii) Suspend, modify, or revoke the accreditation of a TPC in accordance with § 770.7(e).

(ix) Provide written notifications to EPA at the address identified in the recognition agreement, as follows:

(A) Notification of loss of its status as a signatory to the IAF MLA (or membership in an equivalent organization) must be provided to EPA within 5 business days of the date that the body receives notification of the loss of its signatory status.

(B) Notification of the TSCA Title VI accreditation of a TPC must be provided to EPA within 5 business days of the date that the TPC is accredited.

(C) Notification that an accredited TPC has failed to comply with any provision of this section must be provided to EPA within 24 hours of the time the Product AB identifies the failure.

(D) Notification of suspension or revocation of a TPC's accreditation must be provided to EPA within 24 hours of the time that the suspension or revocation takes effect.

(E) Notification of a decision to make changes in its organizational policies or management structure that could adversely affect the TPC accreditation program must be provided to EPA within 30 days of the decision to make the changes.

(x) If the Product AB is removed or withdraws from the TSCA Title VI Third-Party Certification Program, notification must be given to all of the TPCs that receive its accreditation services within 5 business days.

(xi) Maintain the checklists and other records documenting compliance with the requirements for systems audits and on-site assessments of TPCs for 3 years. These records must be in electronic form, and the Product AB must provide them to EPA within 30 days upon request.

(xii) Provide a report to EPA at least once each year (12 months from the anniversary of the date of the recognition agreement), that includes the number and locations of systems audits and on-site assessments performed.

(xiii) Meet with EPA at least once every 2 years to discuss the implementation of the TPC accreditation program.

(xiv) Allow inspections by EPA, conducted at reasonable times, within reasonable limits, and in a reasonable manner, upon the presentation of appropriate credentials and a written notification to the Product AB.

(b) *Laboratory ABs*—(1) *Qualifications.* To apply to be recognized by EPA as a Laboratory AB, a candidate Laboratory AB must:

(i) Be a signatory to the ILAC MRA, or an equivalent organization.

(ii) Be in conformance with ISO/IEC 17011:2004(E) (incorporated by reference. see § 770.99) and maintain that conformity.

(iii) Demonstrate competence to perform accreditation activities for laboratory accreditation according to ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99).

(2) *Recognition.* To be recognized by EPA, a Laboratory AB must apply to EPA by fulfilling the requirements in paragraphs (b)(2)(i) through (ii) of this section:

(i) Submit an application to the EPA with the information listed in paragraphs (b)(2)(i)(A) through (D) of this section (if the accreditation body is also applying to be recognized as a Product AB, this application may be submitted in conjunction with the Product AB application):

(A) Name, address, telephone number, and email address of primary contact.

(B) Documentation of ILAC MRA signatory status, or equivalent.

(C) If not a domestic entity, name and address of an agent for service located in the United States. Service on this agent constitutes service on the AB or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(D) Description of any other qualifications related to the Laboratory AB's experience in performing laboratory accreditation and inspection certification of conformity assessment bodies or TPCs.

(ii) Enter into a recognition agreement with EPA that describes the Laboratory AB's responsibilities under this subpart.

(A) Each recognition agreement will be valid for 3 years.

(B) To renew a recognition agreement for additional 3 year periods, the Laboratory AB must submit an application for renewal (before the 3 year period of the recognition agreement lapses) that indicates any changes from the Laboratory AB's initial application.

(C) If the Laboratory AB does submit an application for renewal prior to the expiration of the previous recognition agreement, it may continue to provide TSCA Title VI accreditation services under the terms of its previous recognition agreement until EPA has taken action on its application for renewal of the recognition agreement.

(3) *Responsibilities.* EPA recognized Laboratory ABs must fulfill the requirements in paragraphs (b)(3)(i) through (xiii) of this section:

(i) Receive and act on applications for laboratory accreditation from TPC laboratories (including contract laboratories).

(ii) Within 15 days of a request by a TPC or their EPA recognized Product AB, forward copies of a TPC's TSCA Title VI laboratory application and accreditation documentation to the applicable EPA recognized Product AB (if the Laboratory AB is not also recognized as a Product AB) at the address identified by the TPC.

(iii) Perform an in-depth systems audit on the laboratory of each TPC applicant who submits a complete application at the time of initial application. The systems audit must include:

(A) An on-site assessment by the Laboratory AB to determine whether the TPC applicant's laboratory is consistent with all regulatory requirements and ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99).

(B) Include a checklist that lists all of the key conformity elements of ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99) and the Laboratory AB's assessors must use the checklist for each on-site assessment.

(iv) Upon request, allow EPA representatives to accompany its assessors during an on-site assessment to observe the audit of a TPC.

(v) Accredit laboratories that submit a complete application as described in § 770.7(c)(1)(ii) and that continue to meet the requirements of § 770.7(c).

(vi) Verify the accuracy of the formaldehyde emissions tests conducted by the TPC laboratory through an inter-laboratory comparison or proficiency testing program if available.

(vii) Conduct a follow-up systems audit at least every 2 years, including an on-site assessment, of each TPC laboratory that the accreditation body has accredited. TPCs' laboratories that have not adequately performed an inter-laboratory comparison or proficiency testing must be audited at least once each year for a period of 2 years from the date of the latest poor proficiency test or inter-laboratory comparison.

(viii) Suspend, modify, or revoke the accreditation of TPCs' laboratories in accordance with § 770.7(e).

(ix) Provide the following written notifications to EPA and to the applicable EPA recognized Product AB (if the Laboratory AB is not also recognized as a Product AB) at the address identified in the recognition agreement:

(A) Notification of loss of its status as a signatory to the ILAC MRA, or membership in an equivalent organization, must be provided within 5 business days of the date that the body receives notice of the loss of its signatory status.

(B) Notice of accreditation of a TPC's laboratory must be provided within 5 business days of the date that the laboratory is accredited.

(C) Notice that an accredited laboratory has failed to comply with any provision of this section must be provided within 24 hours of the time the Laboratory AB identifies the failure.

(D) Notice that an accredited TPC has failed to comply with any provision of this section must be provided within 24 hours of the time the Laboratory AB identifies the failure.

(E) Notice of a decision to make changes in its organizational policies or management structure that could adversely affect the laboratory accreditation program must be provided to EPA within 30 days of the decision to make the changes.

(F) Notice if the Laboratory AB suspends or revokes a laboratory's accreditation must be provided within 24 hours of the time that the suspension or revocation takes effect.

(x) Maintain checklists and other records documenting compliance with the requirements for systems audits and on-site assessments of laboratories must be retained for 3 years. These records

must be in electronic form and provided to EPA within 30 days of request.

(xi) Provide a report to EPA at least once each year (12 months from the date of the recognition agreement) that includes the following information:

(A) The names and contact information of all the TSCA Title VI accredited TPC laboratories.

(B) Number and locations of systems audits and on-site assessments performed.

(C) Results of inter-laboratory comparisons or proficiency testing for each of the AB's TSCA Title VI accredited TPC laboratories, if such an EPA recognized inter-laboratory comparisons or proficiency testing program is available.

(xii) Meet with EPA at least once every 2 years to discuss the implementation of the laboratory accreditation program.

(xiii) Allow inspections by EPA, conducted at reasonable times, within reasonable limits, and in a reasonable manner, upon the presentation of appropriate credentials and written notice to the laboratory accreditation body.

(c) *Third-party certifiers*—(1) *Qualifications.* In order to participate as a TPC of composite wood products under TSCA Title VI, a TPC must apply to an EPA recognized Product AB. In its application the TPC must demonstrate that it has been accredited by an EPA recognized Laboratory AB, unless the TPC is applying to an EPA recognized Product AB that is also an EPA recognized Laboratory AB and the TPC is seeking both accreditations from this single AB. In such a case, the TPC will obtain the required product and laboratory accreditations pursuant to ISO/IEC Guide 65:1996(E) and ISO/IEC 17025:2005(E), respectively, from the EPA recognized Product AB.

(i) To participate in the TSCA Title VI Third-Party Certification Program, a TPC must submit an application to an EPA recognized Product AB every 3 years that includes the elements in paragraphs (c)(1)(i)(A) through (D) of this section:

(A) Name, address, telephone number, and email address of primary contact.

(B) If not a domestic entity, name and address of an agent for service located in the United States. Service on this agent constitutes service on the TPC or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(C) Type of composite wood products that the applicant intends to certify if accredited.

(D) Description of the TPC's qualifications, including indications that the TPC has:

(*1*) Experience or ability in product certification and complying with ISO/IEC Guide 65:1996(E) (incorporated by reference, see § 770.99).

(*2*) Experience in the composite wood product industry with the specific product(s) the applicant intends to certify.

(*3*) Ability to conduct inspections and properly train and supervise inspectors pursuant to ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99).

(ii) To be accredited by a laboratory accreditation body under TSCA Title VI, a TPC or its laboratories must submit an application to an EPA recognized Laboratory AB every 3 years that includes the elements in paragraphs (c)(1)(ii)(A) through (C) of this section:

(A) Name, address, telephone number, and email address of primary contact.

(B) If not a domestic entity, name and address of an agent for service located in the United States. Service on this agent constitutes service on the TPC or any of its officers or employees for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(C) Description of the TPC's laboratory's qualifications, including indications that the TPC's laboratory has:

(*1*) Experience in performing or verifying formaldehyde testing on composite wood products.

(*2*) Experience complying with ISO/IEC 17025:2005(E) (incorporated by reference, see § 770.99).

(*3*) Experience with test method ASTM E1333–10 (incorporated by reference, see § 770.99) and experience evaluating correlation between test methods.

(2) *Responsibilities.* To maintain participation in the TPC TSCA Title VI program, TSCA Title VI accredited TPCs must fulfill the requirements in paragraphs (c)(2)(i) through (xvi) of this section:

(i) Verify that panel producers have adequate quality assurance and quality control procedures and are complying with applicable quality assurance and quality control requirements pursuant to TSCA Title VI, including the requirements of this subpart.

(ii) Verify quality control test results compared with ASTM E1333–10 (incorporated by reference, see § 770.99) test results by having TPC laboratories conduct quarterly tests and evaluate test method equivalence.

(iii) Review applications from panel producers for reduced testing, approve an application within 90 days of receipt if it demonstrates that the requirements for reduced testing under TSCA Title VI are met, and notify EPA of all approvals for reduced testing within 5 days of the approval, and forward copies of all approved applications for reduced test to EPA within 30 days of receipt.

(iv) Establish quality control limits in consultation with panel producers and, if applicable, shipping quality control or other limits for each panel producer, product type, and production line.

(v) Establish for each panel producer the process that will be used to determine if product lots are exceeding the applicable quality control limit.

(vi) Inspect and audit panel producers and products and their records at least quarterly and pursuant to ISO/IEC 17020:1998(E) (incorporated by reference, see § 770.99).

(vii) Use only laboratories that have been accredited by an EPA recognized Laboratory AB and participate in an EPA-approved inter-laboratory comparison or proficiency testing program and ensure the results of the EPA-approved inter-laboratory comparison or proficiency testing program are provided to the Laboratory AB.

(viii) Certify composite wood product types that comply with the emission standards of TSCA Title VI and this subpart, following ISO/IEC Guide 65:1996(E) (incorporated by reference, see § 770.99).

(ix) Provide its accreditation number to the panel producer for labeling and recordkeeping.

(x) Maintain the following records, in electronic form, for 3 years from the date the record is created, and provide them to EPA within 30 days of the request:

(A) A list of panel producers and their respective product types, including resins used, that the TPC has certified.

(B) Results of inspections, audits, and emission tests conducted for and linked to each panel producer and product type.

(C) A list of laboratories used by the TPC, as well as test methods, including test conditions and conditioning time, and test results.

(D) Methods and results for establishing test method correlations and equivalence.

(xi) Provide an annual report to its accreditation body or bodies (Product AB and Laboratory AB) and to EPA that contains the following:

(A) A list of panel producers and their products that the TPC has certified during the previous year, including resins used and the average and range

of formaldehyde emissions by panel producer, resin, and product type.

(B) A list of any non-complying products or events by panel producers.

(C) A list of laboratories and test methods used by the TPC.

(xii) Inform its accreditation body or bodies (Product AB and Laboratory AB) within 30 days of any changes in personnel qualifications, procedures, or laboratories used by the TPC.

(xiii) Allow inspections by EPA, conducted at reasonable times, within reasonable limits, and in a reasonable manner, upon the presentation of appropriate credentials and of a written notice to the TPC.

(xiv) If not a domestic entity, the TPC must maintain an agent for service located in the United States and notify EPA of any changes in the name or address of that agent within 5 business days.

(xv) Participate an inter-laboratory comparison or proficiency testing program annually, or use only contract laboratories that participate in such a program.

(xvi) If a TPC or its laboratory loses its accreditation or discontinues participation in the program for any reason, it must notify EPA and all the panel producers it provides TSCA Title VI certification services to within 3 business days.

(d) *Third-party certifiers approved by the California Air Resources Board.* TPCs approved by the California Air Resources Board as of [*date 60 days after date of publication of the final rule in the* **Federal Register**] may certify composite wood products under TSCA Title VI until [*date 1 year after date of publication of the final rule in the* **Federal Register**] as long as they remain approved by the California Air Resources Board for that period and comply with all aspects of this subpart other than the accreditation requirements of paragraph (c)(1) of this section. In lieu of the accreditation number required to be provided according to paragraph (c)(2)(ix) of this section, a TPC approved by CARB according to this section must provide the panel producer with the TPC number issued by CARB. For a TPC approved by CARB according to this section, the annual report under paragraph (c)(2)(xi) of this section must be provided to CARB in lieu of the AB. After [*date 1 year after date of publication of the final rule in the* **Federal Register**], no TPC may certify composite wood products under TSCA Title VI unless the TPC is accredited in accordance with paragraph (c)(1) of this section.

(e) *Suspension, revocation, or modification of recognition or accreditation*—(1) *Third-party certifiers.* EPA or an AB may suspend, revoke, or modify the accreditation of a TPC or a TPC laboratory, if the TPC or TPC laboratory:

(i) Fails to comply with any requirement of TSCA Title VI or this subpart;

(ii) Makes any false or misleading statements on its application, records, or reports; or

(iii) Makes substantial changes to personnel qualifications, procedures, or laboratories that make the TPC or TPC laboratory unable to comply with any applicable requirements of this subpart.

(2) *ABs.* EPA may suspend, revoke, or modify the recognition of an AB if the AB:

(i) Fails to comply with the requirements of the applicable recognition agreement(s) (the International Accreditation Forum Multilateral Recognition Arrangement and the International Laboratory Accreditation Cooperation Mutual Recognition Agreement or equivalent(s));

(ii) Fails to comply with any requirement of TSCA Title VI or this subpart;

(iii) Makes any false or misleading statements on its application, records, or reports; or

(iv) Makes substantial changes to personnel qualifications or procedures that make the TPC unable to comply with any applicable requirements of this subpart.

(3) *Process for suspending, revoking, or modifying accreditation or recognition.* (i) Prior to taking action to suspend, revoke, or modify accreditation or recognition, EPA or the accreditation body will notify the recognized AB or the accredited TPC or TPC laboratory in writing of the following:

(A) The legal and factual basis for the proposed suspension, revocation, or modification.

(B) The anticipated commencement date and duration of the suspension, revocation, or modification.

(C) Actions, if any, which the affected AB or TPC or TPC laboratory may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(D) The opportunity and method for requesting a hearing with EPA prior to final suspension, revocation, or modification.

(ii) If the affected AB or TPC or TPC laboratory requests a hearing in writing to EPA within 30 days of receipt of the notification, EPA will:

(A) Provide the affected accreditation body or TPC or TPC laboratory an opportunity to offer written statements in response to EPA's or the accreditation body's assertions of the legal and factual basis for the proposed action.

(B) Appoint an impartial EPA official as Presiding Officer to conduct the hearing. The Presiding Officer will:

(*1*) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(*2*) Consider all relevant evidence, explanation, comment, and argument submitted.

(*3*) Notify the affected AB or TPC or TPC laboratory in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final EPA action which may be subject to judicial review. The order must contain the basis, commencement date, and duration of the suspension, revocation, or modification.

(iii) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the recognition of an AB or the accreditation of a TPC or TPC laboratory prior to the opportunity for a hearing, it will notify the affected AB, TPC, or TPC laboratory of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(iv) Any notification, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by TSCA section 14. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under TSCA section 14.

(v) EPA will maintain a publicly available list of accreditation bodies whose recognition has been suspended, revoked, modified, or reinstated and a publicly available list of TPCs and laboratories whose accreditation has been suspended, revoked, modified, or reinstated.

(vi) Unless the decision and order issued under this paragraph (d)(3) of this section specify otherwise, an AB whose recognition has been revoked or a TPC or TPC laboratory whose accreditation has been revoked must reapply for recognition or accreditation after the revocation ends in order to

become recognized or accredited under this subpart again.

(vii) Unless the decision and order issued under paragraph (d)(3) of this section specifies otherwise, an AB whose recognition has been revoked or a TPC or TPC laboratory whose accreditation has been revoked, must immediately notify all TPCs or panel producers to which it provides TSCA Title VI accreditation or certification services of the revocation.

(f) *Process for denying a TSCA Title VI accreditation*—(1) Upon denying to accredit a TPC or a TPC laboratory for failure to submit a complete application, the accreditation body will notify the TPC or TPC laboratory in writing of the following:

(i) The legal and factual basis for the denial.

(ii) Actions, if any, which the affected TPC or TPC laboratory may take to receive accreditation in the future.

(iii) The opportunity and method for requesting a hearing with EPA.

(2) If the affected TPC or TPC laboratory requests a hearing in writing to EPA within 30 days of receipt of the notice, EPA will:

(i) Provide the affected TPC or TPC laboratory an opportunity to offer written statements in response to the legal and factual basis for the denial.

(ii) Appoint an impartial EPA official as Presiding Officer to conduct the hearing. The Presiding Officer will:

(A) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(B) Consider all relevant evidence, explanation, comment, and argument submitted.

(C) Notify the affected TPC or TPC laboratory in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the basis for the denial.

(3) Any notification, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by TSCA section 14. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under TSCA section 14.

(g) *Process of seeking alternate accreditations or certifications*—(1) If AB is removed or withdraws from the TSCA Title VI Third-Party Certification Program:

(i) For reasons other than fraud or providing false or misleading statements, or other than a reason that implicates a particular TPC in a violation of TSCA Title VI or its implementing regulations, TPCs accredited by that AB have 365 days, or 180 days if less than 365 days were left on their 3 year accreditation period, to be accredited again by an alternate EPA recognized AB.

(ii) Due to fraud or providing false or misleading statements with respect to a particular TPC, or for any other reason that implicates a particular TPC in a violation of TSCA Title VI or its implementing regulations, that TPC may not provide any TSCA Title VI certification services until it has been accredited by an alternate EPA recognized AB.

(2) If a TPC loses its accreditation or discontinues participation in the program:

(i) For reasons other than fraud or providing false or misleading statements, or other than a reason that implicates a particular panel producer in a violation of TSCA Title VI or its implementing regulations, the panel producers that used the TPC to certify their products must enlist another TPC to certify their products within 3 months (90 days). During the time a panel producer is seeking a new TPC, it must continue to comply with all other requirements of TSCA Title VI and its implementing regulations, including quality control testing.

(ii) Due to fraud or providing false or misleading statements with respect to a particular panel producer, or for any other reason that implicates a particular panel producer in a violation of TSCA Title VI or its implementing regulations, that panel producer may not offer regulated composite wood products for sale in the United States until its composite wood products have been recertified by another TPC.

§ 770.9 Prohibited Acts.

(a) Failure or refusal to comply with any requirement of TSCA section 601 (15 U.S.C. 2697) or this subpart part is a violation of TSCA section 15 (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA section 15 (15 U.S.C. 2614).

(c) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

Subpart C—[Reserved]

Subpart D—Incorporation by Reference

§ 770.99 Incorporation by reference.

The materials listed in this section are incorporated by reference into this part with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, a document must be published in the **Federal Register** and the material must be available to the public. All approved materials are available for inspection at the OPPT Docket in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. In addition, these materials are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials may also be obtained from the sources listed in this section.

(a) [Reserved]

(b) *ASTM material.* Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, or by calling (877) 909–ASTM, or at *http://www.astm.org.*

(1) ASTM D6007–02 (Reapproved 2008), October 1, 2008, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber, IBR approved for § 770.7(a) through (c).

(2) ASTM D5582–00 (Reapproved 2006), October 1, 2006, Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator, IBR approved for § 770.7(a) through (c).

(3) ASTM E1333–10 (Approved May 1, 2010), Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber, IBR approved for § 770.7(a) through (c).

(c) *ISO material.* Copies of these materials may be obtained from the International Organization for Standardization, 1, ch. de la Voie-

Creuse, CP 56, CH–1211 Geneve 20, Switzerland, or by calling +41–22–749–01–11, or at *http://www.iso.org.*

(1) ISO/IEC 17011:2004(E), Conformity Assessments—General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies (First Edition) February 15, 2005, IBR approved for § 770.7(a) through (c).

(2) ISO/IEC 17020:1998(E), General Criteria for the Operation of Various Types of Bodies Performing Inspections (First Edition), November 15, 1998, IBR approved for § 770.7(a) through (c).

(3) ISO/IEC 17025:2005(E), General Requirements for the Competence of Testing and Calibration Laboratories (Second Edition), May 15, 2005, IBR approved for § 770.7(a) through (c).

(4) ISO/IEC Guide 65:1996(E), General Requirements for Bodies Operating Product Certification Systems (First Edition), 1996, IBR approved for § 770.7(a) through (c).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2012–0018; FRL–9342–3]

RIN 2070–AJ92

Formaldehyde Emissions Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing new requirements under the Formaldehyde Standards for Composite Wood Products Act, or Title VI of the Toxic Substances Control Act (TSCA). These proposed requirements are designed to implement the statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured (including imported) in the United States. As directed by the statute, this proposal includes provisions relating to, among other things, laminated products, products made with no-added formaldehyde resins or ultra low-emitting formaldehyde resins, testing requirements, product labeling, chain of custody documentation and other recordkeeping requirements, enforcement, and product inventory sell-through provisions, including a product stockpiling prohibition. The composite wood product formaldehyde emission standards contained in TSCA Title VI are identical to the emission standards currently in place in California. This regulatory proposal implements these emissions standards and is designed to ensure compliance with the TSCA Title VI formaldehyde emission standards while aligning, where practical, with the regulatory requirements in California.

DATES: Comments must be received on or before August 9, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0018, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2012–0018. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2012–0018. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The 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 regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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 electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Cindy Wheeler, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–566–0484; email address: *wheeler.cindy@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This document is directed to the public in general. However, this document may be of particular interest to the following entities:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).

- Prefabricated wood building manufacturing (NAICS code 321992).
- All other basic organic chemical manufacturing (NAICS code 325199), *e.g.,* formaldehyde manufacturing.
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.,* merchant wholesale distributors of manufactured homes (*i.e.,* mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).
- Manufactured (mobile) home dealers (NAICS code 45393).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).
- Plastics material and resin manufacturing (NAICS code 325211).

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. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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. Background

A. Executive Summary

1. *Purpose of the regulatory action.* EPA is proposing a rule to implement the emission standards and other provisions of the Formaldehyde Standards for Composite Wood Products Act, enacted as Title VI of Toxic Substances Control Act (TSCA), 15 U.S.C. 2697. The purpose of TSCA Title VI is to reduce formaldehyde emissions from composite wood products. This proposed rule would implement the emission standards established by TSCA Title VI for composite wood products sold, supplied, offered for sale, or manufactured in the United States (including imported products). TSCA Title VI directs EPA to promulgate supplementary provisions to ensure compliance with the emissions standards by January 1, 2013.

2. *Summary of the major provisions.* TSCA Title VI requires EPA to promulgate regulations that include provisions on labeling; chain of custody requirements; sell-through provisions; ultra low-emitting formaldehyde resins (ULEF); no-added formaldehyde-based resins (NAF); finished goods; third-party testing and certification; auditing and reporting of third-party certifiers (TPC); recordkeeping; enforcement; laminated products; and exceptions from regulatory requirements for products and components containing *de minimis* amounts of composite wood products. The listed topics are addressed in this proposal, with the exception of topics related to third-party certification which are being handled in a separate regulatory proposal. EPA also proposes several definitions, clarifies frequency and process requirements for emissions testing, and provides a means of determining test method equivalence. The emission standards themselves are set by statute and are not altered in this proposal.

TSCA Title VI grants EPA the authority to modify the statutory definition of ''laminated product'' and directs EPA to use all available and relevant information to determine whether the definition of hardwood plywood should exempt engineered veneer or any laminated product. EPA is proposing to exempt laminated products in which a wood veneer is attached to a compliant and certified platform using a NAF resin. EPA is also proposing modifications to the statutory definition of ''laminated product.''

This action includes labeling requirements for composite wood panels and finished goods. It also includes ''chain of custody requirements'' and recordkeeping requirements with a proposed 3-year record retention period. EPA is also proposing to specifically require TSCA section 13 import certification for composite wood products that are articles. EPA has decided not to propose an exception from any of the regulatory requirements for products containing *de minimis* amounts of composite wood products.

EPA proposes to set the manufactured-by date at 1 year after publication of the final rule in the **Federal Register**. Composite wood panels made after the manufactured-by-date would be subject to the emissions standards. Although TSCA Title VI allows EPA to set this date at 180 days after promulgation of the final implementing regulations, EPA believes that more time will be needed to ensure infrastructure is in place and allow panel producers time to develop their initial qualifying data for certification.

EPA proposes to provide producers of panels made with NAF-based resins or ULEF resins with an exemption from TPC oversight and formaldehyde emissions testing after an initial testing period of 3 months for each product type made with NAF-based resins and 6 months for each product type made with ULEF resins. These specific initial testing periods are required by the statute and are designed to ensure that

the products meet the TSCA section 601(a)(7) formaldehyde emission standards for products made with NAF-based resins or the TSCA section 601(a)(10) formaldehyde emission standards for products made with ULEF resins.

3. *Costs and benefits.* EPA has prepared an analysis of the potential costs and benefits associated with this rulemaking. This analysis is summarized in greater detail in Unit V.A. Table 1 provides a brief outline of the costs and benefits of this proposal. The estimated costs of the proposed rule exceed the quantified benefits. There are additional unquantified benefits due to other avoided health effects. After assessing both the costs and the benefits of the proposal, including the unquantified benefits, EPA has made a reasoned determination that the benefits of the proposal justify its costs.

TABLE 1—SUMMARY OF COSTS AND BENEFITS OF PROPOSAL

Category	Description
Benefits	This proposed rule will reduce exposures to formaldehyde, resulting in benefits from avoided adverse health effects. For the subset of health effects where the results were quantified, the estimated annualized benefits (due to avoided incidence of eye irritation and nasopharyngeal cancer) are $20 million to $48 million per year using a 3% discount rate, and $9 million to $23 million per year using a 7% discount rate. There are additional unquantified benefits due to other avoided health effects.
Costs	The annualized costs of this proposed rule are estimated at $72 million to $81 million per year using a 3% discount rate, and $80 million to $89 million per year using a 7% discount rate.
Effects on State, Local, and Tribal Governments.	Government entities are not expected to be subject to the rule's requirements, which apply to entities that manufacture, fabricate, distribute, or sell composite wood products. The proposed rule does not have a significant intergovernmental mandate, significant or unique effect on small governments, or have Federalism implications.
Small Entity Impacts	This rule would impact nearly 879,000 small businesses: Over 851,000 have costs impacts less than 1% of revenues, over 23,000 firms have impacts between 1% and 3%, and over 4,000 firms have impacts greater than 3% of revenues. Most firms with impacts over 1% have annualized costs of less than $250 per year.
Environmental Justice and Protection of Children.	This rule increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population or children.

B. What action is the Agency taking?

EPA is proposing a rule to implement the emission standards and other provisions of the Formaldehyde Standards for Composite Wood Products Act, enacted as Title VI of Toxic Substances Control Act (TSCA), 15 U.S.C. 2697. This proposed rule would implement emissions standards established by TSCA Title VI for composite wood products sold, supplied, offered for sale, or manufactured in the United States. Pursuant to TSCA section 3(7), the definition of ''manufacture'' includes import. As required by Title VI, these regulations apply to hardwood plywood, medium-density fiberboard, and particleboard. TSCA Title VI also directs EPA to promulgate supplementary provisions to ensure compliance with the emissions standards, including provisions related to labeling; chain of custody requirements; sell-through provisions; ULEF resins; no-added formaldehyde-based resins; finished goods; third-party testing and certification; auditing and reporting of third-party certifiers; recordkeeping; enforcement; laminated products; and exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing *de minimis* amounts of composite wood products.

EPA issued a separate proposal on the third party certification provisions (the TPC proposal) (Ref. 1). The TPC proposal included provisions for the accreditation of TPCs and general requirements for accreditation bodies and TPCs.

The proposed requirements in this document are consistent, to the extent EPA deemed appropriate and practical, with the requirements currently in effect in California under a California Air Resources Board (CARB) Airborne Toxic Control Measure (ATCM) (Ref. 2). By aligning with the CARB ATCM requirements, EPA seeks to avoid differing or duplicative regulatory requirements that would result in an increased burden on the regulated community.

C. What is the Agency's authority for taking this action?

This proposal is being issued under the authority of section 601 of TSCA, 15 U.S.C. 2697.

D. Formaldehyde Sources and Health Effects

Formaldehyde is a colorless, flammable gas at room temperature and has a strong odor. It is found in resins used in the manufacture of composite wood products (*i.e.,* hardwood plywood, particleboard and medium-density fiberboard). It is also found in household products such as glues, permanent press fabrics, carpets, antiseptics, medicines, cosmetics, dishwashing liquids, fabric softeners, shoe care agents, lacquers, plastics and paper product coatings. It is a by-product of combustion and certain other natural processes. Examples of sources of formaldehyde gas inside homes include cigarette smoke, unvented, fuel-burning appliances (*e.g.,* gas stoves, kerosene space heaters), and composite wood products made using formaldehyde-based resins (Ref. 3).

Formaldehyde is an irritant and the National Toxicology Program recently classified it as a known human carcinogen (Ref. 4). Depending on concentration, formaldehyde can cause eye, nose, and throat irritation, even when exposure is of relatively short duration. In the indoor environment, sensory reactions and various symptoms as a result of mucous membrane irritation are potential effects, including respiratory symptoms. In addition, formaldehyde is a by-product of human metabolism, and thus endogenous levels are present in the body.

In 1991, EPA classified formaldehyde as a probable human carcinogen, ''based on limited evidence in humans, and sufficient evidence in animals,'' and derived an inhalation unit risk factor for assessing formaldehyde cancer risk. The risk factor and supporting documentation is included in EPA's Integrated Risk Information System

(IRIS) assessment of formaldehyde (Ref. 5). Formaldehyde is also listed under section 112(b)(1) of the Clean Air Act (CAA) as a hazardous air pollutant (HAP). The CAA requires EPA to regulate emissions of HAPs from a published list of industrial source categories. EPA has developed lists of major and area source categories that must meet emission standards for HAPs and has developed (or is developing) standards for these source categories. The plywood and composite wood products (PCWP) National Emission Standards for Hazardous Air Pollutants (NESHAP), codified at 40 CFR part 63, subpart DDDD, first issued in 2004, is one of these standards. The PCWP NESHAP controls emissions of formaldehyde and other HAPs (primarily acetaldehyde, acrolein, methanol, phenol, and propionaldehyde) from various process units (*e.g.,* blenders, dryers, formers, board coolers, and presses) at PCWP facilities.

In 2004, EPA determined that unit risk derived from the Chemical Industry Institute of Toxicology (CIIT; CIIT 1999) biologically-based cancer dose-response modeling of formaldehyde-induced respiratory cancer (5.5×10^{-9} per micrograms per cubic meter ($\mu g/m^3$)) better reflected the current state of the science than the 1991 IRIS cancer unit risk. The authors of the CIIT modeling (Conolly *et al.* 2004) presented their risk estimates as values more conservative than their maximum likelihood estimates, and as ''conservative in the face of modeling uncertainties.'' Consequently, EPA used the CIIT value in risk assessments supporting regulatory actions developed under the authority of the Clean Air Act. For example, in the 2006 rulemaking that reconsidered the PCWP NESHAP, OAR stated ''[i]n the case of formaldehyde, we have determined that the cancer potency derived using the approach developed by CIIT, which has been peer reviewed by an external review panel sponsored by EPA and the Canadian government, represents an appropriate alternative to EPA's current IRIS URE [unit risk estimate] for formaldehyde. Therefore, this potency represents the best available peer-reviewed science at this time.'' (Ref. 6, p. 8348). However, subsequent research published by EPA suggests that the CIIT model was not appropriate and was very sensitive to unmeasured parameters such that very different estimates, including the 1991 IRIS assessment values, were consistent with the available scientific data. Because the CIIT values do not reflect the extent of uncertainty in estimates using the data that are available, EPA has decided that those estimates do not reflect the broad range of possible risk and that the data are not supportive of interpreting 5.5×10^{-9} per $\mu g/m^3$ as providing a health-protective estimate of human risk. Furthermore, the 1991 IRIS assessment values are consistent with unit risks estimated by Schlosser et al. (2003) based on Benchmark Dose modeling of the best available data at the time. Thus, in 2010, EPA returned to using the Agency's current value on IRIS, 1.3×10^{-5} per $\mu g/m^3$, which was last revised in 1991 as better reflecting the current state of the science as to the potential human cancer risk of exposure to formaldehyde (Ref. 7).

The IRIS program in EPA's Office of Research and Development (ORD) recently completed a draft assessment of the potential cancer and non-cancer health effects that may result from chronic exposure to formaldehyde by inhalation (Ref. 8). This draft IRIS assessment was peer-reviewed by the National Research Council of the National Academy of Sciences (NRC) with its review of the EPA's draft assessment completed in April of 2011 (Ref. 9). EPA will fully address all the NRC recommendations on formaldehyde. The draft formaldehyde IRIS assessment will be revised in response to the NRC peer review and public comments, and the final assessment will be posted on the IRIS Web site. In the interim, EPA will present findings using the 1991 IRIS value as a primary estimate, and may also consider other information as the science evolves. In addition, EPA developed concentration-response functions to estimate the impact of exposure to formaldehyde on eye irritation for use in the non-cancer benefits assessment to support this rule, and proposes additional analysis to address respiratory symptoms and other potential adverse effects. The derivation of these concentration-response functions, uncertainties, and EPA's proposed approach for using the concentration-response functions in the benefits assessment were externally peer reviewed in 2011 (Ref. 10). While the economic analysis of cancer benefits is based on the unit risk, which is a reasonable upper bound on the central estimate of risk, the non-cancer benefits were evaluated using the estimated concentration-response functions which reflect the central effect estimates rather than upper bounds.

E. History of This Rulemaking

1. *Overview of the CARB ATCM.* In 2007, CARB issued an ATCM to reduce formaldehyde emissions from hardwood plywood, medium-density fiberboard, and particleboard, products referred to collectively as composite wood products. The CARB ATCM was approved on April 18, 2008, by the California Office of Administrative Law and the first emission standards took effect on January 1, 2009. The CARB ATCM requires manufacturers to meet formaldehyde emission standards for the covered composite wood products that are sold, offered for sale, supplied, or manufactured for use in California. The CARB ATCM also requires that compliant composite wood products be used in finished goods sold, offered for sale, supplied or manufactured for sale in California. The CARB ATCM does not apply to hardwood plywood and particleboard materials when installed in manufactured homes subject to regulations promulgated by the United States Department of Housing and Urban Development (HUD).

The CARB ATCM Phase 1 emission standards for hardwood plywood veneer core, particleboard, and medium-density fiberboard took effect on January 1, 2009. The Phase 1 standard for hardwood plywood composite core took effect on July 1, 2009. The more stringent Phase 2 standards first took effect on January 1, 2010, for hardwood plywood veneer core. Phase 2 standards for medium-density fiberboard and particleboard took effect on January 1, 2011, the Phase 2 standard for thin medium density fiberboard took effect on January 1, 2012, and the Phase 2 standard for hardwood plywood composite core took effect on July 1, 2012.

The CARB ATCM requires manufacturers of the regulated composite wood products to demonstrate compliance with the emission standards by having their emissions tests and quality control processes certified by a TPC. TPCs must be approved by CARB and must follow specified requirements to verify that a manufacturer's production meets applicable formaldehyde emission standards and that the manufacturers follow prescribed quality control practices. Once approved by CARB, manufacturers who use NAF resin systems are exempted from ongoing testing requirements after 3 months of successful testing in cooperation with a TPC. Manufacturers who use ULEF resin systems may be approved by CARB to reduce the frequency of ongoing testing or, if they meet more stringent emissions requirements, may be exempted from ongoing testing requirements for 2 years. The exemption based on ULEF resin is granted after approval by CARB and 6 months of

testing in cooperation with a TPC. Manufacturers who receive exemptions based on NAF or ULEF resin can reapply every 2 years for the exemption from TPC oversight and formaldehyde emissions testing by submitting the chemical formulation of the resin and the results of at least one primary or secondary method test for each product type (based on a panel or set of panels randomly selected and tested by a TPC).

Under the CARB ATCM, manufacturers of composite wood products are required to label their covered products to identify them as meeting either the Phase 1 or Phase 2 emission standards, or as being made with either NAF or ULEF resins. Manufacturers must also include a statement of compliance on the bill of lading or invoice for the composite wood product. The CARB ATCM also imposes recordkeeping requirements on manufacturers to document their compliance with the regulations, and the records must be kept for 2 years.

The CARB ATCM requires distributors, importers, fabricators, and retailers to purchase and sell panels and finished goods that comply with the applicable formaldehyde emission standards. They must take ''reasonable prudent precautions,'' such as communicating with their suppliers, to ensure that the products they purchase are in compliance with the applicable emission standards. Like manufacturers, distributors and importers must also provide a statement of compliance on the composite wood or finished good product bill of lading or invoice. Like manufacturers, distributors, importers, fabricators and retailers must also maintain records documenting compliance for a period of 2 years. Importers and fabricators must label their finished goods as compliant with the applicable standards. The labeling requirement also applies to distributors if the product is in some way modified. One example of a modification that would make a distributor subject to the labeling requirement is if the distributor receives composite wood product panels, cuts them into different shapes or sizes, and applies edge banding to them.

More information on the specific requirements of the CARB ATCM and the relationship between the CARB ATCM and this proposal is presented in Unit III.

2. *TSCA section 21 petition.* On March 24, 2008, 25 organizations and approximately 5,000 individuals petitioned EPA under section 21 of TSCA to use its authority under section 6 of TSCA to adopt the CARB ATCM nationally. The petitioners asked EPA to assess and reduce the risks posed by formaldehyde emitted from hardwood plywood, particleboard, and medium-density fiberboard by exercising its authority under TSCA section 6 to adopt and apply nationwide the CARB formaldehyde emissions regulation for these composite wood products. In addition, petitioners requested EPA to extend this regulation to include composite wood products used in manufactured homes.

On June 27, 2008, EPA issued a **Federal Register** notice explaining the Agency's decision to grant in part and deny in part the petitioners' request (Ref. 11). EPA denied the petitioners' request to immediately pursue a TSCA section 6 rulemaking, stating that the available information at the time was insufficient to support an evaluation of whether formaldehyde emitted from hardwood plywood, particleboard, and medium-density fiberboard presents or will present an unreasonable risk to human health (including cancer and non-cancer endpoints) under TSCA section 6. As discussed in detail in the **Federal Register** notice announcing EPA's response to the petition, EPA's evaluation of the data provided by the petitioners revealed significant information gaps that would have needed to be filled to support an evaluation of whether use of formaldehyde in these products presents or will present an unreasonable risk under TSCA section 6. However, EPA did agree to initiate a proceeding to investigate whether and what type of regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from pressed wood products.

Accordingly, on December 3, 2008, EPA issued an Advance Notice of Proposed Rulemaking (ANPR) that announced EPA's intention to investigate whether and what regulatory or other action might be appropriate to protect against risks posed by formaldehyde emitted from the products covered by the CARB ATCM as well as other pressed wood products. To help inform EPA's decision on the best ways to address risks posed by formaldehyde emissions from pressed wood products, the Agency requested public comments and held 6 half-day public meetings in Research Triangle Park, NC; Portland, OR; Chicago, IL; Dallas, TX; Washington, DC; and New Orleans, LA. These meetings took place January through March of 2009. EPA received and reviewed comments submitted during the ANPR comment period which can be found at *regulations.gov* under docket number EPA–HQ–OPPT–2008–0627.

3. *The Formaldehyde Standards for Composite Wood Products Act.* On July 7, 2010, President Obama signed into law the Formaldehyde Standards for Composite Wood Products Act, or Title VI of TSCA, 15 U.S.C. 2697. The statute establishes formaldehyde emission standards that are identical to the CARB ATCM Phase 2 standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States and directs EPA to issue final implementing regulations by January 1, 2013. Pursuant to TSCA section 3(7), the definition of ''manufacture'' includes import. TSCA Title VI does not give EPA the authority to raise or lower the established emission standards, and EPA must promulgate the implementing regulations in a manner that ensures compliance with the standards. Congress directed EPA to consider a number of elements for inclusion in the implementing regulations, many of which are aspects of the CARB program. These elements include: (a) Labeling, (b) chain of custody requirements, (c) sell-through provisions, (d) ultra low-emitting formaldehyde resins, (e) no-added formaldehyde-based resins, (f) finished goods, (g) third-party testing and certification, (h) auditing and reporting of TPCs, (i) recordkeeping, (j) enforcement, (k) laminated products, and (l) exceptions from the requirements of regulations promulgated for products and components containing *de minimis* amounts of composite wood products.

III. Provisions of This Proposed Rule

A. Scope and Applicability

Pursuant to TSCA Title VI, this proposed regulation would generally cover entities that manufacture (including import), supply, sell, or offer for sale hardwood plywood, medium-density fiberboard, and particleboard in the United States, whether in the form of a panel or incorporated into a finished good.

1. *Hardwood plywood—a. General definition.* The statute defines the term ''hardwood plywood'' as a hardwood or decorative panel that is intended for interior use and composed of an assembly of layers or plies of veneer joined by an adhesive with a lumber, particleboard, medium-density fiberboard (MDF), or hardboard core or any other special core or back material. The statutory definition also references a voluntary consensus standard for hardwood plywood, American National Standards Institute/Hardwood Plywood and Veneer Association HP–1–2009

(ANSI/HPVA HP–1) (Ref. 12). The statutory definition also describes four specific exclusions from the term: Military-specified plywood, curved plywood, structural plywood, and wood-based structural-use panels. The latter two are described by reference to voluntary consensus standards (Refs. 13 and 14). EPA is proposing to incorporate the basic statutory definition of hardwood plywood and the statutory exclusions into the regulation with one modification. Although the statutory definition of hardwood plywood does not specifically mention hardwood plywood made with a veneer core, TSCA section 601(b)(2)(A) establishes a formaldehyde emission standard for hardwood plywood with a veneer core. Therefore, in order to avoid any potential confusion about whether hardwood plywood made with a veneer core is covered by the regulations, EPA proposes to add ''veneer core'' to the list of cores in the definition of hardwood plywood.

As part of this rulemaking, EPA convened a Small Business Advocacy Review (SBAR) Panel. More information on the Panel process, including the final report of the Panel, is discussed in Unit V. The SBAR Panel made several recommendations on definitions associated with the definition of hardwood plywood (Ref. 15). The definition of the term in TSCA Title VI, and as proposed in this rulemaking, only includes products that are ''panels.'' Therefore, only hardwood plywood panels would be required to be tested and certified. The SBAR Panel recommended that EPA reduce uncertainty in the regulated community by clearly defining ''panel'' in a way that is based on the intent of the statute, and considers trade usage and the limitations of current test methods. EPA is proposing to define panel as a flat or raised piece of composite wood. Raised panels (*e.g.*, raised panel cabinet doors) are specifically included in this proposed definition because they can be produced using a similar manufacturing procedure as flat panels, and have a similar potential to emit formaldehyde. EPA requests comment on test method limitations and the extent to which they should affect the definition of the term ''panel.''

EPA is also proposing a definition of ''intended for interior use.'' Under TSCA Title VI, in order for a product to be regulated as hardwood plywood, it must be intended for interior use. The SBAR Panel recommended that EPA develop a clear definition for ''interior use'' in order to eliminate potential confusion in the regulated community. The Panel further recommended that the definition be based on the intent of the statute and with consideration of how the hardwood plywood is likely to be used and stored once incorporated into a finished good. EPA recognizes that the primary purpose of TSCA Title VI is to reduce formaldehyde emissions from composite wood products inside buildings and similar living areas, such as trailers and recreational vehicles. This is in contrast to other regulations, such as the PCWP NESHAP, which is designed to reduce emissions from buildings and other facilities. Therefore, EPA is proposing to define the phrase ''intended for interior use.'' When applied to products, the phrase would mean intended for use or storage inside a building or recreational vehicle, or constructed in such a way that it is not suitable for long-term use in a location exposed to the elements.

b. Laminated products. For the purposes of TSCA Title VI, laminated products are a subset of hardwood plywood. The statute defines laminated product as a product made by affixing a wood veneer to a particleboard, MDF, or veneer-core platform. The statutory definition further provides that laminated products are component parts used in the construction or assembly of a finished good, and that a laminated product is produced by the manufacturer or fabricator of the finished good in which the product is incorporated. Congress granted EPA the authority to modify the statutory definition of laminated product through rulemaking (TSCA section 601(a)(3)(C)(i)(II)). EPA is also directed to use all available and relevant information to determine whether the definition of hardwood plywood should exempt engineered veneer or any laminated product. As discussed in this Unit, EPA is proposing to exempt some, but not all, laminated products from the definition of hardwood plywood. EPA is further proposing to delete from the definition of laminated product the provision that limits applicability to producers of finished goods.

i. CARB ATCM. The CARB ATCM defines laminated product as a finished good or component part of a finished good made by a fabricator in which a laminate or laminates are affixed to a platform. Under this definition, if the platform consists of a composite wood product, the platform must comply with the applicable emission standards. The CARB ATCM defines fabricator as any person who uses composite wood products to make finished goods, including producers of laminated products. Laminate is defined under the CARB ATCM as a veneer or other material affixed as a decorative surface to a platform. Under the CARB ATCM, fabricators or laminated product manufacturers have different requirements compared with requirements for manufacturers of composite wood products. In particular, fabricators do not need to conduct formaldehyde emissions testing or comply with TPC certification requirements; instead, fabricators need to ensure that they are using compliant composite wood products through recordkeeping and labeling.

Under the CARB ATCM, a facility that affixes wood veneers to purchased cores or platforms and then sells the panels (often referred to as a 3-ply mill) is considered a regulated hardwood plywood manufacturer. In addition, a facility that manufactures its own platforms or cores and attaches decorative face and back veneers is a regulated hardwood plywood manufacturer, whether or not the facility sells the resulting hardwood plywood panels or uses those panels to make a finished good. However, CARB considers a facility that affixes veneers to purchased platforms and then uses the panels to make a finished good to be a fabricator or laminated product manufacturer. For example, a cabinet manufacturer who affixes veneers to purchased composite wood platforms and then cuts the panels and assembles them into cabinets would be a fabricator or laminated product manufacturer. In addition, CARB considers a facility that produces architectural plywood or custom panels to be a fabricator or laminated product manufacturer.

ii. *Other background information on laminated products.* The statute includes laminated products within the definition of hardwood plywood unless EPA specifically exempts them through rulemaking. The provision authorizing EPA to exempt any laminated products, TSCA section 601(a)(3)(C), directs EPA to consider all available and relevant information on the topic in a rulemaking under TSCA section 601(d). Section 601(d) requires EPA to promulgate regulations to implement the formaldehyde emission standards of TSCA Title VI in a manner that ensures compliance with the emission standards.

In determining whether to exempt any laminated products, EPA analyzed available information on formaldehyde emissions. A 2003 Composite Panel Association (CPA) technical bulletin presents information on formaldehyde emission reductions resulting from the application of different types of laminates (*e.g.*, vinyl, paper, melamine, polyethylene) and coatings (*e.g.*, acrylate, acrylic, polyurethane) (Ref. 16).

According to the bulletin, documented emission reductions ranged from approximately 50% to 95% compared with unlaminated or uncoated products. However, the technical bulletin does not present emission reduction data for wood veneer laminates. The bulletin notes that wood veneer laminates have been shown to be effective barriers for some volatile organic compounds (VOCs) but have only low to moderate effectiveness as a barrier for formaldehyde, depending on the type of wood veneer used. This may be related to the porosity of the wood veneer, since according to the technical bulletin, the effectiveness of an emission barrier is determined by its basic permeability or porosity, as well as the integrity of the laminate or coating. Some woods are more porous than others. In addition, the technical bulletin points out that wood veneers are frequently applied to particleboard and MDF using urea-formaldehyde adhesives, and these adhesives create the potential for another source of formaldehyde emissions. EPA requests comments, information, and data on the formaldehyde emissions of wood veneered laminated products, particularly relative to the emissions of comparable hardwood plywood products that are not considered laminated products under the CARB ATCM.

As directed by the statute, EPA evaluated other available and relevant information. Some of this information came to EPA through the SBAR Panel process, particularly through the advice and recommendations of the Small Entity Representatives (SERs) to the SBAR Panel. Several SERs submitted oral or written comments on potential provisions for laminated products under TSCA Title VI. One SER argued that laminators add only about 1/10th the resin a platform manufacturer adds (*e.g.,* 1.1 pounds of resin per panel to attach the veneer versus 9.6 total pounds resin per panel) and that laminators use a minor, if not *de minimis,* amount of urea-formaldehyde resin (Ref. 15). Furthermore, this SER stated that laminators using NAF resins would not add at all to the formaldehyde emissions from the product (Ref. 15), but did not provide data supporting this assertion. Multiple SERs noted that if laminators are regulated under TSCA Title VI, they would be paying for their products to be certified twice (Ref. 15). According to these SERs, the composite wood platform manufacturer would pay for certification of the platform and pass that cost along to the laminator who purchases the platform. If the laminator is also regulated under TSCA Title VI, such that the laminator would have to have its product certified again after the veneer is attached, then the laminated product would have two certifications, one for the composite wood platform and one for the final product. These SERs contended that this would put them at a distinct disadvantage with respect to manufacturers who make the entire product in-house and therefore have only one certification for the final product. Another SER commented that if laminated products were regulated as hardwood plywood, it could be costly and burdensome to thousands of small cabinet makers that laminate on a kitchen-by-kitchen basis (Ref. 15). Several SERs suggested that many laminators laminate component parts, not panels. In particular, it was suggested that the ''raised panel doors'' that are used on some cabinets do not meet the definition of a hardwood plywood panel under the ANSI/HPVA HP–1 standard. Several SERs provided suggestions to EPA on which laminators should be exempted by rule; these included laminators not using urea-formaldehyde, laminators using a certified composite wood platform or core, and cabinetmakers producing less than 10 million square feet of laminated product. One SER specifically suggested that EPA exempt from the third-party certification and testing requirements those laminators that certify that they use NAF resins to attach veneers to compliant cores or otherwise include a statement of compliance under penalty of perjury (Ref. 15). Many small manufacturers of laminated products have contended that the testing requirements would be extremely burdensome for them if they are required to test each product type because many of the smaller manufacturers and custom manufacturers produce many different product types, often made to order.

In contrast, the Hardwood Plywood and Veneer Association (HPVA) informed EPA both orally and in written comments submitted in response to EPA's 2008 ANPR that it considers the CARB ATCM provision for fabricators to be a ''giant loophole'' for certain hardwood plywood manufacturers (Ref. 17). HPVA's comments state that ''[t]he emission standards must apply to any and all hardwood plywood irrespective of who manufactures the hardwood plywood. CARB arbitrarily differentiates between a primary hardwood plywood manufacturer and a 'fabricator' who also manufactures hardwood plywood but is exempt from having to certify the hardwood plywood they manufacture'' (Ref. 17). HPVA also contends that the processes that fabricators and manufacturers of hardwood plywood use to lay up the veneers or press the face and back onto a core or platform are identical as are the hardwood plywood panels that they produce.

iii. Proposed exemption for laminated products. Because of the potential for increased formaldehyde emissions from attaching a wood veneer to a platform, and because the final laminated product can be indistinguishable from other products that are considered hardwood plywood, EPA proposes to conclude that there is an insufficient basis to categorically exempt all laminated products from the definition of hardwood plywood based on information currently available to EPA. Accordingly, EPA is proposing to exempt laminated products in which a wood veneer is attached to a compliant and certified platform using a NAF resin. EPA believes the proposed exemption would be consistent with the statutory directive to promulgate regulations in a manner that ensures compliance with the formaldehyde emission standards. If the laminated product is made from a veneer core platform that is certified as meeting the emission standards for hardwood plywood, and a veneer that is attached with a NAF resin, it is very unlikely that the laminated product would exceed the hardwood plywood standards. If the laminated product is made from a particleboard or MDF platform that is certified as meeting the applicable emission standards, and a veneer that is attached with a NAF resin, the final laminated product may not meet the hardwood plywood standard, but it is very unlikely that it would exceed the applicable particleboard or MDF emission standard. EPA interprets its statutory authority with respect to laminated products to give EPA the discretion to exempt laminated products from the definition of hardwood plywood if EPA has reasonable assurance that the exempted products would comply with the emission standards in TSCA section 601(b)(2) for the relevant platform. EPA believes that the proposed exemption is responsive to comments from SERs and other affected entities and that it is a reasonable approach to addressing policy inequities between entities making similar products. EPA also believes that the proposed exemption is protective of public health, because most laminated products made by attaching veneers with NAF resins to compliant platforms would meet the emission standards for hardwood plywood, and all would

comply with the standards for MDF or particleboard. EPA specifically requests comments, information, and data relating to the proposed exemption.

To qualify for this exemption, laminated product producers would be required to maintain records demonstrating that they are using compliant platforms and NAF resins. These records could include records of purchases of NAF resins and of compliant, certified platforms, or, if the resins or platforms are made in-house, records demonstrating that the platforms have been certified by an accredited TPC and records demonstrating the production of NAF resins.

The statute defines the term ''laminated product'' as a product in which a wood veneer is affixed to a particleboard platform, a medium-density fiberboard platform, or a veneer-core platform, and that is a component part used in the construction or assembly of a finished good. The statute further defines a laminated product as being produced by the manufacturer or fabricator of the finished good in which the product is incorporated. EPA is proposing a definition of laminated product that is based on the statutory definition with several modifications. First, EPA is proposing to include not only wood veneers, but also woody grass veneers (*e.g.* bamboo). Woody grass veneers are similar to wood veneers in that they can be porous and therefore not effective barriers to formaldehyde emissions, and they can be affixed to cores and platforms using urea-formaldehyde resins. In addition, including woody grass veneers is consistent with the definition of hardwood plywood in the ANSI/HPVA HP–1 standard, which specifies that ''—the decorative face veneer is made from a hardwood or softwood species or woody grass.'' To ensure greater clarity in the regulatory provisions on this specific issue, EPA is proposing to include a definition of veneer that is based on the ANSI/HPVA HP–1 standard, but also refers to woody grasses and their specific structure. EPA is proposing to define veneer as a thin sheet of wood or woody grass that is rotary cut, sliced, or sawed from a log, bolt, flitch, block, or culm. EPA is also proposing to define woody grass as a plant of the family *Poaceae* (formerly *Gramineae*) with hard lignified tissues or woody parts. EPA requests comment on these definitions and whether they are consistent with industry usage.

EPA's proposed definition would not include a provision stating that a laminated product is produced by the manufacturer or fabricator of the finished good in which the product is incorporated. EPA does not believe that the application of the third-party certification and testing requirements under TSCA Title VI should differ depending on the identity of the product manufacturer. If the applicability limitation is retained, an entity that purchases certified particleboard or MDF panels, cuts and otherwise prepares them for future use as kitchen cabinet doors, attaches a hardwood veneer using a NAF resin, and then sells them to a kitchen cabinet manufacturer would not be considered a laminated product manufacturer and would not qualify for the proposed exemption from the definition of hardwood plywood. The door producer would then have to comply with the third-party certification and testing requirements applicable to hardwood plywood manufacturers. In contrast, still under a scenario where the applicability limitation is retained, if the entity also produced the kitchen cabinets, considered a finished good under the statute, then the entity would be a laminated product manufacturer and would be exempt from the proposed testing and certification requirements. EPA has no reason to believe that the formaldehyde emissions from the cabinet doors would differ depending on who makes the door. It may be that entities that produce the entire finished good in-house are smaller than entities that only produce part of the good, such as cabinet doors, and thus it would be significantly more burdensome for them to have to comply with the certification and testing provisions of this proposal. However, EPA has no evidence that this is the case. In addition, if the emissions from the products are the same, EPA does not currently perceive a reason that justifies additional testing, regardless of the size of the entity making the product. Considering these factors, EPA's proposed definition of laminated product does not include a provision limiting applicability to the manufacturer or fabricator of the finished good in which the product is incorporated. EPA specifically requests comments, information, and data on this aspect of the proposed definition of laminated product.

In addition, to provide additional clarity for the regulated community and the public on the applicability of this regulation, EPA is proposing to define ''component part,'' a term used in the definition of ''laminated product,'' as a part that contains one or more composite wood products and is used in the assembly of finished goods. EPA is also proposing to define ''fabricator'' as an entity that incorporates composite wood products into component parts or into finished goods.

TSCA Title VI also directs EPA to determine whether the definition of hardwood plywood should exempt engineered veneer. EPA interprets the phrase ''assembly of layers or plies of veneer'' in the definition of hardwood plywood to include engineered veneer. EPA understands engineered veneer to be a veneer that is created by dyeing and gluing together veneer leaves in a mold to produce a block. The block is then sliced into leaves of veneer with a designed appearance that is highly repeatable. EPA also understands that engineered veneer is often made using urea-formaldehyde resin, and EPA expects that engineered veneer made with urea-formaldehyde resin will have formaldehyde emission rates that are similar to other composite wood products made with urea-formaldehyde resin. EPA has not identified any information justifying an exemption for engineered veneer, so this proposal does not include such an exemption.

2. *Particleboard and medium-density fiberboard.* The statute defines the term ''particleboard'' as a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin, as determined under the voluntary consensus standard ANSI A208.1–2009 (Ref. 18). The statute further excludes products specified in the ''Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels'' (Ref. 14). EPA is proposing to incorporate the statutory definition of particleboard into the implementing regulations without change.

The statute defines the term ''medium-density fiberboard'' as a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat, as determined under the voluntary consensus standard ANSI A208.2–2009 (Ref. 19). EPA is proposing to incorporate the statutory definition of medium-density fiberboard without change. This proposed rule also includes a separate definition for a related term, ''thin medium-density fiberboard.'' The statute provides for a slightly-higher formaldehyde emission standard for thin medium-density fiberboard, 0.13 ppm, than it does for regular medium-density fiberboard, 0.11 ppm. CARB defines ''thin medium-density fiberboard'' as medium density fiberboard that has a maximum thickness of 8 millimeters (mm). The voluntary consensus standard for medium-density fiberboard, ANSI A208.2–2009 (Medium Density

Fiberboard (MDF) For Interior Applications), defines ''thin medium-density fiberboard'' as medium-density fiberboard with a thickness less than or equal to 8 mm or 0.315 inches (Ref. 19). EPA is proposing to use the same definition as the voluntary consensus standard because it is consistent with CARB and EPA believes that it reflects the common industry understanding of the term.

3. Statutory exemptions. TSCA section 601(c) exempts a number of products from the formaldehyde emission standards for composite wood products. These exemptions include, but are not limited to, hardboard, structural plywood, structural panels, oriented strandboard, glued laminated lumber, prefabricated wood I-joists, finger-jointed lumber, wood packaging, composite wood products used inside new vehicles other than recreational vehicles, windows that contain less than 5% by volume of composite wood products, exterior doors and garage doors that contain less than 3% by volume of composite wood products, and exterior and garage doors that are made with NAF-based or ULEF-based resins. EPA proposes to incorporate these exemptions into the implementing regulations without modification.

The statute exempts any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale. The statute provides two examples: Antiques and secondhand furniture. EPA's interpretation of this exemption is such that once a finished good, such as a piece of furniture, is sold to an end-user, the piece of furniture is no longer subject to TSCA Title VI. Thus, dealers in secondhand furniture would not have any obligations under this proposed rule.

With respect to exterior and garage doors made with NAF-based or ULEF-based resins, these resin types are defined elsewhere in the statute, with reference to both the composition of the resin and the formaldehyde emissions of composite wood products made with the resin. EPA interprets these statutory provisions to mean that, in order to be eligible for this exemption, exterior and garage doors must comply with the emission standards contained in the statutory definitions of NAF-based resins and ULEF-based resins, as measured by the testing described in the statutory definitions. However, EPA is not proposing to require that manufacturers, fabricators, distributors, or retailers of these doors comply with the third-party certification, recordkeeping, or labeling provisions of the TSCA Title VI implementing regulations. EPA requests comments on whether any additional clarifications are needed, or whether manufacturers, fabricators, distributors, or retailers of such doors should be required to comply with any of the provisions of the TSCA Title VI implementing regulations. For example, should manufacturers of these doors be required to maintain records to demonstrate that they are purchasing or manufacturing NAF-based or ULEF-based resins or composite wood products made with NAF-based or ULEF-based resins and that the required testing has been conducted?

While many of the exemptions are defined within the text of the exemption itself, by reference to an applicable voluntary consensus standard or other parameter, hardboard is not so defined. Rather, TSCA Title VI provides that ''the term 'hardboard' has such meaning as the Administrator shall establish, by regulation pursuant to subsection (d).''

Under the CARB ATCM, hardboard is defined as ''a composite panel composed of cellulosic fibers, made by dry or wet forming and hot pressing of a fiber mat with or without resins, that complies with one of the following ANSI standards: 'Basic Hardboard' (ANSI A135.4–2004), 'Prefinished Hardboard Paneling' (ANSI A135.5–2004), or 'Hardboard Siding' (ANSI A135.6- 2006)'' (Refs. 20, 21 and 22). The CARB ATCM further excludes hardboard from the definition of composite wood product. Accordingly, hardboard is not subject to the emission standards in the CARB ATCM.

EPA understands that the definition of hardboard has been recently reevaluated by industry in the context of a pending revision to the voluntary consensus standard for basic hardboard, ANSI A135.4 (Ref. 20). EPA was informed that final approval of revisions to ANSI A135.4, along with revisions to the prefinished hardboard paneling standard, ANSI A135.5 and the hardboard siding standard, ANSI A135.6, would be anticipated by the end of 2011 (Refs. 20, 21 and 22).

The Composite Panel Association, sponsor of the ANSI standard, also informed EPA in its comments to the SBAR Panel that the Association intended to vote on a proposed revision to ANSI A135.4 that included the following definition:

> Hardboard is a panel manufactured primarily from inter-felted lignocellulosic fibers consolidated under heat and pressure in a hot press to a density of 500 kg/m^3 (31 lbs/ft^3) or greater by:
>
> (A) a wet process, or
>
> (B) a dry process that uses:
>
> (a) a phenolic resin, or
>
> (b) a resin system in which there is no added formaldehyde as part of the resin cross-linking structure.
>
> Other materials may be added to improve certain properties, such as stiffness, hardness, finishing properties, resistance to abrasion and moisture, as well as to increase strength, durability, and utility. (Ref. 15)

EPA is concerned that, because hardboard and thin medium-density fiberboard share similar appearances and end uses, a broad definition of hardboard could lead to thin medium-density fiberboard being erroneously categorized as hardboard and exempted from the emission standards. This is contrary to the clear intent of TSCA Title VI which specifically includes an emissions standard for thin medium-density fiberboard. EPA believes that the definition quoted above would address this concern. Accordingly, EPA is proposing to base its definition of hardboard on this definition. EPA's proposal defines hardboard as a panel composed of cellulosic fibers made by dry or wet forming and hot pressing of a fiber mat, either without resins, or with a phenolic resin (*e.g.*, a phenol-formaldehyde resin) or a resin system in which there is no added formaldehyde as part of the resin cross-linking structure, as determined under one of the following ANSI standards: ANSI A135.4 (Basic Hardboard), ANSI A135.5 (Prefinished Hardboard Paneling), or ANSI A135.6 (Hardboard Siding). EPA believes this is consistent with TSCA 601(d) which requires EPA to promulgate regulations in a manner that ensures compliance with the statutory emission standards.

Revisions to the three ANSI hardboard standards have been made and the revised versions are now available (Refs. 23, 24 and 25). EPA requests comment on the proposed hardboard definition and whether any changes should be made to the definition in light of the recent ANSI standard revisions.

In general, EPA believes that composite wood products made with phenol-formaldehyde resins have lower formaldehyde emission rates than do products made with urea-formaldehyde resins. In fact, phenol-formaldehyde resin is mentioned in TSCA Title VI as a resin that may qualify for ULEF resin status. EPA has some data on formaldehyde emissions from hardboard made with phenol-formaldehyde resins (Refs. 26 and 27). The data appear to support the idea that products made with phenol formaldehyde resins have lower formaldehyde emission rates. EPA requests comment, information, and data on hardboard made with phenol-

formaldehyde resins and whether such products should be included within the definition of the term hardboard, thereby exempting such products from the statutory emission standards.

4. Other definitions. EPA is also proposing to define a number of other terms used in the proposed regulations to ensure that the meaning and applicability of the regulatory requirements are clear. These terms include ''distributor,'' ''importer,'' ''purchaser,'' and ''retailer.'' EPA is proposing to define ''distributor'' as an entity that supplies composite wood products, component parts, or finished goods to others. The term ''importer'' would be defined, consistent with the definition of the term ''manufacturer'' in TSCA section 3 and the definition of ''importer'' in 40 CFR 710.3, as an entity that imports composite wood products, component parts that contain composite wood products, or finished goods that contain composite wood products into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States). The term includes the entity primarily liable for the payment of any duties on the products, or an authorized agent acting on the entity's behalf. The term ''purchaser'' would be defined as an entity that acquires composite wood products in exchange for money or its equivalent. Finally, ''retailer'' would be defined as an entity that generally sells smaller quantities of composite wood products directly to consumers. EPA requests comment on the utility of these definitions, whether these definitions comport with typical industry usage, and whether any other general terms should be defined in EPA's regulation.

B. Formaldehyde Emission Standards

TSCA Title VI establishes formaldehyde emission standards for composite wood products (hardwood plywood, particleboard, and medium-density fiberboard) so that beginning July 1, 2012, or 180 days after the final implementing regulations are promulgated, whichever is later, the standards mirror the CARB ATCM Phase 2 emission levels. The statute also provides for emission standards that would apply after the effective date of the implementing regulations but before July 2011, or before July 2012. However, the July 2012 date has already passed, so these interim standards will not take effect.

When the later TSCA Title VI emission standards take effect 180 days after implementing regulations are promulgated, the emission limit for hardwood plywood will be 0.05 parts per million (ppm) formaldehyde. For medium-density fiberboard, the limit will be 0.11 ppm. For thin medium-density fiberboard, the limit will be 0.13 ppm. For particleboard, the limit will be 0.09 ppm. The statute does not give EPA authority to modify these emission standards.

Because each of the two statutory emission standards for hardwood plywood is 0.05 ppm for any final rule taking effect after July 1, 2012, the proposed regulation merely states that the emission standard for hardwood plywood is 0.05 ppm. With this language, EPA intends that any product that meets the definition of hardwood plywood is subject to the hardwood plywood emission limit, regardless of the makeup of its core. EPA notes that the statutory definition of hardwood plywood includes a number of different types of cores that may not appear to expressly fit under the statutory emission standards for veneer core and composite core. Yet, EPA does not believe that Congress intended to exempt hardwood plywood made with a lumber core, for example, from the emission standards of TSCA Title VI in part because the statute says that ''the emission standards . . . shall apply to hardwood plywood.'' Therefore, EPA proposes an emission standard for hardwood plywood of 0.05 ppm, given that the two statutory emission standards for hardwood plywood are ultimately identical. EPA requests comment on whether and how this revision would affect entities making laminated products with lumber cores or any other special core material.

C. Product Certification in General

Under this proposal, composite wood products sold, supplied, offered for sale, or manufactured (including imported) within the United States would have to be certified, unless they are specifically exempted by TSCA Title VI or excluded by the proposed rule. In general, this means that the formaldehyde emission levels from the composite wood products would have been demonstrated to be below the emission standards in TSCA Title VI. This demonstration would be through a combination of testing performed by an accredited third-party certifier (TPC), and repeated on a quarterly basis, and more frequent quality control testing performed by the maker of the composite wood product, an accredited TPC, or a contract laboratory. Specific proposed requirements for this testing are discussed in Unit III.D.

EPA is proposing to require makers of composite wood product panels to apply to an accredited TPC for product certification, and to design and establish a quality control program, including testing, that is both approved by the accredited TPC and specific to the panel producer. For each product type to be certified, the panel producer would have to have at least one quarterly test result and 3 months of quality control testing data that demonstrate that the formaldehyde emission rates of the product are below the emission standards established by TSCA Title VI and discussed in greater detail in Unit III.C. Uncertified product produced after the manufactured-by date, discussed in Unit III.I., would not be permitted to be sold, supplied, or offered for sale in the United States. Under this proposal, products currently certified by approved TPCs under the CARB ATCM would be considered certified for purposes of TSCA Title VI. However, in the TPC proposal, EPA proposed to allow CARB-approved TPCs 1 year to become accredited under TSCA Title VI. If that provision is finalized as proposed, a panel producer whose TPC does not become accredited under TSCA Title VI in a timely manner would have to apply to an accredited TPC to be able to continue to make certified product after the manufactured-by date. EPA requests comment on this approach for CARB-certified products and whether a different approach or additional requirements should be imposed for these products.

D. Formaldehyde Emission Testing Requirements

TSCA Title VI requires that composite wood products be measured for compliance with the statutory emission standards by quarterly tests pursuant to test methods ASTM E–1333–96 or ASTM D–6007–02 (Refs. 28 and 29). TSCA Title VI also requires that quality control tests be conducted pursuant to ASTM D–6007–02, ASTM D–5582, or such other test methods as may be established by EPA through rulemaking (Refs. 29 and 30). Under the statute, test results conducted using any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means that EPA must establish through rulemaking. Under TSCA Title VI, EPA must also establish, through rulemaking, the number and frequency of tests required to demonstrate compliance with the emission standards. This unit of the preamble discusses EPA's proposed rulemaking on each of these statutory elements.

1. *CARB ATCM formaldehyde testing requirements.* The CARB ATCM requires that compliance with the emission standards for hardwood plywood, medium-density fiberboard,

and particleboard be demonstrated by conducting emission tests, verified by TPCs using ASTM E–1333–96 (2002) (large chamber test method), referred to as the primary test method, or ASTM D–6007–02 (small chamber test method), referred to as the secondary test method. If ASTM D–6007–02 is used, equivalence between ASTM D–6007–02 and ASTM E–1333–96 (2002) must be established at least once each year by the TPC. The CARB ATCM specifies minimum requirements for demonstrating equivalence in section 93120.9(a)(2)(B) of the ATCM; demonstration of equivalence for the purposes of this proposal is discussed in Unit III.D.3. of this document. The CARB ATCM allows alternate secondary test methods to be used if they are demonstrated to provide equivalent results to those obtained using ASTM E–1333–96 (2002) (following the requirements in section 93120.9(a)(2)(B)) and are approved in writing by the CARB Executive Officer, following submission of an application for approval. The CARB ATCM also requires quality control testing using a test method that is correlated to the primary, secondary, or alternate secondary test method. The CARB ATCM also provides that all panels must be tested in an unfinished condition, prior to the application of a finishing or topcoat.

The CARB ATCM requires that an initial qualifying primary or secondary method test be conducted on each product type, from each production line of each facility; however, it also allows a manufacturer to group two or more product types together if they have ''similar emission characteristics.'' The emissions from each product type from each production line cannot exceed the applicable standard. If an initial qualification test exceeds the emission standard, certification lapses on all of the products represented by that product group.

Under the CARB ATCM, after the initial qualifying test, primary or secondary method tests must be conducted at least quarterly. For particleboard and medium-density fiberboard, these quarterly tests must be conducted on randomly selected samples of each product type (unless approved NAF or ULEF resins are used). Again, products can be grouped for testing, but if a quarterly test exceeds the emission standard, certification lapses on all of the products represented by that grouping. For hardwood plywood, a primary or secondary method test is required at least quarterly (unless approved NAF or ULEF resins are used) on randomly selected samples of the hardwood plywood product determined by the TPC to have the highest potential to emit formaldehyde.

The CARB ATCM also requires ''small scale'' quality control tests that must be conducted at the composite wood product manufacturing facility, a contract laboratory, or a laboratory operated by an approved TPC. These tests must be conducted on all lots of each product type being certified unless prior notice is given, and tests must be reported to the TPC. The CARB ATCM lists the following as approved small-scale test methods: ASTM D 5582–00 (desiccator), ASTM D–6007–02 (small chamber), and alternative tests that can be shown to correlate to the primary or secondary method tests and are approved by the CARB Executive Officer. CARB has approved the following for use as alternative small-scale test methods: EN 717–2 (gas analysis), DMC (dynamic micro chamber), EN 120 (perforator method), and JIS A 1460 (24-hr desiccator). CARB does not expressly permit the grouping of product types for quality control testing. However, CARB does provide TPCs and manufacturers with some flexibility in interpreting the term ''product type'' to allow similar products, particularly those made with the same resin system, to be considered to belong to the same product type for quality control testing purposes (Ref. 2).

a. *Basic testing frequency requirements for particleboard and medium-density fiberboard under the CARB ATCM.* The CARB ATCM requires manufacturers of particleboard and medium-density fiberboard (that do not qualify for NAF or ULEF TPC exemption or reduced testing) to conduct routine small-scale quality control tests at least once per shift (8 or 12 hours, plus or minus 1 hour of production) for each production line for each product type. Quality assurance and quality control requirements for the purposes of this proposal are discussed in Unit III.E. Quality control tests must also be conducted whenever a product type production ends, even if 8 hours of production has not been reached, or whenever one of the following occurs: (1) The resin formulation is changed so that the formaldehyde to urea ratio is increased; (2) an increase by more than 10% in the amount of formaldehyde resin used, by square foot or by panel; (3) a decrease in the designated press time by more than 20%; or (4) the Quality Control Manager or Quality Control Employee has reason to believe that the panel being produced may not meet the requirements of the applicable standards. The CARB ATCM allows for reduced testing for particleboard and medium-density fiberboard when the facility demonstrates consistent operations and low variability of test values to the satisfaction of the TPC based on criteria established by the TPC. Testing frequency still must occur at least once per 48-hour production period.

b. *Basic testing frequency requirements for hardwood plywood under the CARB ATCM.* The CARB ATCM requires manufacturers of hardwood plywood (that do not qualify for NAF or ULEF TPC exemption or reduced testing) to conduct routine small-scale quality control tests on each product type and product line based on production at the facility with the following testing frequency: At least one test per week per product type and product line if the weekly hardwood plywood production is less than 200,000 square feet; at least two tests per week per product type and product line if the weekly hardwood plywood production is between 200,000 and 400,000 square feet; and at least four times per week per product type and product line if the weekly hardwood plywood production is greater than 400,000 square feet. The CARB ATCM also requires that quality control samples must be analyzed within a period of time specified in the manufacturer's quality control manual to avoid distribution of non-complying lots.

2. *Proposed general testing requirements.* As an initial matter, EPA is proposing to define several terms that would be used in the testing requirements. EPA is proposing to use the term ''panel producer'' to refer to those facilities that actually make composite wood products or laminated products, excluding importers that do not also make the products. Because TSCA section 3 defines the term ''manufacture'' to include import, EPA believes that using another term would clarify the regulation by referring to facilities that actually make the products regulated under TSCA Title VI for the purposes of the testing, certification, and recordkeeping requirements. Under this proposal, some laminated products would not be hardwood plywood, and the act of making those products would, therefore, not be subject to the testing and certification requirements. However, EPA believes that there are some laminated products that cannot be made in such a way as to render them exempt from the testing and certification requirements. EPA is proposing to define ''panel producer'' as a manufacturing plant or other facility that manufactures (excluding facilities

that solely import products) composite wood products on the premises. EPA is also proposing to incorporate within this definition a statement that this includes laminated products not excluded from the definition of hardwood plywood. EPA requests comment on whether the term ''panel producer'' should apply separately to each specific facility owned or operated by an entity that produces composite wood products for the purposes of the testing, certification and recordkeeping requirements, or whether the term ''panel producer'' should apply to the entire business entity that produces the composite wood products. For example, should panel producers be required to have a quality control manual for each separate facility?

EPA is proposing to incorporate the CARB definition of the term ''product type'' with some modifications. The term ''manufacturer'' in the CARB definition would be replaced by the term ''panel producer.'' Under this proposal, ''product type'' means a type of composite wood product that differs from another made by the same panel producer, based on wood type, composition, thickness, number of plies (if hardwood plywood), or resin used. In order to make it clear that TPCs and manufacturers have the flexibility to treat similar products similarly, the proposed definition includes a statement that products with similar emissions made with the same resin systems may be considered to be the same product type.

EPA is also proposing to define ''lot'' to mean a particular lot or batch of a product type made during a single production run. EPA believes that this is common industry usage of the term. Likewise, EPA is proposing to define ''production line'' as a set of operations and physical industrial or mechanical equipment used to produce a composite wood product. EPA requests comment on the utility of these definitions, and whether other terms should also be defined, such as ''production run.''

In addition, entities conducting formaldehyde testing would be required to use the procedures, such as testing conditions and loading ratios, specified in the method being used. As required by CARB, EPA is also proposing to require that all equipment used in formaldehyde testing be calibrated in accordance with the equipment manufacturer's instructions. EPA believes that this requirement is important for ensuring that the equipment is working properly and that accurate results are obtained.

a. *Quarterly testing requirements.* EPA is proposing to require that accredited TPCs conduct the quarterly tests required by TSCA Title VI. The statute requires these tests to be performed using ASTM E–1333–96 (2002) or, upon a showing of equivalence as discussed in this unit, ASTM D–6007–02 (Refs. 28 and 29). In the TPC proposal, using the authority provided by TSCA section 601(d)(5), EPA proposed to incorporate ASTM E–1333–10, the most recent version of this method, into the testing requirements, rather than the 2002 version (Refs. 1 and 31). EPA will review the comments received on the TPC proposal and determine whether to incorporate ASTM E–1333–10 into the testing requirements in place of ASTM E–1333–96 (2002) before issuing the final rule.

EPA is proposing to require that the TPC laboratories test randomly chosen samples from a single lot that is ready for shipment by the panel producer. Neither the top nor bottom composite wood product of a bundle would be selected because the emissions from these products may not be representative of the bundle. For particleboard and medium-density fiberboard, the proposed rule would require quarterly tests to be conducted on randomly selected samples of each product type (unless they qualify for reduced testing based on ULEF or NAF resin). For hardwood plywood, the proposed rule would require quarterly tests to be conducted on randomly selected samples of the hardwood plywood product determined by the TPC to have the highest potential to emit formaldehyde (unless they qualify for reduced testing based on ULEF or NAF resins).

As under the CARB ATCM, this proposal would allow product types to be grouped for quarterly testing. EPA is proposing to allow accredited TPCs to approve the grouping of products with similar characteristics, particularly those characteristics that are most likely to affect emissions, such as the type of wood or the resin system(s) used to make the composite wood product. For hardwood plywood, other factors that are likely to influence formaldehyde emissions are core type, press time, veneer type (*i.e.,* species), and whether or not the core is certified. EPA requests comment on the appropriate criteria for grouping product types for quality control testing, given the statutory directive to promulgate implementing regulations in a manner that ensures compliance with the emission standards. For example, one possibility could be to allow panel producers and accredited TPCs to identify the products that are likely to have the highest emissions and to test those products.

Samples selected for quarterly testing would have to be dead-stacked (*i.e.,* closely stacked) or air tight wrapped between the time of sample selection and the start of test conditioning (as specified in ASTM E–1333–10 or, as appropriate, ASTM D–6007–02). Samples would have to be labeled as such, signed by the TPC, bundled air tight, wrapped in polyethylene, protected by cover sheets, and promptly shipped to the laboratory testing facility. EPA is proposing to require conditioning to begin as soon as possible, but no more than 30 days after production. This requirement, also included in the CARB ATCM, is designed to prevent panel producers from holding composite wood products to allow them to off-gas. TPCs must notify panel producers in writing within 24 hours of a failed quarterly test result. Lots represented by a failed quarterly test result, would have to be handled as non-complying lots in accordance with the proposed requirements discussed in Unit III.D.4. If lots were grouped for quarterly testing, all lots in the group represented by a failed quarterly test result would have to be treated as non-complying lots. EPA requests comment on all aspects of these sampling requirements, including whether the 30-day requirement is appropriate.

b. *Quality control test methods.* EPA is proposing that in addition to ASTM D–6007–02 and ASTM D–5582, the following methods would also be allowed for quality control testing (with a showing of equivalence as described in this Unit): EN 717–2 (gas analysis method) (Ref. 32), DMC (Dynamic Micro Chamber) (Ref. 33), EN 120 (Perforator Method) (Ref. 34), and JIS A 1460 (24-hr Desiccator Method) (Ref. 35). EPA believes that these are appropriate methods for quality control testing based on CARB's evaluation and approval of these methods as alternative small-scale test methods, and test results using these methods have been demonstrated to have adequate correlations with test results using ASTM E–1333–10. EPA proposes to establish these additional methods pursuant to section 601(b)(3)(A)(ii) for quality control testing; as a general matter, EPA does not endorse any particular method over others. Other methods may also be appropriate for quality control testing, such as EN 717–1 (chamber method), EN 717–3 (flask method), ISO/DIS 12460–1(1-cubic-meter chamber method), ISO/DIS 12460–2 (small-scale chamber method), ISO/DIS 12460–3 (gas analysis method), or ISO/DIS 12460–4 (desiccator method). EPA requests comment on

whether these methods should also be allowed for quality control testing.

c. *Proposed quality control testing frequency for particleboard and medium-density fiberboard that do not qualify for reduced testing based on ULEF or NAF resins.* EPA is proposing to require the same quality control testing frequency for particleboard and medium-density fiberboard as is required under the CARB ATCM. This proposal would require quality control tests at least once per shift (8 or 12 hours, plus or minus one hour of production) for each production line for each product type. Quality control tests would also be conducted whenever a product type production ends, even if 8 hours of production has not been reached, or whenever (1) there is a significant change to the resin formulation, *e.g.,* an increase in the formaldehyde-to-urea ratio; (2) there is an increase by more than 10% in the amount of formaldehyde resin used; (3) there is a decrease in the designated press time by more than 20%; or (4) the quality control manager or quality control employee has reason to believe that the panel being produced may not meet the requirements of the applicable standards.

Also consistent with the CARB ATCM, EPA is not proposing to allow the grouping of products for quality control testing purposes. However, EPA is proposing to allow accredited TPCs and panel producers some flexibility in determining which products constitute a product type. CARB's guidance to its TPCs on defining product type include mention of those characteristics most likely to affect product emissions, such as type of wood or the resin system(s) used to make the composite wood product. Again, for hardwood plywood, these factors include core type, press time, veneer type (*i.e.,* species), and whether or not the core is certified.

EPA is proposing to allow reduced quality control testing requirements similar to CARB's for particleboard and medium-density fiberboard when the panel producer demonstrates consistent operations and low variability of test values. Under the EPA proposal, the panel producer would be required to request approval for reduced quality control testing from an accredited TPC. If approved, quality control testing would still have to occur at least once per 48-hour production period. Unlike CARB, EPA is proposing to establish criteria for demonstrating consistency and low variability. Under EPA's proposed requirements, which are based on a Composite Panel Association voluntary program, a 30 panel running average would be maintained (Ref. 36). If the 30 panel running average remains two standard deviations below the designated Quality Control Limit (QCL) for the previous 60 consecutive days or more, testing frequency could be reduced to one test per 24-hour production period. When the 30 panel running average remains three standard deviations below the QCL for the previous 60 days or more, testing frequency could be reduced to once every 48-hour production period. The QCL would be the quality control test value that is the correlative equivalent to the emission standard based on the ASTM E–1333–10 method. The QCL is established by using a simple linear regression where the dependent variables (Y-axis) are the quality control test results and the independent variables (X-axis) are the ASTM E–1333–10 test results. More information on the establishment of the QCL can be found in the TPC proposal (Ref. 1). An accredited TPC would be required to approve a request for reduced quality control testing as long as the data submitted by the panel producer demonstrate compliance with the criteria and the TPC does not otherwise have reason to believe that the data are inaccurate or that the panel producer's production processes are inadequate to ensure continued compliance with the emission standards. EPA will provide a list of panel producers and products types that are allowed reduced testing under this provision on the EPA Web site. EPA requests comment on whether there should be a finite time period for reduced testing, after which a new application and demonstration would be required, or whether reduced testing should continue to be allowed as long as the quality control test data demonstrate continued eligibility for reduced testing.

As in the CARB ATCM, EPA is proposing that all panels would be tested in an unfinished condition, prior to the application of a finishing or topcoat. EPA believes that the proposed testing frequency is sufficient to ensure compliance with the emission standards, but is not overly burdensome. EPA believes that most U.S. producers of particleboard and medium-density fiberboard have been complying with the testing requirements under the CARB ATCM and thus, the rule, if finalized as proposed, would not impose an additional burden on these producers.

d. *Proposed quality control testing frequency for hardwood plywood that does not qualify for reduced testing based on ULEF or NAF resins.* EPA is generally proposing to require the same frequency of testing for hardwood plywood that CARB requires. EPA believes that this testing frequency is adequate to ensure compliance with the TSCA Title VI emission standards and consistency with CARB makes it easier for panel producers already complying with CARB to comply with these proposed requirements. Similarly, if a quality control test exceeds the applicable emission standards for that product, all lots of products represented by that test result would be considered to be non-complying lots and would have to be treated and retested in accordance with the procedures discussed in Unit III.D.4.

EPA's proposed quality control testing frequency requirements for hardwood plywood are generally similar to CARB and are likewise based on production volume. Under this proposal, hardwood plywood panel producers would be required to conduct routine quality control tests on each production line of each product type based on total hardwood plywood production by the panel producer with the following testing frequency: At least one test per week per production line of each product type if the weekly hardwood plywood production is between 100,000 and 200,000 square feet; at least two tests per week per production line of each product type if the weekly hardwood plywood production is between 200,000 and 400,000 square feet; and at least four times per week per production line of each product type if the weekly hardwood plywood production is greater than 400,000 square feet. EPA believes that, for some small specialty panel producers, even one quality control test per week would be excessive. Very small custom manufacturers may make significantly less than 100,000 square feet of product per week per product type. In order to address the inequity of requiring small manufacturers to conduct many more tests than required of large manufacturers for the same production volume, if weekly production of hardwood plywood at the panel producer is less than 100,000 square feet, EPA is proposing to require one quality control test per 100,000 square feet of each lot produced of each product type produced. If the panel producer never produces 100,000 square feet of a particular product type at one time, EPA is proposing to require just one quality control test of that product type per production run or lot produced.

EPA believes that the proposed testing frequency for hardwood plywood is sufficient to ensure compliance with the emission standards but is not overly burdensome. EPA believes that most

U.S. hardwood plywood panel producers as well as many foreign producers have been complying with the CARB ATCM testing requirements and thus, the rule, if finalized as proposed, would not impose an additional burden on these producers. For laminated product producers that do not have to test under the CARB ATCM requirements, this proposed testing would be a new requirement; however, because the requirements are based on production volume, EPA believes that they would not be overly burdensome. EPA requests comment on whether these proposed requirements are sufficient to ensure compliance with the standards.

Under the CARB ATCM, only particleboard and medium-density fiberboard producers are required to conduct quality control testing when product type production ends, changes are made to the resin formulation or the amount of resin used, or there is a significant decrease in press time. There is no similar provision applicable to hardwood plywood. EPA's proposal is consistent with the CARB ATCM, but EPA requests comment on whether quality control testing should be required for hardwood plywood production in these situations, or in any other situations, such as when the quality control manager or quality control employee has reason to believe that the panels in production may not meet the emission standard. EPA is also requesting comment on whether the proposed reduced quality control testing for consistent particleboard and medium-density fiberboard manufacturing operations should also be applicable to hardwood plywood.

3. *Means of showing test method equivalence.* EPA is proposing that equivalence between ASTM E–1333–10 and any other test method used would be demonstrated by the TPC for each laboratory used by the TPC or panel producer that is using the alternative method at least once each year or whenever there is a significant change in equipment, procedures, or the qualifications of testing personnel.

The CARB ATCM includes a specific method for demonstrating equivalence between ASTM E–1333–96 (2002) and ASTM D–6007–02. The CARB ATCM method requires at least 10 comparison sample sets, which compare the results of the 2 methods, for an equivalence demonstration. The 10 comparison sample sets consist of testing a minimum of 5 sample sets in at least 2 out of 3 specified ranges of formaldehyde concentrations. For the ASTM E–1333–96 (2002) method, each comparison sample consists of the result of simultaneously testing an appropriate number of panels (factoring in the loading rate) from the same batch of panels tested by the ASTM D–6007–02 method. For the ASTM D–6007 method, each comparison sample consists of testing 9 specimens representing evenly distributed portions of an entire panel. The nine specimens are tested in groups of 3 specimens (factoring in loading rate), resulting in 3 test results, which are averaged to represent one data point for the panel, and matched to their respective ASTM E–1333–96 (2002) comparison sample result. CARB requires that equivalence be established between the ASTM E–1333–96 (2002) and ASTM D–6007–02 methods to represent the range in emissions based on the emission standards for the composite wood products being tested.

EPA is proposing the same general methodology as is required under the CARB ATCM. However, because the CARB phase 2 emission standards will be in effect by the time EPA issues a final rule, EPA believes that it will be very difficult, if not impossible, to find products with emissions in the intermediate and upper ranges specified by the CARB equivalency demonstration requirements. EPA's proposed procedure, therefore, does not include the requirement of testing different formaldehyde concentration ranges. Instead, EPA is proposing that equivalence be demonstrated in a range of formaldehyde concentrations that is representative of the emissions of the products that the TPC certifies. Therefore, EPA is proposing to require a minimum of 5 comparison sample sets rather than 10. In addition, EPA is proposing to allow for more flexibility in sampling and not require testing of 9 specimens representing evenly distributed portions of an entire panel. EPA believes that for some types of panels, within panel variability is such that fewer specimens can be tested, but for other panels testing of at least 9 specimens would be needed. EPA believes that TPCs and panel producers are best able to determine the sampling and testing needed to account for within panel variability for a specific product type and is therefore proposing to allow for flexibility in the distribution and number of specimens to require for the small chamber test comparison sample set.

EPA is proposing the following method for demonstrating equivalence between ASTM E–1333–10 and ASTM D–6007–02: An equivalence demonstration would include at least five comparison sample sets (*i.e.,* five large chamber sample sets and five small chamber sample sets), which compare the results of the two methods. For the ASTM E–1333–10 method, each comparison sample would consist of the result of simultaneously testing an appropriate number of panels, using the applicable loading ratios from the method, from the same batch of panels tested by the ASTM D–6007–02 method. For the ASTM D6007 method, each comparison sample would consist of testing specimens representing portions of panels tested in the ASTM E–1333–10 and matched to their respective ASTM E–1333–10 method comparison sample result. The arithmetic mean, $\bar{x}$ and standard deviation, *S,* of the difference of all comparison sets would be calculated as follows:

$$\overline{X} = \sum_{i=1}^{n} D_i / n \qquad S = \sqrt{\sum_{i=1}^{n} (D_i - \overline{X})^2 / (n-1)}$$

Where $\bar{x}$ = arithmetic mean;
S = standard deviation;
n = number of sets;
Di = difference between the ASTM E–1333–10 and the ASTM D–6007–02 method values for the ith set; and
i ranges from 1 to n.

EPA is proposing that ASTM D–6007–02 method would be considered equivalent to the ASTM E–1333–10 method if the following condition were met:

$$\left|\overline{X}\right| + 0.88S \leq C$$

Where C is equal to 0.026 (Ref. 37).

EPA believes that the proposed means for showing equivalence between ASTM

E–1333–10 and ASTM D–6007–02 is a reasonable method of showing equivalence. EPA independently analyzed this proposed method for demonstrating equivalence by evaluating CARB's Supplemental Analysis Supporting the Test for Demonstrating Equivalence between Primary and Secondary Methods for Measuring Formaldehyde Emissions from Composite Wood Products (Ref. 37) and by comparing CARB's method with the two-one sided t-test (TOST). EPA is proposing to use the CARB method because it appears to be satisfactory for the desired purpose, it is simpler than the TOST method, it is not overly burdensome, and industry is already using it. EPA requests comment on whether the proposed means of showing equivalence is appropriate. EPA specifically requests comment on whether 5 comparison sample sets are sufficient or whether 10 should be required. In addition, EPA requests comment on whether testing products in two different ranges of formaldehyde concentrations should be required, as is required under the CARB ATCM, and what ranges would be appropriate (*e.g.*, lower range less than 0.05 ppm and upper range 0.05 ppm–0.13 ppm as measured by ASTM E–1333–10). EPA also requests comment on whether sampling should be left to the TPCs and manufacturers, or whether EPA should require testing of nine specimens (representing evenly distributed portions of an entire panel) tested in groups of three specimens, resulting in three test results, which would be averaged to represent one comparison sample for the ASTM D–6007–02 method, or whether some other sampling protocol should be required. EPA also requests comment on whether the proposed criteria for demonstrating equivalence are appropriate, or whether other criteria would be more appropriate, such as establishing equivalence criteria based on the TOST method.

EPA is proposing to require that equivalence between ASTM E–1333–10 and any formaldehyde quality control test method used other than ASTM D–6007–02 would be demonstrated by establishing a linear regression and an acceptable correlation, as defined by the correlation coefficient, or ''r'' value. Although correlation will not show that the test methods give equivalent results, it will demonstrate whether a quality control test method can be used to adequately estimate the corresponding ASTM E–1333–10 test result; therefore, if there is an acceptable correlation, the quality control test method can be used to estimate whether the product meets the emission standards. The correlation would be based on a minimum sample size of five data pairs and a simple linear regression where the dependent variable (Y-axis) is the quality control test value and the independent variable (X-axis) is the ASTM E–1333–10 test value. EPA is proposing the following minimum acceptable correlation coefficients (''r'' values) for the correlation:

MINIMUM CORRELATION FOR EQUIVALENCY CORRELATIONS

Degrees of Freedom (n-2)	''r'' Value
3	0.878
4	0.811
5	0.754
6	0.707
7	0.666
8	0.632
9	0.602
10 or more	0.576

The number of data pairs is represented by the letter ''n.'' For example, correlations based on five data pairs have 3-degrees of freedom, and the correlation coefficient would need to be 0.878 or greater. These values are the same as those recommended by CARB in its Certification Guideline No. CWP–10–001 (Ref. 38). EPA requests comment, information, and data on these values and whether they adequately account for the uncertainties (*e.g.,* sample preparation, emission testing) and thus, are appropriate for this purpose.

Because of the low emissions required for regulated composite wood products, it may be necessary to include more than five data pairs and/or a range of products (with a suitable range in emissions, *e.g.,* 0–0.1 ppm) in the testing to achieve acceptable correlation coefficients. In addition to the requirement of establishing a new correlation annually or whenever there is a significant change in equipment, procedures, or the qualifications of testing personnel, EPA is proposing that a new correlation would need to be established by the TPC for the panel producer whenever a TPC's quarterly test results compared with the panel producer's quality control test results do not fit the previously established correlation. In addition, if a panel producer fails two quarterly tests in a row, a new correlation curve would have to be established.

EPA requests comment on the proposed correlation method for demonstrating equivalence and whether the proposed acceptable correlation coefficients are reasonable. EPA also requests comment on whether the term ''equivalency'' needs to be defined more clearly and whether additional statistical parameters are needed to make a determination of ''equivalency'' for the quality control methods.

4. *Non-complying lots.* EPA is proposing to require producers of non-complying lots of composite wood products to treat such lots in a manner similar to the CARB ATCM requirements. A non-complying lot would be any lot or batch represented by a quarterly or quality control test value that exceeds the applicable emission standard for the particular composite wood product. In the case of a quarterly test value, only the particular lot from which the sample was taken would be considered a non-complying lot; lots produced after the previous quarterly test but before the lot from which the sample was taken would still be considered certified product. However, future production of product type(s) represented by a failed quarterly test would not be considered certified and would have to be treated as a non-complying lot until the product type(s) are re-qualified through a successful quarterly test.

TPCs would be required to notify EPA and the panel producer of any quarterly tests that exceed the applicable standard within 24 hours of obtaining the test result. Panel producers would be required to segregate the non-complying lot from other product. Products in non-complying lots could only be sold, supplied, or offered for sale in the United States if a test value that meets the applicable standard is obtained after the products are treated with scavengers, to absorb excess formaldehyde, or treated through another process that reduces formaldehyde emissions, *e.g.* aging. EPA is proposing to define the term ''scavenger'' as a chemical or chemicals that can be applied to resins or composite wood products to reduce the amount of formaldehyde that can be emitted from composite wood products. EPA requests comment on whether this definition is appropriate. EPA also requests comment on processes other than aging that could be used to reduce formaldehyde emissions from non-complying lots. Under this proposal, panel producers would be required to keep records of the disposition of non-complying lots, including the specific treatment used and the subsequent test results demonstrating compliance.

Non-complying lots, by definition, do not meet the applicable emission standards and may not be sold, supplied, or offered for sale in the United States. In order to ensure that

this does not occur, EPA is proposing to require that panel producers retain lots of composite wood products from which quality control or quarterly samples have been selected until the samples have been tested and the results received. With respect to quarterly samples, this includes lots that are grouped for purposes of quarterly testing. EPA believes that this approach may be less burdensome overall and offer better protection to importers, distributors, wholesalers, retailers, and consumers than an approach relying on after-the-fact enforcement actions and customer notifications.

E. Quality Assurance and Quality Control Requirements for Composite Wood Product Panel Producers

Composite wood product panel producers are responsible for ensuring that their products meet the emission standards of TSCA Title VI. Quality assurance and quality control requirements for panel producers are necessary to ensure that all of their products comply with the applicable standards, including those that are not actually tested. EPA believes that the proposed quality assurance and quality control requirements would help ensure proper handling of test samples, test equipment, and quality control testing. EPA is generally proposing quality assurance requirements that are identical to the requirements under the CARB ATCM. As discussed in more detail in Unit III.F., these quality assurance and quality control requirements do not apply to any product type made with a NAF-based resin or ULEF resin for which the panel producer is eligible for an exemption from the third party certification requirements, except for the purpose of applying for re-approval for the exemption.

Under this proposal, each panel producer would be required to have a written quality control manual containing at a minimum: (1) Organizational structure of the quality control department; (2) sampling procedures; (3) method of handling samples, including a specific maximum time period for analyzing quality control samples; (4) frequency of quality control testing; (5) procedures to identify changes in formaldehyde emissions resulting from production changes (*e.g.*, increase in the percentage of resin, increase in formaldehyde/urea molar ratio in the resin, or decrease in press time); (6) provisions for additional testing; (7) recordkeeping requirements; (8) average percentage of resin and press time for each product type; (9) product grouping, if applicable, and (10) procedures for reduced quality control testing, if applicable. The TPC would review and approve the manual to ensure that the manual is complete and that the panel producer's procedures are adequate to ensure that the TSCA Title VI emission standards are being met on an ongoing basis. The proposed requirement for a quality control manual is consistent with CARB and with international voluntary consensus standards, such as the International Standards Organization (ISO) 9000 series of standards. EPA requests comment on what should be included in the quality control manual.

This proposal would also require each panel producer to designate a quality control facility for conducting quality control formaldehyde testing of their product. The quality control facility must be a laboratory owned and operated by the panel producer, a TPC, or a contract laboratory.

EPA is also proposing to require each panel producer to designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emission quality control. EPA is requesting comment on criteria for determining whether an individual's experience and/or training are appropriate for this position. For example, should the quality control manager have a certain number of years of experience in the wood products industry, or a degree in chemistry or a related field?

The quality control manager would have to have the authority to take actions necessary to ensure that applicable emission standards are being met. The quality control manager would also be identified in writing to the TPC. Under this proposal, the panel producer would have to notify the TPC in writing within 10 days of any change in the identity of the quality control manager and provide the TPC with the new quality control manager's qualifications. The quality control manager would review and approve all reports of quality control testing conducted on the production of the panel producer. The quality control manager would also be responsible for ensuring that the samples are collected, packaged, and shipped according to the procedures specified in the quality control manual. The panel producer quality control manager would monitor the testing facility's results, and would immediately inform the TPC in writing of any significant changes in production that could affect formaldehyde emission rates.

EPA is proposing to require panel producers to submit monthly product data reports for each panel producer, production line and product type, to their TPC. The content requirements for the product data reports would be similar to the CARB requirements and include a data sheet for each specific product with test and production information, and a quality control graph containing the established quality control limit (QCL) and shipping QCL, if applicable, the results of quality control tests, and retest values. EPA requests comment on whether other useful information, or a different format, should be required.

EPA is also proposing to require that each quality control facility have quality control employees with adequate experience and/or training to conduct accurate and precise chemical quantitative analytical tests. EPA requests comment on the criteria for determining whether an individual's experience and/or training are appropriate for this position. The quality control manager would identify each person conducting formaldehyde quality control testing in the quality control manual and to the accredited TPC.

F. NAF and ULEF Resins

TSCA Title VI section 601(d)(2)(D) and (E) directs EPA to include, in its implementing regulations, provisions related to products made with NAF and ULEF resins. The statute also defines, under section 601(a)(7) and (10) respectively, what constitutes NAF-based and ULEF-based resins, in terms of the composition of the resin system and maximum formaldehyde emissions for composite wood products made with these resin systems. In general, a NAF composite wood product cannot incorporate a resin formulated with formaldehyde. A ULEF composite wood product is one made from resins that may contain formaldehyde, but emit it at particularly low levels, such as melamine-urea-formaldehyde resin, phenol formaldehyde resin, resorcinol formaldehyde, or other formaldehyde-based resins. The statutory maximum emissions for products made with NAF-based or ULEF-based resins are identical to those in the CARB ATCM.

Under the CARB ATCM, ULEF and NAF manufactures are provided with incentives such as reduced testing requirements for ULEF, and for NAF, a 2-year exemption from TPC oversight and formaldehyde emissions testing for one individual product type. If further reduced emission standards are met, ULEF manufacturers can also be exempted from TPC oversight and formaldehyde emissions testing. ULEF and NAF manufacturers must apply to CARB to get the initial exemption for

either the reduced testing of their individual products (for ULEF) or for a total exemption from TPC oversight and formaldehyde emissions testing (ULEF or NAF). A separate exemption is required for each composite wood product type. The NAF exemption under the CARB ATCM from TPC oversight and formaldehyde emissions testing requires an initial 3-month formaldehyde emissions testing period with a TPC. For manufacturers to receive a ULEF exemption from TPC oversight and formaldehyde emissions testing, 6 months of formaldehyde emissions testing with a TPC is required. In addition, formaldehyde emissions must be reduced to below the standard ULEF emissions level. Exempt NAF and ULEF manufacturers must reapply to CARB for exemption from TPC oversight and formaldehyde emissions testing every 2 years by submitting test results for each product type for which an exemption is sought, based on a panel or set of panels randomly selected and tested by a TPC, and the chemical formulation of the resin.

EPA is proposing a similar approach for the TSCA Title VI program. If certain emission thresholds are met, EPA proposes to provide producers of panels made with NAF-based resins or ULEF resins with an exemption from TPC oversight and formaldehyde emissions testing after an initial testing period of 3 months for each product type made with NAF-based resins or 6 months for each product type made with ULEF resins. These specific initial testing periods are required by the statute and are designed to ensure that the products meet the TSCA section 601(a) formaldehyde emission standards for products made with NAF-based or ULEF resins.

Whether using a NAF-based or ULEF resin, to qualify for the exemption from TPC oversight and formaldehyde emission testing for a particular product type, there can be no test result higher than 0.05 ppm of formaldehyde for hardwood plywood and 0.06 ppm for particleboard, medium-density fiberboard, and thin medium-density fiberboard during the initial testing period of 3 or 6 months for NAF-based or ULEF resins, respectively. In addition, test results for 90% of the required 3 or 6 months of quality control testing must be no higher than 0.04 ppm of formaldehyde.

EPA is also proposing that, if less stringent emission standards than these are met, producers of panels made with ULEF resins may still qualify for reduced formaldehyde emission testing—but not the TPC exemption or the exemption from emission testing after the initial 6 months. To qualify for this reduced testing provision for products made with ULEF resins, there can be no test result higher than 0.05 ppm of formaldehyde for hardwood plywood, 0.08 ppm for particleboard, 0.09 ppm for medium-density fiberboard, and 0.11 ppm for thin medium-density fiberboard during the initial 6 month testing period. In addition, test results for 90% of the required quality control testing must be no higher than 0.05 ppm of formaldehyde for particleboard, 0.06 ppm for medium-density fiberboard, and 0.08 ppm for thin medium-density fiberboard. Under this reduced testing provision, qualifying panels would only need to be quality control tested at least once per week per product type and production line, except that hardwood plywood panel producers who qualify for less frequent quality control testing may continue to perform the lesser amount of testing. For these panels, what would otherwise be quarterly testing by an accredited TPC would instead only be required every 6 months.

An accredited TPC would be required to oversee the testing during the initial testing period, which must include at least one test result for the NAF exemption or two test results for either ULEF provision under ASTM E–1333–10 or, upon a showing of equivalence as discussed in this Unit, ASTM D–6007–02 (Refs. 31 and 29). In contrast to the CARB ATCM, EPA is not proposing to require the panel producer to formally apply to EPA for reduced testing or a TPC exemption. Rather, the panel producer would be required to apply to an accredited TPC for reduced testing or a TPC exemption based on the regulatory requirements and to send a copy of the application to EPA. EPA intends to list panel producers and product types that have been approved for reduced testing and exemption from TPC requirements on EPA's Web site.

To maintain eligibility for a TPC exemption, at least once every 2 years after the conclusion of the initial testing period, the panel producer would have to reapply for exemption to an accredited TPC and have one test result under ASTM E–1333–10 or, upon a showing of equivalence as discussed in this unit, ASTM D–6007–02, which demonstrates continued compliance with the reduced formaldehyde emission standards for each product type (Refs. 31 and 29). The test must be based on products randomly selected and tested by an accredited TPC. In the case of approval for ULEF reduced testing, no periodic reapplication would be necessary because the panel producer would have ongoing TPC oversight.

Testing records and other records demonstrating eligibility for a TPC exemption or reduced testing, such as records showing the chemical composition of the resins used to manufacture the eligible products, would have to be maintained for a minimum of 3 years from the date that the record was created. EPA requests comment on whether the test records from the initial testing period should be kept for as long as a panel producer claims a TPC exemption.

Under this proposal, any change in the resin formulation, the core material, or any other part of the manufacturing process that may affect formaldehyde emission rates would render the product ineligible for the reduced testing approval or TPC exemption. EPA requests comment on whether other events, such as failed quarterly or routine quality control tests, should invalidate a reduced testing approval. EPA also requests comment on whether, in the event of such a change, the panel producer should be required to begin the TPC exemption process again with a 3 or 6 month testing period overseen by an accredited TPC, or whether a single TPC test of the modified product would be sufficient. EPA further requests comment on whether a distinction can be made between changes that are unlikely to result in changes in product emissions, which may not need extensive testing to confirm continued eligibility for the exemption, and more significant changes. EPA is particularly interested in specific examples of both types of changes.

Although this proposal contains a ULEF reduced testing provision, EPA requests comment on the utility of this option. It is EPA's understanding that very few manufacturers have sought the ULEF reduced testing provision under the CARB ATCM in lieu of the total exemption from TPC oversight and formaldehyde emissions testing requirements after the initial testing period. As such, EPA anticipates that the vast majority of ULEF resin-based composite wood product manufacturers will apply for the full exemption from TPC oversight and formaldehyde emissions testing after the initial testing period.

EPA is also requesting comments, information, and data on the broader question of giving composite wood products made with ULEF resins preferential treatment under TSCA. EPA is particularly concerned with products made with urea-formaldehyde-based resins. EPA believes that it is more

difficult to ensure that formaldehyde emissions from products made with these resins remain low over time, regardless of environmental conditions. It is well known that urea-formaldehyde resins can release formaldehyde when exposed to heat and humidity because of the chemistry of the resin. There are a number of older studies demonstrating that urea-formaldehyde resins have increased emissions in the presence of heat and humidity. For example, a 1985 review article analyzes data on the effects of temperature or humidity on formaldehyde emissions from urea-formaldehyde bonded particleboard and hardwood plywood from numerous studies from 1960–1984 (Ref. 39). This article concludes that formaldehyde emissions increased exponentially with increasing temperature. The relationship between humidity and formaldehyde emissions was more complex and variable, but the author concludes that the relationship was approximately linear.

Since the 1980s, changes have been made to resins to lower formaldehyde emissions; for example, the ratio of formaldehyde to urea is often lower, and sometimes scavengers are added to the resin. Several recent emission studies have been conducted on composite wood products that have been produced to meet stringent emission standards. A study on a hardwood plywood product made with urea-formaldehyde resin and a similar hardwood plywood product made with a NAF resin demonstrated that the urea-formaldehyde product emitted more formaldehyde as the temperature and relative humidity increased. The study reports that both products met the CARB Phase 2 standard when initially tested in a small chamber under the test conditions specified by the method, *i.e.,* 25 °C and 50% relative humidity (Ref. 40). However, when the urea-formaldehyde product was tested at 35 °C and 100% relative humidity, its formaldehyde emissions increased by more than 31 times compared with the emissions measured at 25 °C and 30% relative humidity. In contrast, the formaldehyde emissions from the NAF product only increased slightly (less than 4 times) over the same change in temperature and humidity conditions. In addition, for the NAF product, total formaldehyde emissions reached a plateau and decreased rapidly after a few days under all of the test conditions.

Riedlinger *et al* measured formaldehyde emissions from four types of particleboard (PB) panels (made with UF, phenol-formaldehyde (PF), melamine-urea-formaldehyde (MUF), and polymeric diphenylmethane diisocyanate (pMDI) resins), one of which (the PF product) was certified as a ULEF panel under the CARB ATCM (Ref. 41). Testing was conducted at both the standard temperature/relative humidity conditions and at 30 °C and 75% relative humidity using ASTM D–6007 and the Dynamic Microchamber Method (Refs. 29 and 33) for up to 50 days. Aspects of the testing confound comparisons of the data; for example, testing at the standard and elevated temperature/relative humidity conditions was conducted in two different laboratories, using different sampling procedures and analytical methods, with sampling at different time points. Nonetheless, the study appears to show that formaldehyde emissions from panels made with all four resin types increased by factors of 2 to 3 under the elevated temperature/relative humidity conditions. Emissions from panels made with two non-UF resin types (*i.e.,* PF and pMDI) never exceeded the numerical emission limit of 0.09 ppm for PB, even at elevated conditions, whereas emissions from panels made with the UF resins (*i.e.,* UF and MUF) exceeded that numerical emission limit at elevated temperature and relative humidity until about 20 or 25 days after the start of the testing.

EPA also recently conducted a study to investigate the effects of temperature and humidity on formaldehyde emissions from hardwood plywood made with different types of resins (Ref. 42). A CARB approved third-party certifier tested commercial hardwood plywood products certified as NAF or ULEF under the CARB ATCM using ASTM D–6007–02 (small chamber testing) at two different temperatures (25 °C and 30 °C) and three different relative humidities (50%, 70%, and 85%). The results demonstrate that while formaldehyde emissions increased from all panels with increasing temperature, the effect of temperature on emissions from ULEF panels made with urea-formaldehyde (ULEF–UF) was up to three times greater than on the NAF panels made with an acrylic resin or the ULEF panels made with phenol-formaldehyde. All formaldehyde emissions from the ULEF–UF panel exceeded the numerical emission limit for ULEF panels (0.05 ppm) except under standard conditions, while, in almost all cases, despite the chamber conditions, formaldehyde emissions for the ULEF–PF and NAF-acrylic panels were below the numerical emission standard.

Given this information, EPA requests comment on whether there should be a reduced testing option or a TPC exemption available to products made with ULEF resins. EPA also requests comment on whether the ULEF provisions should be limited to products made with a subset of ULEF resins that do not contain urea-formaldehyde polymer—in other words, limited to no-added urea formaldehyde-based (NAUF) resins. EPA believes that encouraging the use of NAUF resins is a more reliable way of ensuring that formaldehyde emissions from a particular product remain low over time, regardless of environmental conditions, such as heat and humidity.

G. De Minimis Exception

Section 601(d)(2)(L) of TSCA allows EPA to promulgate, for products and components containing *de minimis* amounts of composite wood products, an exception to all of the requirements of the implementing regulations other than the formaldehyde emission standards. After due consideration, EPA has decided not to propose an exception from any of the regulatory requirements for products containing *de minimis* amounts of composite wood products. EPA does not have data on the emission levels of such products, nor does EPA know of any information that suggests that such products would not have formaldehyde emissions that exceed the statutory emission standards. In addition, EPA has not identified any apparent dividing line between products that contain *de minimis* amounts of composite wood products and other products. EPA requests comment, information and data on whether there should be such an exception, how the exception should be delineated, and what regulatory provisions should apply or not apply to such products. EPA notes that any decision on this particular exception would not affect the statutory exemption from the emission standards for windows, exterior doors, and garage doors made with small amounts of composite wood products.

H. Chain-of-Custody, Recordkeeping, and Labeling Requirements

Section 601(d)(2) of TSCA Title VI also directs EPA to consider chain of custody, recordkeeping, and labeling requirements. For labeling, EPA is proposing requirements that generally follow the approach taken in the CARB ATCM because EPA believes that this approach supports compliance with the TSCA Title VI emission standards while not being unduly burdensome. With respect to chain of custody and recordkeeping requirements, EPA is proposing requirements similar to that of the CARB ATCM for entities that are manufacturers under TSCA. This

includes entities who import, produce, or manufacture composite wood panels, component parts, or finished goods. Again, EPA believes that this approach supports compliance with TSCA Title VI without undue burden. However, for distributors and retailers who are not manufacturers under TSCA, EPA is proposing that they only be required to keep invoices and bills of lading. EPA has determined that these ordinary business records would provide enough information to enable EPA to trace back a particular composite wood product to the panel producer and thus allow EPA to monitor compliance with TSCA Title VI. Each of these proposed requirements is discussed in more detail in this Unit.

1. *Chain of custody and recordkeeping requirements.* Most records would have to be kept for a period of 3 years from the date that they are generated. In addition, all records that would be required by this proposal would also have to be provided to EPA upon request to facilitate EPA's compliance monitoring activities.

Producers of hardwood plywood, particleboard, and medium-density fiberboard panels would be required to maintain records of quarterly emission testing and records of quality control testing. These records would have to identify the accredited TPC conducting or overseeing the testing, and would include the date, the product type tested, the lot or batch number that the tested material represents, and the test results. In addition, panel producers would have to maintain the following records:

- Production records, including a description of the composite wood product(s), date of manufacture, lot or batch numbers, and tracking information allowing each product to be traced to a specific lot number or batch produced.
- Changes in production, including changes in resin use, resin composition, and changes in the process, *e.g.,* press time.
- Purchaser information for each composite wood product, if applicable, including name, contact person, address, telephone number, purchase order or invoice number, and amount purchased.
- Transporter information for each composite wood product, if applicable, including name, contact person, address, telephone number, shipping invoice number, and amount transported.
- Information on the disposition of non-complying lots or batches, including product type and amount of composite wood products affected, lot or batch numbers, mitigation measures used, results of retesting, and final disposition of the lots or batches.

In addition, laminated product producers whose products are exempt from the definition of hardwood plywood would have to maintain records demonstrating use of a NAF resin, including the resin trade name, resin manufacturer contact information, and resin supplier contact information, or, if the resin is made in-house, records sufficient to demonstrate that the resin is a NAF resin.

In order to assist customers such as fabricators, distributors, importers, and retailers in determining whether they are purchasing compliant composite wood products, EPA would require that all records pertaining to the compliance status of a particular lot, batch, or shipment of composite wood products be provided to purchasers upon request. EPA realizes that some of the information contained in these records is information that manufactures might claim as Confidential Business Information (CBI) in other contexts. While information collected under TSCA may be entitled to confidential treatment if it meets the standard for Exemption 4 in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), TSCA provides that health and safety studies and data derived from health and safety studies, are not entitled to confidential treatment, irrespective of the Exemption 4 standard, unless the data derived from such studies disclose confidential processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing confidential portion of mixture information.

TSCA defines a ''health and safety study'' as any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical or mixture, toxicological, clinical, and ecological studies of a chemical or mixture, and any test performed pursuant to TSCA (15 U.S.C. 2602(6)). Because the testing required by TSCA Title VI and the implementing regulations would be ''any test performed pursuant to the Act,'' such tests would be health and safety studies. Therefore, under TSCA, the formaldehyde emission test results of specific products are not entitled to confidential treatment. The names of the producers of panels for which formaldehyde emission data are generated similarly are not entitled to confidential treatment, analogous to how EPA treats the confidentiality of chemical identities in health and safety studies. It is a long established principle that the chemical name is part of, or underlying data to, a health and safety study. (See 40 CFR 716.3; 40 CFR 720.3(k)) The rationale for this is that the chemical name provides context for the study results, *i.e.,* the test relates to a specific chemical. Without knowing the chemical name, there is no basis for understanding the results of the test.

The same principle applies to producer names. The requirement to test formaldehyde emissions from specific composite wood products produced by specific panel producers, and an obligation to make those results available to downstream purchasers so that purchasers can determine whether they are purchasing compliant products, is integral to TSCA Title VI and these implementing regulations. In order to have context, the raw emission numbers must be linked to the products tested. For this reason, the product name and the producer of the product constitute part of, or are underlying data to, a health and safety study. Therefore under TSCA, the product and panel producer name are not entitled to confidential treatment.

Producers of hardwood plywood, particleboard and medium-density fiberboard panels using NAF-based resins or ULEF resins who qualify for the reduced testing and third-party certification requirements discussed in Unit III.F. would have to maintain records demonstrating initial eligibility for the reduced testing. In addition, the panel producer would have to keep records documenting the following for each product type:

- The amount of resin use by volume and weight.
- Production volume, reported as square feet per product type.
- Resin trade name, resin manufacturer contact information, and resin supplier contact information.
- Changes in the production method, including changes in press time by more than 20%.
- Changes in the resin formulation.

Importers, fabricators of finished goods that incorporate composite wood products, laminated product producers whose products are exempt from the definition of hardwood plywood, distributors, and retailers would be required to take steps to ensure that they are purchasing composite wood products or component parts that comply with the emission standards. Importers, fabricators, and laminated product producers would be required to document these steps. In general, this means that the importer, fabricator, or producer would be required to obtain

from the supplier records identifying the panel producer(s) that produced the composite wood products and the dates that the products were manufactured and purchased from the panel producer(s), and bills of lading or invoices that include a written affirmation from the supplier that the composite wood products are compliant with this subpart. EPA requests comment on what documentation ought to be required of distributors and retailers in this regard. For example, should distributors and retailers be required to obtain bills of lading or invoices from their suppliers that include a written affirmation that the composite wood products are compliant with this subpart? Or should distributors and retailers be required to obtain the same records that EPA is proposing to require for importers, fabricators, and laminators? In addition, laminated product producers whose products are exempt from the definition of hardwood plywood would have to maintain records demonstrating use of a NAF resin, including the resin trade name, resin manufacturer contact information, and resin supplier contact information, or, if the resin is made in-house, records sufficient to demonstrate that the resin is a NAF resin.

For distributors and retailers who do not import, produce, or manufacture composite wood panels, component parts, or finished goods, EPA is proposing to require that they maintain invoices and bills of lading. The invoices and bills of lading would not be required to contain an affirmation by the supplier that the goods comply with TSCA Title IV. EPA believes that invoices and bills of lading are usually kept by most distributors and retailers already, as part of their general recordkeeping practices. EPA has determined that these records will enable EPA to identify the producer or importer of composite wood panels, component parts, or finished goods being sold by distributors and retailers. For finished goods, this will allow EPA to ultimately identify the producer of the composite wood panels that make up the finished goods. Without imposing additional recordkeeping burdens on most distributors and retailers, this requirement will allow EPA to effectively monitor compliance with TSCA Title VI.

Entities that fit within two or more of these recordkeeping categories, such as a fabricator of finished goods who also buys finished goods for resale, or a distributor that buys finished goods from both foreign and domestic companies for resale, would be required to keep only the records for each product that correspond to the activities the entity undertook with respect to that product. For example, a domestic fabricator of finished goods who also buys domestic finished goods and sells both categories of finished goods to a domestic distributor for resale would have to keep the records required for fabricators on those products that the fabricator produces, and invoices and bills of lading only for those finished goods that the fabricator buys and resells. A distributor who purchases both foreign and domestic finished goods for resale would be required to keep the following records:

- For foreign finished goods that the distributor imports, records identifying the panel producer(s) that produced the composite wood products and the dates that the products were manufactured and purchased from the panel producer(s) as well as bills of lading or invoices that include a written affirmation from the supplier that the composite wood products are compliant with this subpart.
- For domestic finished goods, only invoices and bills of lading, which need not contain a written compliance affirmation from the supplier.

For imported finished goods, only the importer would be responsible for keeping the records identifying the panel producer and the date that the composite wood products were manufactured. For example, if the importer sells the goods to a domestic distributor, who then sells them to a domestic retailer, only the importer would have to keep the additional records. The domestic distributor and retailer would only be required to keep invoices and bills of lading.

With respect to home builders or producers of goods such as modular homes, manufactured homes, or recreational vehicles that contain composite wood products, EPA will generally consider these entities to be either fabricators or retailers for recordkeeping purposes, depending on their activities with respect to composite wood products. For example, a home builder or manufactured home producer who purchases finished kitchen cabinets made of composite wood products from another entity, installs them in the home, and then sells the home to a consumer would be considered to be a retailer so long as no major modifications were made to the cabinets in the process of installing them. In contrast, a manufactured home producer would be considered a fabricator if the producer purchased finished composite wood panels, cut them into shelves or countertops, edge-banded them, and then installed them into a manufactured home and sold the home to a consumer. EPA believes that this approach is consistent with CARB's approach (Ref. 43, Questions 87, 89, and 91). These entities may also be importers if they import composite wood products, or components made with composite wood products, for installation into their homes or recreational vehicles. EPA requests comment on how the definition of ''fabricator'' and the record keeping requirements for fabricators would affect manufactured home producers.

In order for this recordkeeping system to function effectively, allowing EPA to determine the source of the composite wood products that make up an imported finished good, the records required to be kept by the importer would have to be accessible to EPA. EPA requests comment on alternative ways to ensure that this is the case. For example, EPA could require importer records to be maintained in the United States, either at the importer's place of business or at a registered agent's. Or EPA could require an electronic copy of the importer records to be available in the United States at the importer's place of business or with the importer's registered agent.

2. *Labeling.* The CARB ATCM requires that each panel or bundle of regulated composite wood products be labeled with the manufacturer name; product lot number or batch produced; markings that denote the product complies with the applicable Phase 1 or Phase 2 emission standards; markings if the product was made using ULEF or NAF-based resins; the CARB assigned number of the TPC; and a statement of compliance on the bill of lading or invoice.

EPA is proposing similar labeling requirements. Under this proposal, panels or bundles of panels that are sold, supplied, or offered for sale in the United States would have to be labeled with the name of the panel producer, the lot or batch number, the number of the accredited TPC, and markings indicating that the product complies with the TSCA Title VI emission standards. Labels for products produced under the NAF or ULEF exemptions discussed in Unit III.F. would also have to include the designation ''no-added formaldehyde'' or ''ultra low-emitting formaldehyde.'' There would also have to be a statement of compliance on the bill of lading or invoice. Distributors and wholesalers who receive labeled bundles of regulated composite wood products and then divide and repackage them, whether in bundles or separately, would be required to label each separate bundle or item with the same

information as required on the original label. EPA is proposing to define the term ''bundle'' as more than one composite wood product panel, component part, or finished good fastened together for transportation or sale. EPA requests comment on the utility of this definition and whether it represents common industry usage.

EPA is interested in any information or data available on how often retailers receive bundles of regulated composite wood products and then divide and repackage them. In addition, EPA requests comment on whether these retailers should then be required to label each separate bundle or item with the same information as required on the original label. EPA would also be interested in comments on other approaches that could be used to convey the information; for example, allowing retailers to use signage in the retail display area, which contains the information on the label, to meet this requirement in lieu of separate labels on each product once debundled. Alternatively EPA requests comment on requiring fabricators and manufacturers to label every regulated product separately prior to bundling and also requiring wholesalers, distributors, and retailers to maintain those labels at all times.

Fabricators of finished goods containing composite wood products would be required to label every finished good they produce, or every box containing finished goods. As permitted by under the CARB ATCM, EPA is proposing to allow the label to be applied as a stamp, tag, sticker, or bar code. It would have to include, at a minimum, the fabricator's name, the date the finished good was produced and a marking to denote that the product was made in compliance with TSCA Title VI. EPA requests comment on whether a label applied as a bar code should be permitted, given that consumers of finished goods may not be able to read bar codes. EPA believes that many consumers of finished goods will be aware of the labeling requirements, either under the CARB ATCM or TSCA Title VI, and will be looking for a label that indicates compliance with the emission standards.

EPA proposes to allow boards to be shipped into and around the United States for quality control or quarterly tests. These boards may not be sold, offered for sale or supplied to any entity other than a TPC laboratory or contract laboratory prior to successful emissions testing. These boards or bundles must be labeled ''For TSCA Title VI testing only, not for sale in the United States.'' The boards or bundles may be re-labeled as compliant with TSCA and offered for sale once they have successfully completed testing.

I. Sell-through Provisions and Stockpiling

TSCA Title VI directs EPA to establish sell-through provisions for composite wood products, and finished goods containing regulated composite wood products, based on a designated date of manufacture, or ''manufactured-by'' date. Under the statute, composite wood products or finished goods manufactured before the specified manufactured-by date are not subject to statutory emission standards or testing requirements. TSCA Title VI states that the manufactured-by date must be no earlier than 180 days after promulgation of the final implementing regulations, but EPA has the discretion to establish, by rulemaking, a later date.

The manufactured-by date approach directed by TSCA Title VI differs from the CARB ACTM approach, which is based on a sell-through date. CARB established a series of dates by which products that are not compliant with all of the CARB requirements must be sold. In contrast, TSCA Title VI requires EPA to set a date by which all new products that are manufactured must be compliant with the emission standards. This approach should avoid some of the implementation issues encountered by CARB. For example, due to the economic recession, CARB found it necessary to extend the sell-through dates more than once to allow for the slow turnover of preexisting inventory (Refs. 44 and 45).

TSCA Title VI also directs EPA to prohibit the sale of inventory that was stockpiled, which is defined in the statute as manufacturing or purchasing composite wood products between the date the statute was enacted and the manufactured-by date at a rate significantly greater than the rate during a particular base period. EPA is directed to define what constitutes ''a rate significantly greater'' and to establish the base period. Under the statute, the base period must end before July 7, 2010, the date that the Formaldehyde Standards for Composite Wood Products Act was enacted.

EPA believes that because many products are already CARB ATCM-compliant, and because of a low consumer demand for products not CARB ATCM-compliant, stockpiling is not likely to be advantageous for manufacturers. During the SBAR Panel process, at least one SER commented that consumers were asking for CARB-compliant products prior to the end of the CARB sell-through periods (Ref. 15). Moreover, EPA believes that the cost of storing stockpiled goods would reduce or eliminate any economic advantage to stockpiling. Another SER commented that ''[g]iven the cost of carrying inventory there is a natural brake on accumulating non-complying inventories long before the effective date of the regulation.'' (Ref. 15).

EPA proposes to set the manufactured-by date at 1 year after publication of the final rule in the **Federal Register**. Although TSCA Title VI allows EPA to set this date at 180 days after promulgation of the final implementing regulations, EPA believes that more time will be needed to get all of the infrastructure, such as the accredited TPCs, in place and allow panel producers time to develop their initial qualifying data for certification. The manufactured-by date would apply to both regulated composite wood panels and finished goods containing regulated composite wood panels. Composite wood products that can be shown to be manufactured before the established manufactured-by date would not be subject to the emissions standards, nor would they be required to be labeled or tested for emissions. Composite wood products manufactured before the manufactured-by date could be incorporated into finished goods at any time. Retailers, fabricators, and distributors would be permitted to continue to buy and sell these composite wood products and finished goods that incorporate these products, because they would be considered compliant with TSCA Title VI and its implementing regulations, assuming the absence of stockpiling as discussed below. Under TSCA, the term ''manufacture'' includes import, so the ''manufactured-by'' date would effectively be an ''imported-by'' date for imported goods.

In order to establish that a regulated composite wood product panel was made before the manufactured-by date, the panel producer or importer and any subsequent distributor, retailer or fabricator would be required to keep records that document when the product was manufactured. In the case of a finished good, any subsequent distributor, retailer or fabricator would be required to keep records that document that the composite wood products making up the finished good were either manufactured before the manufactured-by date or were manufactured in accordance with TSCA Title VI. In order to reduce consumer confusion, products that are made before the manufactured-by date would not be labeled as compliant with TSCA Title VI. Selling stockpiled regulated

composite wood panels and finished goods containing regulated composite wood products would be prohibited. EPA proposes to define stockpiling as manufacturing or purchasing composite wood products between July 7, 2010, the date that the Formaldehyde Standards for Composite Wood Products Act was signed into law by the President, and the established manufactured-by date (1 year after the final regulations are promulgated), for the purpose of circumventing the TSCA Title VI emission standards, at an average annual rate 20% t greater than the amount manufactured or purchased during the 2009 calendar year. For producers of regulated composite wood panels, stockpiling would be measured by square footage of regulated composite wood panels produced. For importers and fabricators of finished goods containing regulated composite wood products, stockpiling would be measured by the square footage of regulated composite wood panels purchased to be incorporated into finished goods. In either case, entities that can demonstrate that they have a greater than 20% increase in purchasing or production of regulated composite wood panels for some reason other than circumventing the emissions standards would not be deemed to be stockpiling. Other reasons may include an immediate increase in customer demand or sales, or a planned business expansion. EPA requests comment on whether the stockpiling provisions should apply to entities that were not in existence at the beginning of calendar year 2009.

EPA specifically requests comment on whether it is appropriate to set the proposed manufactured-by date at the date 1 year after the final implementing regulations are promulgated. EPA requests comment on alternate dates, and the rationale, including any available information and data, for selecting another date. EPA is also interested in how different manufactured-by dates would affect panel producers and fabricators of products that are not regulated under the CARB ATCM, but would be regulated under TSCA Title VI. EPA recognizes that increased production during the period after the statute was enacted may very well be due to the economic recovery and not to a desire on the part of panel producers, importers, and fabricators to circumvent the emission standards. EPA requests comment on the proposed stockpiling definition, including information and data for alternate baseline periods, rates, and measurements. EPA also requests comment on any data that might be available from which to derive an appropriate rate for determining potential stockpiling.

J. Import Certification

TSCA Title VI directs EPA, in coordination with U.S. Customs and Border Protection (CBP) and other appropriate Federal departments and agencies, to revise regulations promulgated pursuant to TSCA section 13 as necessary to ensure compliance. The TSCA section 13 regulations, promulgated by CBP, require importers to certify that shipments of chemical substances and mixtures are in compliance with TSCA or not subject to TSCA. EPA believes that most, if not all, products subject to TSCA Title VI would be considered articles. Articles, defined in 19 CFR 12.120(a), are generally formed to specific shapes or designs during manufacture and have end use functions related to their shape or design. Articles are generally exempt from the TSCA section 13 certification requirements, but the regulations at 19 CFR 12.121(b) recognize that EPA has the authority to, by regulation or order, make the requirements applicable to articles.

EPA is proposing to specifically require TSCA section 13 import certification for composite wood products that are articles. TSCA section 13 import certification is a compliance monitoring tool and import certification for articles subject to TSCA Title VI would also serve as an important reminder of the TSCA Title VI requirements to the importer. The certification requirement would apply to imports of hardwood plywood, particleboard, and medium-density fiberboard panels, as well as finished goods containing such materials. Persons importing specifically exempted products, such as structural or curved plywood, and finished goods incorporating such products, would not be required to certify.

EPA generally believes that the existing import certification regulations, along with the specific labeling and recordkeeping requirements for composite wood products discussed in Unit III.H., are sufficient to ensure compliance with TSCA Title VI. However, EPA has begun consultations with CBP on the TSCA section 13 import regulations to determine whether revisions are warranted.

K. Enforcement

The failure to comply with any provision of TSCA Title VI, or the regulations implementing TSCA Title VI, is a prohibited act under TSCA section 15. Any person who commits a prohibited act under TSCA section 15 can be held liable for civil and criminal penalties.

L. Report to Congress

Section 3 of the Formaldehyde Standards for Composite Wood Products Act requires EPA to report to Congress on an annual basis beginning in July 2011, and continuing through 2014. These reports must describe the status of the measures carried out or planned to be carried out pursuant to TSCA Title VI and the extent to which relevant industries have achieved compliance with the requirements of TSCA Title VI. The statute directs EPA to promulgate final implementing regulations by January 1, 2013. EPA is proposing to make the manufactured-by date 1 year after the final rule is promulgated, which would mean composite wood products manufactured through 1 year after promulgation would not be subject to the emission standards. EPA requests comment on how data on industry compliance could or should be obtained, and whether a reporting requirement would best accomplish this goal.

M. HUD's Manufactured Housing Program

Under the authority of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.,* HUD regulates the construction of all manufactured (mobile) homes built in the United States. The HUD standards established pursuant to the 1974 Act cover many aspects of manufactured home construction, including body and frame requirements, thermal protection, plumbing, electrical, and fire safety. (*See* 24 CFR parts 3280 and 3282) HUD oversees the enforcement of the construction standards through third party inspection agencies and State governments.

The HUD standards for manufactured housing include specific formaldehyde emission limits for plywood and particleboard materials installed in manufactured housing. In contrast, TSCA Title VI covers only hardwood plywood, a subset of plywood. In addition, TSCA Title VI also covers MDF, which is not covered by the current HUD standards. The HUD emission limits apply to any plywood or particleboard that is bonded with a resin system. In addition, HUD's limits also apply to plywood or particleboard that is coated with a surface finish containing formaldehyde. HUD's current formaldehyde emission limits are 0.2 parts per million (ppm) for

plywood and 0.3 ppm for particleboard, as measured by ASTM E–1333–96 (Ref. 28). These emission limits are higher than those established by the Formaldehyde Standards for Composite Wood Products Act of 2010, but section 4 of the 2010 Act directs HUD to update its regulations to ensure that the regulations reflect the standards established by section 601 of TSCA.

EPA is requesting comment on how best to harmonize EPA's regulatory program under TSCA Title VI with HUD's manufactured homes program. In particular, the focus of TSCA Title VI, with its emphasis on composite wood product panel producers and product certification, is somewhat different from the focus of the National Manufactured Housing Construction and Safety Standards Act of 1974 on manufactured home producers and consumer protection. In view of the differences in statutory authorities provided to EPA and HUD, are there additional provisions that EPA should consider or other actions that EPA and HUD should take to ensure that their respective programs are complementary?

IV. References

As indicated under **ADDRESSES**, a docket has been established for this rulemaking under docket ID number EPA–HQ–OPPT–2012–0018. The following is a listing of the documents that are specifically referenced in this proposed rule. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. US Environmental Protection Agency (EPA). Formaldehyde; Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products; Proposed Rule. (published in this issue of the **Federal Register**) (FRL–9342–4).
2. California Environmental Protection Agency Air Resources Board. Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. Final Regulation Order. April 2008. *http://www.arb.ca.gov/regact/2007/compwood07/compwood07.htm*
3. Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological Profile for Formaldehyde and 2010 Addendum to the Profile. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.
4. National Toxicology Program, U.S. Department of Health and Human Services (HHS), 12th Report on Carcinogens, June 10, 2011.
5. USEPA Office of Research and Development (ORD). Formaldehyde. Integrated Risk Information System (IRIS). 1991. *http://www.epa.gov/iris/subst/0419.htm.*
6. USEPA Office of Air and Radiation (OAR). National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List; Final Rule. **Federal Register** (71 FR 8341, February 16, 2006) (FRL–8028–9). *http://www.epa.gov/ttn/atw/plypart/fr16fe06.pdf.*
7. USEPA, ORD. Memorandum from Peter Preuss to Steve Page entitled ''Recommendation for Formaldehyde Inhalation Cancer Risk Values'' (January 22, 2010).
8. USEPA, ORD. IRIS Toxicological Review of Formaldehyde-Inhalation Assessment (2010 External Review Draft). *http://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=223614.*
9. National Research Council of the National Academy of Sciences (NRC). Review of the Environmental Protection Agency's Draft IRIS Assessment of Formaldehyde (2011). *http://www.nap.edu/catalog.php?record_id=13142.*
10. Approach to Assessing Non-cancer Health Effects from Formaldehyde and Benefits from Reducing Non-cancer Health Effects as a Result of Implementing Formaldehyde Emission Limits for Composite Wood Products (2013).
11. USEPA. Formaldehyde Emissions from Composite Wood Products; Disposition of TSCA Section 21 Petition; Notice. **Federal Register** (73 FR 36504, June 27, 2008).
12. American National Standards Institute (ANSI)/Hardwood Plywood and Veneer Association (HPVA). American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2009.
13. US Department of Commerce (DOC), National Institute of Standards and Technology (NIST), Technology Administration. Voluntary Product Standard PS–1–07 (2007), Structural Plywood.
14. USDOC, NIST. Voluntary Product Standard PS–2–04 (2004), Performance Standard for Wood-Based Structural-Use Panels.
15. USEPA. Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule Implementing the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) (April 4, 2011).
16. Composite Panel Association (CPA). VOC Emission Barrier Effects of Laminates, Overlays and Coatings for Particleboard, Medium Density Fiberboard (MDF) and Hardboard (2003), available at *http://www.pbmdf.com/cpa30/files/ccLibraryFiles/Filename/000000000738/TB%20VOC.pdf.*
17. HPVA. Comments of the Hardwood Plywood and Veneer Association (HPVA) Submitted to the Environmental Protection Agency (EPA) on the Advanced Notice of Proposed Rulemaking (ANPR) for Formaldehyde from Certain Wood Products (March 19, 2009).
18. ANSI. American National Standard for Particleboard A208.1–2009.
19. ANSI. American National Standard for Medium Density Fiberboard (MDF) for Interior Applications, ANSI A208.2–2 2009.
20. ANSI. American National Standard, Basic Hardboard, ANSI A135.4 2004.
21. ANSI. American National Standard, Prefinished Hardboard Paneling, ANSI A135.5 2004.
22. ANSI. American National Standard, Hardboard Siding, ANSI A135.6 2006.
23. ANSI. American National Standard, Basic Hardboard, ANSI A135.4–2012.
24. ANSI. American National Standard, Prefinished Hardboard Paneling, ANSI A135.5–2012.
25. ANSI. American National Standard, Engineered Wood Siding, ANSI A135.6–2012.
26. Kelly, T.I., D.L. Smith, J. Satola. Emission Rates of Formaldehyde from Materials and Consumer Products Found in California Homes. Environmental Science & Technology Vol. 33: 81–88 (1999).
27. Georgia Pacific LLC. Letter (August 15, 2011).
28. ASTM International. ASTM E–1333–96, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.
29. ASTM International. ASTM D–6007–02 (2008), Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber.
30. ASTM International. ASTM D 5582–00 (2006), Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator.
31. ASTM International. ASTM E–1333–10, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber.
32. CEN, European Committee for Standardization. EN 717–2 (1995), Wood-based panels. Determination of formaldehyde release-Formaldehyde release by the gas analysis method, English Version.
33. Huber, C.W., Anderson, W.H., Vieira, J. W., and Liles, W.T., The Dynamic Microchamber Computer Integrated Formaldehyde Test System: User Manual, revised version (March 2007); available at *http://www.gp-dmc.com.*
34. CEN, European Committee for Standardization. EN 120 (1992), Wood based panels. Determination of formaldehyde content-Extraction method called the perforator method, English Version.
35. Japanese Standards Association, Japanese Industrial Standards. JIS A 1460 (2001), Building boards determination of Formaldehyde emission-Desiccator method, English Version.
36. Composite Panel Association, Formaldehyde Grademark Program Quality Assurance Manual (January 1, 2007).
37. CARB. Supplemental Analysis Supporting the Test for Demonstrating

Equivalence between Primary and Secondary Methods for Measuring Formaldehyde Emissions from Composite Wood Products (January 2008).
38. CARB. Third Party Certification Guideline: Establishing a Correlation with an Acceptable Correlation Coefficient (''r'' Value), Guideline No. 10–001 (June 8, 2010).
39. Myers, G.E. The effects of temperature and humidity on formaldehyde emission from UF-bonded boards: a literature critique. Forest Prod. J. 35(9):20–31 (1985).
40. Frihart, C.R., Wescott, J.M., Birkeland, M. J., and Gonner, K.M. ''Formaldehyde Emissions from ULEF- and NAF-Bonded Commercial Hardwood Plywood as Influenced by Temperature and Relative Humidity.'' Proceedings of the International Convention of Society of Wood Science and Technology and United Nations Economic Commission for Europe—Timber Committee, October 11–14, 2010, Geneva, Switzerland. *http://www.fpl.fs.fed.us/documnts/pdf2010/fpl_2010_frihart005.pdf.*
41. Riedlinger, D., Martin, P., and Holloway, T. Particleboard Formaldehyde Emissions and Decay under Elevated Temperature and Humidity Conditions, study conducted for Arclin, (March 28, 2012).
42. USEPA. Measuring Formaldehyde Emissions from Low Emitting Hardwood Plywood Panels under Different Conditions of Temperature and Relative Humidity (April 2013).
43. CARB. Composite Wood Products ATCM Frequently Asked Questions (Version 6—August, 2012).
44. CARB. Composite Wood Products Regulation Advisory: 10–01, Extension of Sell-Through Date for Distributors, Fabricators, and Retailers of Pre-Phase 1 Finished Goods (July 2010).
45. CARB. Composite Wood Products Regulation Advisory: 11–01, Extension of Sell-Through Dates for Distributors, Importers, Fabricators, and Retailers of Finished Goods Containing Phase 1 Hardwood Plywood—Veneer Core and Distributors of Phase 1 Particleboard and Medium Density Fiberboard Panels (May 2011).
46. USEPA. Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Implementing Regulations Proposed Rule (Economic Analysis) (May 2013).
47. Hanrahan, L.P., K.A. Dally, H.A. Anderson, M.S. Kanarek and J. Rankin. Formaldehyde vapor in mobile homes: a cross sectional survey of concentrations and irritant effects. American Journal Public Health. 74: 1026–1027 (1984).
48. Neghab, M., A. Soltanzadeh, and A. Choobineh. Respiratory morbidity induced by occupational inhalation exposure to formaldehyde. Industrial Health, 49(1), 89–94 (2011).
49. Herbert, F.A., P.A. Hessel, L.S. Melenka, K. Yoshida, and M. Nakaza. Respiratory consequences of exposure to wood dust and formaldehyde of workers manufacturing oriented strand board. Arch. Environ. Health 49(6):465–470 (1994).
50. Malaka, T., and A.M. Kodama. Respiratory health of plywood workers occupationally exposed to formaldehyde. Arch. Environ. Health 45:288–294 (1990).
51. Alexandersson, R., and G. Hedenstierna. Pulmonary function in wood workers exposed to formaldehyde: A prospective study. Arch. Environ. Health 44:5–11 (1989).
52. Horvath, E, Jr., J. Anderson, W.E. Pierce, L. Hanrahan, and J.D. Wendlick. Effects of formaldehyde on the mucous membranes and lungs: A study of an industrial population. JAMA 259:701–707 (1988).
53. Holmström, M., and B. Wilhelmsson. Respiratory symptoms and pathophysiological effects of occupational exposure to formaldehyde and wood dust. Scand J Work Environ Health 14:306 – 311 (1988).
54. Alexandersson, R., G. Hedenstierna, and B. Kolmodin-Hedman. Exposure to formaldehyde effects on pulmonary function. Arch. Environ. Health 37:279–284 (1982).
55. Garrett, M.H., M.A. Hooper, B.M. Hooper, P.R. Rayment, and M.J. Abramson. Increased risk of allergy in children due to formaldehyde exposure in homes. Allergy 34:330–337 (1999).
56. Krzyzanowski, M. J.J. Quackenboss, and M.D. Lebowitz. Chronic respiratory effects of indoor formaldehyde exposure. Environ. Res. 52:117–125 (1990).
57. Taskinen, H. K., P. Kyyronen, M. Sallmen, S. V. Virtanen, T. A. Liuldwnen, O. Huida, M. L. Lindbohm and A. Anttila. Reduced Fertility Among Female Wood Workers Exposed to Formaldehyde. American Journal of Industrial Medicine 36: 202–221 (1999).
58. Taskinen, H. K., P. Kyyronen, K. Hemminki, M. Holkkala, K. Lajunen, and M. L. Lindbohm. Laboratory Work and Pregnancy Outcome. J. Occup. Med. 36 (3): 311–319 (1994).
59. John, E.M., D.A. Savitz, and C.M. Shy. Spontaneous Abortions among Cosmetologists. Epidemiology 5 (2): 147–55 (1994).
60. USEPA. Information Collection Request (ICR) for the Formaldehyde Emission Standards for Composite Wood Products Act Implementing Regulations (Proposed Rule). EPA ICR No. 2446.01 and OMB No. 2070–[NEW].
61. USEPA. Initial Regulatory Flexibility Analysis for Formaldehyde Emission Standards for Composite Wood Products; Proposed Rule (May 2013).
62. USEPA. Unfunded Mandates Reform Act Statement. Formaldehyde Emission Standards for Composite Wood Products; Proposed Rule (May 2013).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA has prepared an analysis of the potential costs and benefits associated with this rulemaking. This analysis is contained in the Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Implementing Regulations Proposed Rule (Economic Analysis, Ref. 46) and is briefly summarized in Table 2, and in more detail below.

TABLE 2—SUMMARY OF COSTS AND BENEFITS OF PROPOSAL

Category	Description
Benefits	This proposed rule will reduce exposures to formaldehyde, resulting in benefits from avoided adverse health effects. For the subset of health effects where the results were quantified, the estimated annualized benefits (due to avoided incidence of eye irritation and nasopharyngeal cancer) are $20 million to $48 million per year using a 3% discount rate, and $9 million to $23 million per year using a 7% discount rate. There are additional unquantified benefits due to other avoided health effects.
Costs	The annualized costs of this proposed rule are estimated at $72 million to $81 million per year using a 3% discount rate, and $80 million to $89 million per year using a 7% discount rate.
Effects on State, Local, and Tribal Governments.	Government entities are not expected to be subject to the rule's requirements, which apply to entities that manufacture, fabricate, distribute, or sell composite wood products. The proposed rule does not have a significant intergovernmental mandate, significant or unique effect on small governments, or have Federalism implications.
Small Entity Impacts	This proposed rule would impact nearly 879,000 small businesses: over 851,000 have costs impacts less than 1% of revenues, over 23,000 firms have impacts between 1% and 3%, and over 4,000 firms have impacts greater than 3% of revenues. Most firms with impacts over 1% have annualized costs of less than $250 per year.

TABLE 2—SUMMARY OF COSTS AND BENEFITS OF PROPOSAL—Continued

Category	Description
Environmental Justice and Protection of Children.	This proposed rule increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population or children.

1. *Entities subject to the proposed rule.* EPA analyzed the effect of this proposal on panel producers, fabricators, wholesalers (*i.e.,* distributors and importers), and retailers. Due to the similarities between this proposal and the CARB ATCM, the incremental costs and benefits of this proposal are determined in part by the degree to which firms are already complying with the ATCM. So the following discussion of the number of entities subject to the TSCA Title VI rule includes an estimate of baseline compliance with the CARB ATCM. These estimates are displayed in Table 3.

Mills making hardwood plywood, MDF, or particleboard panels that would be classified as a composite wood product under the CARB ATCM are referred to here as stock panel producers. Thus, stock panel producers do not include facilities that only make products exempted from the CARB ATCM (and that are statutorily excluded from the TSCA Title VI rule) such as curved plywood, military specified plywood, structural plywood, and wood-based structural-use panels. There are approximately 90 stock panel mills in the U.S., operated by 54 firms. This count of stock panel producers excludes firms making laminated products that are included in the definition of hardwood plywood. These laminated product producers are discussed separately below.

A total of 79 stock panel mills have been certified as meeting the CARB Phase 2 standards for at least one of their composite wood products. (The Phase 2 standards are equivalent to the emissions standards in this proposal.) The CARB certified mills are responsible for virtually all the U.S. production volume of composite wood products. Approximately 99.6% of stock hardwood plywood produced in the U.S. is certified as meeting the CARB Phase 2 emissions standard, as is 100% of the MDF production and 98% of the particleboard production. All of these mills would incur costs for the time spent on rule familiarization under the TSCA Title VI program (i.e., becoming familiar with the requirements of the rule).

There are 16 U.S. stock panel mills making at least one product that is not certified as meeting the CARB Phase 2 standards. (Some of the 90 stock panel mills make both product lines that are certified under the CARB ATCM as well as product lines that are not certified because they are not intended to be sold in California.) These mills would incur costs for certification and testing due to the proposal, and some may incur costs to change raw materials and production processes in order to meet the emission standards in this proposal. They would also incur costs for rule familiarization and labeling.

Approximately 7,000 to 14,000 laminated product producers in the U.S. make products (such as custom hardwood plywood and architectural panels, windows, doors, kitchen cabinets, furniture, architectural woodwork and millwork, engineered wood flooring, and other goods) by affixing veneer to purchased platforms as part of the production process. These laminated products are regulated as hardwood plywood under this proposal unless they are made using NAF resins to attach the veneer to compliant and certified platforms, in which case they are exempted from the definition of hardwood plywood.

The wood products industry commonly uses the term laminates to describe products that are laminated with materials other than veneer, such as high pressure laminate, thermally fused paper, vinyl film, decorative foil, or polypropylene film. Such products are not considered to be hardwood plywood under this proposal regardless of the type of resin used. So firms making these products are considered fabricators (discussed below), and are not counted as laminated product producers.

The estimate of 7,000 to 14,000 laminated product producers excludes firms that use veneer to make products that are exempted from the definition of hardwood plywood because they do not create panels (flat or raised pieces of composite wood product) during the production process; the products are made by affixing veneer to substrates other than particleboard, MDF, or veneer core platforms; or the products are statutorily exempted by TSCA Title VI (including products used in boats and aircraft, and products not intended for interior use) or otherwise do not qualify as regulated hardwood plywood (such as curved plywood, military specified plywood, and structural plywood).

Since laminated products are not considered to be hardwood plywood under the CARB ATCM, they are not certified or tested for emissions under that rule. But in order to be sold in California, such products must be made using certified composite wood products as platforms, and they must comply with the labeling and chain of custody requirements in the CARB ATCM.

Nationally, 2,700 to 4,000 of these laminated product producers are assumed to be using formaldehyde-based resins. It is generally less expensive for these firms to switch to a NAF resin than to pay for the certification and product testing required for panel producers under this proposal. EPA believes that nearly all laminated product producers using formaldehyde-based resins to attach wood or woody grass veneer to compliant and certified platforms will switch to NAF resins, in order to qualify for the exemption from the definition of hardwood plywood in this proposal. EPA assumes that only about 150 to 300 U.S. laminated product producers will continue using formaldehyde-based resins, and thus will need to certify and test their products as a result of this proposal.

There are approximately 80,000 fabricators in the U.S. making composite wood products into component parts or finished goods, including the 7,000 to 14,000 laminated product producers. The other 66,000 to 73,000 fabricators use composite wood products to make goods such as architectural components, cabinets, and furniture, without affixing veneer themselves. Under the CARB ATCM, fabricated products sold in California must be made using certified composite wood products, and they must comply with the ATCM's labeling and chain of custody requirements. Nationwide, approximately 32,000 fabricators (including some laminated product producers) are estimated to comply with the labeling and chain of custody requirements in the CARB ATCM because their products may be sold in California. Firms that sell any products in California typically follow

the CARB ATCM's requirements for all of their products, including products that are sold outside of California. Such firms would still incur rule familiarization costs due to this proposal. The remaining 48,000 fabricators that do not comply with the CARB ATCM because they do not sell any products in California would incur costs to comply with the chain of custody requirements in this proposal, as well as rule familiarization costs.

Approximately 86,000 U.S. distributors (also referred to as wholesalers) are estimated to sell goods containing composite wood products. As many as 24,000 wholesalers may be importing composite wood panels or component parts or finished goods containing composite wood products, and are considered manufacturers under TSCA. (This is the number of firms that may import the goods themselves, not those that only buy and sell goods imported by others.) Approximately 32,000 of the 86,000 wholesalers have at least one facility in California, and thus must comply with the labeling and chain of custody requirements in the CARB ATCM. Of the approximately 759,000 retailers in the U.S. that sell products containing composite wood products, about 101,000 have at least one facility in California and are following the chain of custody requirements in the CARB ATCM. Again, firms that sell any products in California typically follow the CARB ATCM's requirements for all of the products they sell, including products that are sold outside of California. All wholesale and retail firms will incur additional costs for rule familiarization due to the Title VI rule. Of the 24,000 wholesalers importing composite wood products (who are subject to the rule's recordkeeping requirements for TSCA manufacturers), about 15,000 do not have any facilities in California. Wholesalers that repackage products may incur additional labeling costs due to this proposal.

TABLE 3—NUMBER OF ENTITIES IN THE UNITED STATES SUBJECT TO THE RULE

Type	TSCA Universe	Baseline condition (CARB ATCM Universe)
Stock panel producers (*i.e.,* manufacturers).	90 mills operated by 54 firms.	79 mills have been certified by CARB for at least one product, but 16 mills make at least one product that is not CARB certified. Depending on the product type, 98% to 100% of U.S. production volume is CARB certified.
Laminated product producers (*i.e.,* laminators).	7,000 to 14,000 firms	Laminators are considered fabricators under the CARB ATCM. Nationally, 32,000 of the combined group are subject to CARB ATCM requirements.
Fabricators	66,000 to 73,000 firms.	
Wholesalers (*i.e.,* distributors).	86,000 firms, of which 24,000 are importers.	32,000 are subject to CARB ATCM requirements, of which 9,000 are importers.
Retailers	759,000 firms	101,000 are subject to CARB ATCM requirements.
Total	925,000 firms	

2. *Options evaluated.* Congress directed EPA to consider a number of elements for inclusion in the implementing regulations, and EPA considered various options for addressing these elements. For many of the provisions, such as the product-inventory sell-through provision and the stockpiling prohibition, EPA did not have the data needed to make quantitative estimates of the effects of different options. EPA did have sufficient information to analyze several different options for how laminated products might be included in the definition of hardwood plywood, for the certification of ULEF products, and for the chain of custody and recordkeeping required by the rule. The Economic Analysis discusses emissions standards that are different from those set in TSCA Title VI. That discussion is simply for informational purposes, and the breadth of the discussion should not necessarily imply that EPA has corresponding flexibility in implementing the statute. The options EPA analyzed with emissions standards consistent with TSCA Title VI are displayed in Table 4.

TABLE 4—OPTIONS ANALYZED IN THE ECONOMIC ANALYSIS

Option	Description
Option SE	All laminated products are exempt from the definition of hardwood plywood.
Option SI	All laminated products are included in the definition of hardwood plywood.
Option SP	All laminated products are exempt from the definition of hardwood plywood except architectural panels and custom plywood.
Option SN	Laminated products made using NAF resins to attach veneer to platforms certified as NAF are exempt from the definition of hardwood plywood.
Option SC	Laminated products made using NAF resins to attach veneer to compliant and certified platforms are exempt from the definition of hardwood plywood.
Option SCR	Laminated products made using NAF resins to attach veneer to compliant and certified platforms are exempt from the definition of hardwood plywood; reduced recordkeeping requirements for firms that do not qualify as manufacturers under TSCA; no requirement to inform suppliers that the products supplied must comply with TSCA Title VI.
Option SEUR	All laminated products are exempt from the definition of hardwood plywood; ULEF certification allowed; reduced recordkeeping requirements for firms that do not qualify as manufacturers under TSCA; no requirement to inform suppliers that the products supplied must comply with TSCA Title VI.
Option SFCC	All laminated products are exempt from the definition of hardwood plywood; ULEF certification allowed; tested lots may be shipped before test results are available.

TABLE 4—OPTIONS ANALYZED IN THE ECONOMIC ANALYSIS—Continued

Option	Description
Proposed Option—Option SCUR ...	Laminated products made using NAF resins to attach veneer to compliant and certified platforms are exempt from the definition of hardwood plywood; ULEF certification allowed; reduced recordkeeping requirements for firms that do not qualify as manufacturers under TSCA; no requirement to inform suppliers that the products supplied must comply with TSCA Title VI.

3. *Benefits.* Reductions of formaldehyde emissions from composite wood products benefits individuals who reside, work, or otherwise spend a substantial amount of time where new composite wood products are introduced to an indoor space. The Economic Analysis (Ref. 46) estimates the benefits of the options over a 30-year period for lowering formaldehyde emissions from composite wood products.

This benefits analysis uses an age-dependent exposure analysis that includes formaldehyde exposure from homes, daycare, schools, workplace, vehicles, and outdoors. For each option, there are 3,300 different exposure scenarios derived from 22 different composite wood product age/source combinations, 5 structure types, 5 climate zones, and 6 individual age/employment status combinations. Changes in exposure are estimated by changing the two broad categories where a substantial amount of new composite wood products might be introduced: New home construction and major renovations that include kitchen remodeling. Changes in the risk of the adverse health outcomes associated with the changes in exposure are estimated for nasopharyngeal cancer and sensory irritation. Table 5 displays the benefits for the options described in Table 4.

The total quantified benefits of the proposed option are between $20 million and $48 million per year (in 2010 dollars) using a 3% discount rate, and between $9 million and $23 million per year using a 7% discount rate. The majority of the quantified benefits are attributable to reductions in cancer risk. The benefits under the proposed option (Option SCUR) are less than 5% lower those of the most protective option (Option SN). The proposed option has benefits that are 14% larger than the options that exclude laminated products from the definition of hardwood plywood (Options SE, SEUR, and SFCC).

There are additional unquantified benefits for all of the options from respiratory and other avoided health effects. While EPA has not valued these avoided health effects in this proposal, EPA believes that the effects could be substantial and has represented their inclusion in the table below using the letter indicator ''B''.

TABLE 5—SUMMARY OF THE MONETIZED BENEFITS

[Millions 2010$]

Regulatory option	Benefit category	Annual cases avoided	Annualized benefits ($ million)	
			3% Discount rate	7% Discount rate
Options SE, SEUR, and SFCC	Cancer	9 to 21	$17 to $38	$8 to $17
	Eye Irritation	22,133 to 170,214	$1 to $4	$1 to $4
	Total Benefits	.....	$18 to $42 + B	$8 to $20 + B
Option SP	Not estimated			
Option SN	Cancer	11 to 25	$20 to $45	$9 to $20
	Eye Irritation	24,154 to 198,950	$1 to $5	$1 to $5
	Total Benefits	.....	$21 to $50 + B	$10 to $24 + B
Options SI, SC, SCR, and SCUR (Proposed Option)	Cancer	10 to 24	$20 to $43	$9 to $19
	Eye Irritation	23,650 to 191,590	$1 to $5	$1 to $4
	Total Benefits	.....	$20 to $48 + B	$9 to $23 + B

Totals may not add due to rounding.
''B'' represents the unquantified health benefits.

Formaldehyde is classified as a known human carcinogen by the National Toxicology Program, based on evidence in humans and animals (Ref. 4). This analysis uses EPA's 1991 IRIS Inhalation Unit Risk factor of 1.3×10^{-5} cancer cases per μg/m³ of formaldehyde. In June 2010, EPA released a draft IRIS Toxicological Review of Formaldehyde that recommended a different unit risk factor and recommended the use of age-dependent adjustment factors (ADAFs) to account for age-specific susceptibility. This draft assessment underwent independent scientific peer review by the NRC. However, given that EPA is currently in the process of revising the IRIS assessment based on the NRC review and public comments, the 1991 IRIS value is used to analyze this proposed rule.

The benefits of a reduction in cancer risk are based on the value of a reduction in the risk an individual will ultimately die from the cancer (referred to as fatal cancer), and a reduction in the risk an individual will ultimately die from something other than the cancer (referred to as non-fatal cancer).

These two categories reflect the two possible outcomes for nasopharyngeal cancer and do not reflect different types of cancer. The number of excess cancer cases was estimated and then divided into these two categories: 44.7% of the cancer risk reductions are assumed to be reductions in non-fatal cancer risk and 55.3% of the reductions are assumed to be reductions in fatal cancer (mortality) risk. The value of reduced mortality risk is $8.01 per mortality micro-risk reduction—that is, a reduction of $1/1,000,000$ in the risk of mortality. Non-fatal cases of nasopharyngeal cancer were valued using a cost-of-illness approach. The value of an avoided case of non-fatal nasopharyngeal cancer was estimated to be the present discounted value of the stream of expected medical expenditures and opportunity costs associated with the illness from the year of diagnosis, taking into account that the individual may die of other causes. Costs include the cost of diagnosis, initial treatment costs, and ''maintenance'' costs in each subsequent year. The stream of annual costs depends on the stage of the cancer at diagnosis, the individual's age at diagnosis, and the individual's employment status each year after diagnosis, resulting in a value of $0.09 to $0.14 per micro-risk reduction.

The benefits associated with avoiding non-cancer health impacts are described in an EPA report titled ''Approach to Assessing Non-cancer Health Effects from Formaldehyde and Benefits from Reducing Non-cancer Health Effects as a Result of Implementing Formaldehyde Emission Limits for Composite Wood Products'' (Ref. 10). The 2010 draft IRIS assessment identified seven categories of non-cancer health effects and proposed RfCs based on four effects: Sensory irritation, pulmonary function effects, asthma and allergic sensitization (atopy), and reproductive toxicity. The NRC supported the derivation of candidate reference concentrations (RfCs) for each of these four endpoints based on human epidemiologic data (Ref. 9), but EPA determined there was sufficient information for quantitative concentration-response modeling for only three categories of effects. In the 2011 non-cancer approach document, EPA derived concentration-response functions from preferred studies for these three endpoints and recommended accompanying unit values. The available data on pulmonary function effects could not be advanced because it was not possible to link specific decrements in pulmonary function with specific economic costs and any associated benefits were not monetized. Likewise, benefits from the reduction of the other non-cancer effects for which candidate RfCs were not derived were also not monetized. EPA later concluded that, at this time, it only has sufficient information on the relationship between formaldehyde exposure and eye irritation to include a valuation estimate in the overall benefits analysis.

Information from two studies reporting sensory irritation in humans from chronic formaldehyde inhalation exposures in a residential environment were combined to create the concentration-response function for eye irritation. The function was based on a power model fit to the odds ratio of the prevalence of burning eyes reported in Figure 1 of Hanrahan *et al.* (Ref. 47). This function was then used with a willingness to pay to avoid eye irritation of $26 to calculate the monetized benefits of reduced sensory irritation for all individuals.

Formaldehyde exposure is associated with a range of respiratory related effects. Effects from repeated exposure in humans include irritation of the upper respiratory tract, decrements in pulmonary function, and nasal epithelial lesions such as metaplasia and loss of cilia. Animal studies suggest that formaldehyde may also cause airway inflammation.

In occupational studies of formaldehyde exposure, lung function deficits and decreases in spirometric values (that is, the volume and speed of air that is exhaled or inhaled) have been reported both in preshift versus postshift measurements and as a result of long-term exposures (Refs. 48–54). Studies of long-term formaldehyde exposure also report increased respiratory symptoms, such as cough, increased phlegm, chest tightness, and chest colds, in exposed workers (Refs. 48–51 and 53–54). In addition, some studies report an association between formaldehyde exposure in residential settings and respiratory symptoms (Ref. 55). Furthermore, there are also studies that report that formaldehyde exposure may increase the prevalence of asthma—particularly in the young (Ref. 56). Studies on asthma, as well as mechanistic information and their analyses, were evaluated in EPA's recent Draft Toxicological Review of Formaldehyde—Inhalation Assessment through the Integrated Risk Information System (IRIS) Program (Ref. 8). This draft IRIS assessment was released in June 2010 for public comment and external peer review by the National Research Council of the National Academy of Sciences (NRC). The NRC released their review report in April 2011 (Ref. 9). The NRC suggested EPA should examine studies relating formaldehyde exposures to asthma, pulmonary function and changes in pulmonary pathology. EPA is currently revising the draft assessment in response to the NRC review.

EPA is committed to evaluating alternative approaches to quantifying the benefits associated with reduced respiratory symptoms such as exacerbation of symptoms among those who have chronic respiratory diseases, *e.g.,* bronchitis and asthma. For instance, the Agency will explore the extent to which approaches used to quantify respiratory symptoms in air quality rules might be applied to residential exposure to formaldehyde. If a scientifically defensible approach is available by the time the final rule is promulgated, EPA will include such quantification as part of the benefits analysis. Although uncertainty remains regarding how best to quantify the formaldehyde exposure's effect on respiratory outcomes, EPA considers these effects to be important non-monetized impacts that contribute to the overall benefits of this rule, as indicated by the ''+B'' in the various tables summarizing benefits.

Epidemiologic studies suggest an association between occupational exposure to formaldehyde and adverse reproductive outcomes in women, including reduced fertility (Refs. 57, 58 and 59). EPA does not feel that it has sufficient information at this time on the relationship between formaldehye exposure and reduced fertility to include a valuation estimate in the overall benefits analysis.

There are three reasons why the total economic benefits reported above may be underestimated. First, there are a number of potential health effects that are not included in this analysis. In addition to cancer, the 2010 draft IRIS assessment enumerated potential health outcomes from formaldehyde exposure including sensory irritation, upper respiratory tract pathology, pulmonary function effects, asthma and allergic sensitization, immune function effects, neurological and behavioral toxicity, and developmental and reproductive toxicity. The NRC review of the draft IRIS assessment was released in April 2011 (Ref. 9), and EPA is currently revising the draft in response. Monetization of any health endpoint requires an estimated concentration-response function that can be appropriately linked for use in the economic analyses. At this time, only sensory irritation has sufficient data to quantify the benefits. Second, while the cancer benefits were evaluated using the

unit risk as a reasonable upper bound on the central estimate of risk, the sensory irritation benefits were evaluated using a central estimate of the concentration-response function rather than an upper (or lower) bound which could also underestimate any associated economic benefits. Third, the valuation of some of these endpoints relies on cost-of-illness estimates rather than willingness to pay. In general, cost of illness estimates only capture mitigating and indirect costs, omitting averting expenditures and lost utility associated with pain and suffering, and are, therefore, considered to be underestimates of economic benefits.

4. *Costs.* The Economic Analysis estimates the incremental cost to firms located in the U.S. of complying with the requirements of the proposal compared to the activities that firms are already undertaking, often in response to the CARB ATCM. The costs of the proposal for the industries subject to the rule are displayed in Tables 6 and 7.

Depending on their baseline compliance with the CARB ATCM, panel producers may incur costs for third-party certification, testing, and changes to raw materials and production processes where necessary to meet the emissions standards. Panel producers and other regulated firms may incur costs for labeling, recordkeeping and rule familiarization.

Stock panel producers are estimated to incur a total annualized cost of $1 million per year under either a 3% or 7% discount rate. Laminated product producers incur a total annualized cost of $18 million to $32 million per year using a 3% discount rate and $18 million to $33 million per year using a 7% rate. Of this, $3 million per year is incurred by firms that convert to NAF resins in order to qualify for the exemption from the definition of hardwood plywood, $8 million to $17 million per year is spent on resin changes, testing and certification by firms that continue to use formaldehyde-based resins and thus do not qualify for the exemption, and the balance is spent on rule familiarization, labeling, and recordkeeping. The remaining fabricators incur a total annualized cost of $21 million to $26 million per year using a 3% discount rate and $21 million to $27 million per year using a 7% discount rate. Wholesalers incur total annualized costs of $16 million per year under a 3% discount rate and $17 million per year using a 7% discount rate. Retailers are estimated to incur total annualized costs of $10 million per year using a 3% discount rate and $16 million per year using a 7% discount rate. The proposal is estimated to result in a total cost of $434 million to $447 million in the first year. Annualized costs of the proposal are $72 million to $81 million per year using a 3% discount rate and $80 million to $89 million per year using a 7% discount rate.

Given the formaldehyde emissions standards that are set in Title VI of TSCA, annualized costs for the other options for laminated products ranged from $60 million to $293 million per year using a 3% discount rate, and $68 million to $311 million per year using a 7% discount rate. The total costs by option are displayed in Table 8.

TABLE 6—COSTS OF PROPOSED OPTION BY INDUSTRY TYPE

[Millions 2010$]

Industry type	First year		Annualized (3%)		Annualized (7%)	
	Low	High	Low	High	Low	High
Stock panel producers	$2	$2	$1	$1	$1	$1
Laminators	55	102	18	32	18	33
Fabricators (excluding laminators)	91	57	26	21	27	21
Wholesalers	71	71	16	16	17	17
Retailers	215	215	10	10	16	16
Total	434	447	72	81	80	89

Low and high end scenarios reflect the estimated number of laminators and the number of product lines certified per firm, not the low and high costs for each category of entities.

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Table 7. – Incremental Cost Estimates for the Proposed Rule by Type of Entity, Baseline Status, and Activity

Type of Entity	Baseline Status under CARB ATCM	Number of Mills, Firms, or Production Volume (msf†)	Activities with Incremental Costs Estimated	Number of Mills, Firms, or Production Volume Incurring Costs	Total Cost (million 2010$)	
					First Year	Subsequent Years
Panel manufacturers	All panel manufacturers	62 mills	Become familiar with TSCA rule	62	$0.02	- - -
			On-site daily quality control testing	21	$0.2	$0.02
			Set-up to label products as TSCA compliant	62	$0.009	- - -
			Keep additional records	62	$0.2	$0.2
	Manufacture products not certified under CARB ATCM	16 mills	Have products tested and certified by a TPC	16	$0.4	$0.09
		49,600 msf	Changes to raw materials	47,300 msf	$1.1	$1.1
Wood veneer laminated product manufacturers	All laminators	7,486 to 13,875 firms	Become familiar with the TSCA rule	7,486 to 13,875	$2.2 to $4.1	- - -
			Set-up to label products as TSCA compliant	7,486 to 13,875	$34.1 to $63.2	- - -
	Laminators defined as hardwood plywood producers under TSCA	150 to 277 firms	Have products tested and certified by a TPC	150 to 277	$9.3 to $19.6	$8.4 to $17.2
			On-site daily quality control testing	150 to 277	$1.6 to $3.0	$0.1 to $0.2
			Keep additional records	150 to 277	$1.4 to $2.5	$1.4 to $2.5
		7,248 msf	Changes to raw materials	2,149 msf	$0.06	$0.06
	Laminators defined as fabricators under TSCA	7,336 to 13,598 firms and 355,164 msf	Changes to raw materials	105,317 msf	$3.2	$3.2
	Laminators defined as fabricators; not compliant with CARB ATCM requirements for fabricators	7,336 to 13,598 firms	Keep additional records	674 to 1249	$3.7 to $6.8	$3.7 to $6.8
Fabricators that are not laminators	All fabricators that are not laminators	66,103 to 72,492 firms	Become familiar with the TSCA rule	66,103 to 72,492	$19.5 to $21.3	- - -
			Set-up to label products as TSCA compliant	66,103 to 72,492	$16.8 to $45.9	- - -
	Fabricators not compliant with CARB ATCM requirements	33,665 to 40,054 firms	Keep additional records	3,703 to 4,406	$20.3 to $24.1	$20.3 to $24.1
Wholesalers	All wholesalers	85,560 firms	Become familiar with the TSCA rule	85,560	$31.9	- - -
			If repackaging or replacing an original label, set-up to label products as TSCA compliant	855	$3.9	- - -
	Wholesalers that import and are not compliant with CARB ATCM	15,045 firms	Set up systems to keep additional records	8,576	$21.5	- - -
			Keep additional records	6,649	$13.5	$13.5
Retailers	All retailers	759,048 firms	Become familiar with the TSCA rule	759,048	$214.7	- - -
Total					**$434 to $447**	**$56 to $65**

† Production volume is reported in thousands of square feet (msf) of production

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TABLE 8—TOTAL COSTS BY OPTION

[Millions 2010$]

Option	First year		Annualized (3%)		Annualized (7%)	
	Low	High	Low	High	Low	High
Option SE	$595	$595	$100	$100	$112	$112
Option SI	919	1,254	204	293	218	311
Option SP	600	600	104	104	115	115
Option SN	626	639	128	137	139	148
Option SC	609	621	112	121	123	132
Option SCR	435	447	72	81	80	89
Option SEUR	420	420	60	60	68	68
Option SFCC	594	594	100	100	111	111
Proposed Option—Option SCUR	434	447	72	81	80	89

5. *Net benefits.* Net benefits are the difference between benefits and costs. The net benefits for the options are displayed in Tables 9 and 10. The proposal is estimated to result in quantified net benefits of −$24 million to −$60 million per year using a 3% discount rate, and −$57 million to −$79 million per year using a 7% discount rate. Quantified net benefits for the other options based on the formaldehyde emissions standards that are set in Title VI of TSCA range from −$18 million to −$273 million per year using a 3% discount rate and −$48 million to −$302 million per year using a 7% discount rate. There are additional unquantified benefits due to respiratory and other avoided health effects. EPA considers health benefits from avoided health effects to be potentially important non-monetized impacts that contribute to the overall net benefits of this proposed rule, and has represented their inclusion in the table below using the letter ''B''.

TABLE 9—ANNUALIZED NET BENEFITS BY OPTION

[Millions 2010$, 3% discount rate]

Option	Costs		Benefits		Net benefits	
	Low estimate	High estimate	Lower estimate	Higher estimate	Lower net estimate	Higher net estimate
Option SE	$100	$100	$18+B	$42+B	($82)+B	($58)+B
Option SI	204	293	$20+B	$48+B	($273)+B	($157)+B
Option SP	104	104	Not estimated	Not estimated	Not estimated	Not estimated
Option SN	128	137	$21+B	$50+B	($116)+B	($79)+B
Option SC	112	121	$20+B	$48+B	($101)+B	($64)+B
Option SCR	72	81	$20+B	$48+B	($61)+B	($24)+B
Option SEUR	60	60	$18+B	$42+B	($42)+B	($18)+B
Option SFCC	100	100	$18+B	$42+B	($82)+B	($58)+B
Proposed Option—Option SCUR.	72	81	$20+B	$48+B	($60)+B	($24)+B

''B'' represents the unquantified health benefits.

TABLE 10—ANNUALIZED NET BENEFITS BY OPTION

[Millions 2010$, 7% discount rate]

Option	Costs		Benefits		Net benefits	
	Low estimate	High estimate	Lower estimate	Higher estimate	Lower net estimate	Higher net estimate
Option SE	$112	$112	$8+B	$20+B	($103)+B	($91)+B
Option SI	218	311	$9+B	$23+B	($302)+B	($195)+B
Option SP	115	115	Not estimated	Not estimated	Not estimated	Not estimated
Option SN	139	148	$10+B	$24+B	($138)+B	($114)+B
Option SC	123	132	$9+B	$23+B	($123)+B	($100)+B
Option SCR	80	89	$9+B	$23+B	($80)+B	($57)+B
Option SEUR	68	68	$8+B	$20+B	($60)+B	($48)+B
Option SFCC	111	111	$8+B	$20+B	($103)+B	($91)+B
Proposed Option—Option SCUR.	80	89	$9+B	$23+B	($79)+B	($57)+B

''B'' represents the unquantified health benefits.

Costs exceed quantified benefits by a larger margin for the proposed rule (Option SCUR) than for Option SEUR, which exempts all laminated products from the definition of hardwood plywood. However, both the relative

ranking of the options and the fact that quantified net benefits are negative for all the options might change if EPA could quantify additional health benefits. Furthermore, as explained elsewhere in this proposal, currently available information indicates that laminated products can exceed the formaldehyde emission standards. Therefore, on the basis of information currently available to the Agency, EPA has concluded that exempting all laminated products from the definition of hardwood plywood is not consistent with TSCA Title VI's statutory mandate that EPA promulgate regulations in a manner that ensures compliance with the emission standards in TSCA section 601(b)(2). Of the options that are consistent with the statutory mandate, the proposed rule has the lowest costs as well as the best balance between costs and quantified benefits. After assessing both the costs and the benefits of the proposal, including the unquantified benefits, EPA has made a reasoned determination that the benefits of the proposal justify its costs.

To further improve the analysis for the final rule, the Agency is also specifically interested in supporting information on the following questions related to the data, estimates, and assumptions used in the Agency's analysis:

1. What, if any, differences are there in actual formaldehyde emissions levels between products made domestically and those imported into the U.S.? Are data available characterizing the differences in emissions between products that are certified under the CARB ATCM and those that are not certified because they are sold in the U.S. outside of California?

2. Is there evidence that products that do not comply with the CARB ATCM are being sold in California? If so, are there differences in compliance between products made domestically and those imported into the U.S.? Is there information available to indicate how the level of compliance with the TSCA Title VI rule can be expected to differ from compliance with the CARB ATCM?

3. Did firms located outside of California that sell regulated composite wood products in California incur different costs due to the CARB ATCM compared to firms located in California? If so, what influenced these differences in costs? How did the differences, if any, depend on firm type (panel producer, fabricator, distributor, or retailer), firm size, complexity of the supply chain, or other factors?

4. To what extent are wholesalers that do not have a physical location in California complying with the CARB ATCM's recordkeeping requirements because they sell goods that may ultimately be sold in California?

5. In addition to the Census data that EPA used in its analysis, what other information is available that would allow EPA to better characterize the number of firms in different industries affected by the rule?

6. For each industry that uses veneer to manufacture products, how many firms make laminated products sold in the U.S. that could potentially be included in the definition of hardwood plywood under TSCA Title VI because they meet all of the following criteria: (a) They affix a wood or woody grass veneer to the face and/or back of a purchased platform to produce a component part used in the construction or assembly of a finished good; (b) they are applying veneer to a particleboard, MDF, or veneer-core platform; (c) they are making a product that qualifies as a panel under the proposed rule, where a panel is defined as a flat or raised piece of composite wood product; and (d) they are making a product that does not qualify for one of the statutory exemptions in TSCA Title VI (such as the exemptions for products intended for use in a new vehicle such as a rail car, boat, or aircraft, or the exemption for products intended for exterior use)?

7. To what extent are the laminated products described above currently made using an added formaldehyde resin to affix the veneer to the platform? To what extent will these products continue to use added formaldehyde resins after the TSCA Title VI rule is implemented? What if any process or performance issues will face laminated product producers that switch to NAF resins?

8. To what extent were firms' customary recordkeeping practices generally sufficient to meet the chain of custody requirements in the CARB ATCM? For firms that had to modify their recordkeeping systems or practices to comply with the CARB ATCM, how much additional effort or cost was required, on a one-time or ongoing basis? How do those costs depend on firm type (panel producer, fabricator, distributor, or retailer), firm size, complexity of the supply chain, or other factors?

9. If your firm has a schedule for the retention of records, how long do you retain records such as purchasing records, invoices, bills of lading, production records, shipping information, and product testing information? What policies does your firm have for the retention or destruction of these records? In light of your firm's records retention and destruction policies or your ordinary business practices, how would the differences between a 2-year recordkeeping period, a 3-year period, and a 5-year period affect your recordkeeping cost under TSCA Title VI? What are the key components of your recordkeeping costs (labor, computer storage, physical storage for paper records, etc.), and how do these costs change as the recordkeeping period increases? Please provide a detailed response.

10. What costs did fabricators incur to label their products due to the CARB ATCM? What factors, such as production volume or the number or complexity of the products, determined the magnitude of those costs? Were there additional costs due to the CARB labeling requirement after the first year? If so, what were the costs for, how large were they, and what factors influenced those costs? How common is it for distributors or retailers to repackage or relabel goods? To what extent do distributors or retailers apply labels under the CARB ATCM, either because they are repackaging goods that were originally labeled on the packaging instead of on the individual items, or because they are replacing an original label applied by the panel producer or fabricator with a label listing a different company name?

11. What data are available on the types and quantities of goods containing composite wood products used within a typical residence? How do these quantities differ by the type of dwelling (single family attached housing, single family detached housing, multi-family housing, manufactured housing, etc.)? Are there differences in the typical quantities of composite wood products used associated with the race or income of the residents?

12. In the absence of a requirement that panel producers hold lots selected for testing until the test results are received, how likely is it that panels would be shipped before the test results are available? Given the lower frequency of quality control testing for hardwood plywood producers (including laminators produced panels defined as hardwood plywood), how would such a requirement affect their decision about whether to perform quality control testing for formaldehyde emissions in-house or to send the panels to a third party for testing?

13. What data are available on the amount of work or leisure time patients typically miss as a result of treatment for nasopharyngeal cancer, including

the time recovering from chemotherapy or radiation?

14. How should EPA quantify the benefits of avoiding respiratory effects related to formaldehyde exposure? Which symptoms should be valued? How should the results be presented to reflect the underlying uncertainty in such estimates?

15. How should EPA evaluate and quantify the benefits of improved fecundity due to reductions in formaldehyde exposure? How should the results be presented to reflect the underlying uncertainty in such estimates?

B. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted to OMB for review and approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2446.01, and the OMB Control No. 2070—[new] (Ref. 60).

The new information collection activities contained in this proposed rule are designed to assist the Agency in meeting the requirement in Section 601(d) of TSCA that EPA promulgate implementing regulations in a manner that ensures compliance with the TSCA Title VI emission standards. The new information collection requirements affect firms that sell, supply, offer for sale, or manufacture (including import) hardwood plywood, particleboard, MDF, or finished goods containing these materials in the United States. Although firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities contained in this proposed rule become mandatory for that firm.

The ICR document provides a detailed presentation of the estimated burden and costs for 3 years of the program. Burden is defined at 5 CFR 1320.3(b). Since the proposed rule applies to products imported into the U.S., the certification, testing, recordkeeping, and reporting requirements also apply to entities outside the U.S. Therefore, the ICR document considers the burden and cost to both foreign and domestic entities. This is in contrast to the Economic Analysis for the proposed rule (Ref. 46), where the cost analysis is limited to domestic entities. The ICR document also accounts for the burdens of baseline reporting and recordkeeping activities in two ways. One estimates the incremental burden and cost excluding all the activities performed to comply with the CARB ATCM in the baseline, which is consistent with the cost estimates in the Economic Analysis. The other estimates the burden and cost of future activities even if those activities would be performed in the absence of the TSCA Title VI rule (*i.e.,* to comply with the CARB ATCM), which yields higher cost estimates than those in the Economic Analysis.

The ICR document estimates that more than 990,000 firms are subject to the rule's reporting and recordkeeping requirements. Of these, nearly 925,000 are domestic firms and approximately 66,000 are foreign firms. Over the 3-year period covered by the ICR, the incremental burden of the rule (excluding burden for activities performed in the baseline) is estimated to average 5.8 million hours per year. The total annual burden (including burden for required activities performed in the baseline) is estimated to average 7.9 million hours per year. The total burden reflects nearly 1.7 million responses per year over the 3 years of the ICR, where the number of responses includes both responses that are submitted to EPA or a third party as well as recordkeeping activities conducted by firms that only maintain records. The total annual burden equates to an average of approximately 5 hours per response.

An agency may not conduct or sponsor, and a person is not required to respond to an ICR unless it displays a currently valid OMB control number, or is otherwise required to submit the specific information by a statute. The OMB control numbers for EPA's regulations codified in Title 40 of the Code of Federal Regulations, after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes the ICR, under Docket ID number EPA–HQ–OPPT–2012–0018. Submit any comments related to the ICR to EPA and OMB. See the **ADDRESSES** unit at the beginning of this document for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 to 60 days after June 10, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by July 10, 2013. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact (Ref. 49). The IRFA is available for review in the docket and is summarized below.

1. *Need for the rule.* TSCA section 601(d) directs EPA to promulgate regulations to implement the formaldehyde standards for composite wood products described in TSCA section 601(b)(2). EPA is issuing a proposed rule under TSCA Title VI to implement the statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured (including imported) in the United States. As directed by the statute, this proposal includes provisions relating to, among other things, laminated products, products made with ultra low-emitting formaldehyde resins, products made with no-added formaldehyde resins, testing requirements, product labeling, chain of custody documentation and other recordkeeping requirements, and product inventory sell-through

provisions, including a product stockpiling prohibition.

2. *Objectives and legal basis for the rule.* The legal basis for the rule is TSCA section 601(d), which provides authority for the Administrator to ''promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).'' Therefore, the central objective of the regulatory provisions of this proposal is to ensure compliance with the TSCA Title VI formaldehyde emission standards.

3. *Description and number of small entities to which the rule will apply.* The small entities potentially affected by the rule are manufacturers (including importers), fabricators, distributors, and retailers of composite wood products. For purposes of assessing the impacts of the rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA estimates that the rule will affect approximately 879,000 small entities.

4. *Projected compliance requirements.* This proposal implements the statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured (including imported) in the United States. As directed by the statute, this proposal includes provisions relating to, among other things, laminated products, products made with ultra low-emitting formaldehyde resins, products made with no-added formaldehyde resins, testing requirements, product labeling, chain of custody documentation and other recordkeeping requirements, and product inventory sell-through provisions, including a product stockpiling prohibition. This proposal would establish requirements for manufacturers (including importers), fabricators, distributors, and retailers of composite wood products. The regulatory provisions in this proposal are designed to ensure compliance with the TSCA Title VI formaldehyde emission standards while aligning, where practical, with the regulatory requirements under the California Air Resources Board's (CARB) Airborne Toxic Control Measure (ATCM). By aligning itself with the existing CARB requirements, EPA seeks to avoid differing or duplicative regulatory requirements that would result in an increased burden on the regulated community.

5. *Classes of small entities subject to the compliance requirements.* Small entities include small businesses, small organizations, and small governmental jurisdictions. The small entities that are potentially directly regulated by this proposed rule are small businesses that are manufacturers (including importers), fabricators, distributors, or retailers of composite wood products. No small governments or small organizations are expected to be directly regulated by the rule.

6. *Professional skills needed to comply.* Each panel producer must designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emission quality control. EPA has not proposed criteria for determining whether an individual's experience or training are appropriate for this position, but experience in the wood products industry or a degree in chemistry or a related field might provide the skills need to comply with the requirements.

A panel producer must be able to follow sampling and handling procedures for the material that is to be tested. However, those procedures must be described in the panel producer's quality control manual, and specified skills should not be needed to follow the written procedures.

Each panel producer must also designate a quality control facility for conducting quality control formaldehyde testing, and the quality control facility must have quality control employees with adequate experience and/or training to conduct accurate chemical quantitative analytical tests. But instead of performing these functions themselves, panel producers have the option of hiring an accredited TPC or a contract laboratory to fulfill these requirements.

To obtain product certification, a panel producer must apply to an accredited TPC, and must provide information and notifications to the TPC. Finally, manufacturers, fabricators, distributors, or retailers of composite wood products must maintain records. None of these activities requires any special skills.

7. *Relevant Federal rules.* The U.S. Department of Housing and Urban Development (HUD) has regulations governing formaldehyde emission levels from plywood and particleboard materials installed in manufactured homes. (See 24 CFR 3280.308.) However, TSCA Title VI establishes specific formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard and does not provide EPA with the authority to modify these standards. Furthermore, the Formaldehyde Standards for Composite Wood Products Act, which includes TSCA Title VI, directs HUD to revise their regulations to ensure that they reflect the emission standards in TSCA Title VI. The HUD regulations do not deal with the other elements addressed in these implementing regulations (where EPA does have the authority to make determinations) such as laminated products, products made with ultra low-emitting formaldehyde resins, products made with no-added formaldehyde resins, testing requirements, chain of custody documentation, and product inventory sell-through provisions. Therefore, the regulatory provisions of this proposal for which EPA has flexibility in implementing the statute do not duplicate, overlap, or conflict with any other Federal rules.

8. *Potential economic impacts on small entities.* Of the 879,000 small firms affected by the proposal, over 851,000 (about 97%) are expected to have costs impacts that are less than 1% of their revenues, over 23,000 firms (about 3%) are expected to experience impacts at levels between 1% to 3% of their revenue, and over 4,000 firms (less than 1%) are expected to incur costs exceeding 3% of their revenues.

Many of the firms with cost impacts above 1% of their revenues are fabricators, wholesalers, and retailers with annualized costs less than $250 (*i.e.,* they are firms with annual revenues below $25,000). These firms account for 92% of the firms with cost impacts that are between 1% to 3% and 42% of the firms with cost impacts that exceed 3%.

9. *Small Business Advocacy Review Panel.* As required here by section 609(b) of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel on February 3, 2011, to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the proposed rule's requirements. The Panel solicited input on all aspects of these proposed regulations and on the framework for the third-party certification program under TSCA Title VI. Seventeen potentially-impacted small entities served as small-entity representatives

(SERs) to the Panel, representing a broad range of small entities from diverse geographic locations, and five trade associations. The Panel concluded its deliberations on April 4, 2011.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to elements of the IRFA. A copy of the Panel report is included in the docket for this proposed rule (Ref. 15). It is important to note that the Panel's findings and discussion were based on the information available at the time the final report was prepared. EPA has continued to conduct analyses relevant to the proposed rule, and additional information may be developed from public comment on the proposed rule.

The Panel's recommendations on the TPC framework were discussed in the TPC Proposal (Ref. 1). The Panel's most significant findings and recommendations on other aspects of the TSCA Title VI implementing regulations are summarized below.

a. *In general.* The Panel recommended that EPA adopt regulatory requirements that are consistent with the CARB ATCM wherever possible. EPA agrees with this recommendation and has tried throughout this proposal to remain consistent with CARB where it is practical to do so.

b. *Manufactured-by dates and stockpiling.* The Panel generally agreed with those SERs that recommended that EPA propose to establish the manufactured-by date at 180 days after promulgation of the final rule and make the reference period for determining whether stockpiling has occurred the 12-month period prior to promulgation of the final rule. The Panel also recommended that EPA request comments and data on alternative dates and reference periods.

EPA is proposing to establish the manufactured-by date at 1 year after promulgation of the final rule. This is primarily to allow for development of the third-party certification infrastructure and to give panel producers who are not already complying with the CARB ATCM adequate time before the manufactured-by date to select an accredited TPC, develop a quality control manual, and complete the initial testing to qualify for product certification.

EPA is proposing to establish the stockpiling reference period, or base period, as the calendar year 2009 because, under TSCA Title VI, the base period must end before the statute was enacted. EPA requests comments and data on both the proposed manufactured-by date and the proposed base period for determining whether stockpiling has occurred.

c. *Quality control and compliance testing.* The Panel recommended that EPA consider CARB's method of establishing equivalency and carefully evaluate any alternative test method permitted. After considering the options, EPA is proposing to use CARB's method of establishing equivalency between test methods and EPA is also proposing to recognize those alternative test methods that CARB has approved.

The Panel further recommended that EPA provide clear direction on product decertification and recertification procedures and the recall of noncompliant products. In response to these recommendations, EPA has proposed specific provisions on what actions are required and allowed in the event of a failed test result. EPA has also proposed to require panel producers to hold lots selected for testing until the test results are received.

d. *Labeling and recordkeeping.* The Panel generally recommended that labeling and recordkeeping provisions should be closely harmonized with CARB's requirements, including allowing panels to be labeled by bundle, rather than individually. The Panel did recognize that subtle differences between the TSCA Title VI implementing regulations and the CARB ATCM may make identical labels impossible. EPA is proposing labeling requirements that are virtually identical to CARB's, except that the labels must say that the products are TSCA Title VI compliant instead of CARB compliant. For entities that are manufacturers under TSCA (i.e., they manufacture, produce, or import composite wood panels, component parts, or finished goods), EPA's proposed recordkeeping and chain of custody documentation requirements are also virtually identical to CARB's. For distributors and retailers that are not manufacturers under TSCA, EPA is proposing that the only records they be required to keep are invoices and bills of lading. This requirement is less burdensome than recordkeeping and chain of custody requirements similar to those in the CARB ATCM.

e. *Laminated products and engineered veneer.* The Panel recommended that EPA continue to seek available information, and exempt those laminated products that can be exempted consistent with the direction given in TSCA Title VI. The Panel further recommended that EPA work with small businesses, especially those laminating on a made-to-order basis, to design a testing scheme that is practical for those businesses, and at the same time, is calculated to ensure compliance with the emissions standards. The Panel also recommended that EPA consider basing the number and frequency of required quality control tests on production volume, thereby requiring fewer tests for smaller producers. EPA has incorporated all of these recommendations into this proposal, by proposing to exempt laminated products that are made with certified platforms and NAF resins, and by proposing to allow for quality control testing frequency based on production volume for hardwood plywood producers.

f. *Definitions.* The Panel recommended that EPA develop a definition of ''hardboard'' that takes the revised ANSI standard into account while ensuring that similar products are similarly regulated under TSCA Title VI. EPA believes that its proposed definition takes into account both widespread industry usage of the term and the intent of the statute.

Recognizing that TSCA Title VI was not intended to apply to structural plywood, the Panel also recommended that EPA develop a clear definition for ''interior use'' in order to eliminate confusion in the regulated community. According to the Panel, the definition should be based on the intent of the statute and consider how the hardwood plywood is likely to be used and stored once incorporated into a finished good. EPA has proposed a definition of ''intended for interior use'' that includes these considerations and requests comments on the appropriateness of this definition.

While the SERs differed in their advice on the definition of the term ''panel,'' the SBAR Panel recommended that EPA reduce uncertainty in the regulated community by including in its regulation a clear definition of ''panel'' that is based on the intent of the statute, and considers trade usage and the limitations of current test methods. Again, EPA is proposing a definition that takes these factors into account, and EPA requests comment on all aspects of the proposed definition.

10. *Alternatives considered.* Over the course of this rulemaking, EPA considered alternatives for various provisions of the rule. Most of these alternatives would have applied to both small and large entities but, given the number of small entities in the affected industries, some of these alternatives could affect many small entities. EPA made a concerted effort to keep the costs and burdens associated with this rule as low as possible while still ensuring compliance with the TSCA Title VI emissions standards. In developing the proposed rule, EPA considered the

statutory requirements and the benefits from protection of human health and the environment, as well as the compliance costs imposed by the rule, both in general and on small entities. EPA took a number of steps to reduce the economic impacts of the rule where doing so was consistent with the statutory mandate. The steps where EPA was able to quantify the resulting cost reductions are:

• *Aligning with the CARB ATCM where practical.* This regulatory proposal is designed to ensure compliance with the TSCA Title VI formaldehyde emission standards while aligning, where practical, with the regulatory requirements in California. Some of the areas where EPA has aligned the proposal with the CARB ATCM are described below. Aligning the TSCA implementing regulations with California's requirements helps reduce costs for the nearly 100 composite wood product mills, the 32,000 fabricators, the 32,000 wholesalers, and the 101,000 retailers that are already complying with the CARB ATCM in the baseline. However, EPA deviated from the CARB ATCM where doing so would reduce burden while still ensuring compliance with the TSCA Title VI emissions standards. The proposed rule costs $19 million to $31 million per year less than an option that is fully consistent with the CARB ATCM.

• *Defining hardwood plywood to exclude laminated products in which a wood veneer is attached to a compliant and certified platform using a NAF resin, and defining laminated products without limiting applicability to the manufacturer or fabricator of the finished good in which the product is incorporated.* These definitions will result in 98% of laminated product producers being regulated as fabricators rather than panel producers. As a result, the rule will cost $92 million to $172 million per year less than if all laminated products were included in the definition of hardwood plywood.

• *Reducing recordkeeping for non-manufacturers.* The rule costs $40 million per year less than if EPA had proposed recordkeeping requirements similar to the CARB ATCM's.

• *Reducing TPC oversight and testing requirements for NAF and ULEF products.* The ULEF provisions alone reduce the total rule costs by $0.5 million per year.

EPA also took a number of steps to reduce burden where it did not have sufficient information to quantify the resulting cost reductions. Some of these steps include:

• Not requiring retailers to relabel items that they divide or repackage.

• Reducing quality control testing for small hardwood plywood producers.

• Reducing quality control testing for particleboard and medium-density fiberboard producers that demonstrate consistent operations and low variability of test values.

• Allowing panel producers to group products and product types for testing.

• Adopting a definition of hardboard that exempts hardboard products (including those made with phenol-formaldehyde resin) from the statutory emission standards and the testing and certification requirements.

• Setting the manufactured-by date for the sell-through provisions at 1 year after promulgation of the final rule, instead of the statutory minimum of 180 days.

• Allowing alternate test methods to ASTM D–6007–02 and ASTM D–5582 for quality control testing, after demonstrating equivalence.

• Not requiring recordkeeping for exempt products.

• Allowing TPCs approved by CARB to certify products under TSCA Title VI until one year after the publication of the final rule, and allowing products currently certified by these TPCs to be considered certified for purposes of TSCA Title VI during that same period. Allowing equivalence between ASTM E–1333–10 and any other approved test method to be demonstrated in a range of formaldehyde concentrations that is representative of the emissions of the products that a TPC certifies.

EPA also considered and rejected various alternatives to the rule that could affect the economic impacts of the rule on small entities. For the reasons described below, these alternatives are not consistent with the statutory objectives of the rule and are not included in the proposed rule.

• *Exempting all laminated products from the definition of hardwood plywood.* EPA considered excluding all laminated products from the definition of hardwood plywood. Because eligibility for such an exemption would not be based on the type of resins used to attach a wood veneer to a platform, currently available information indicates that this would have allowed laminated products that exceed the formaldehyde emission standards to be exempted from the definition of hardwood plywood. Therefore, on the basis of information currently available to the Agency, EPA has concluded that exempting all laminated products from the definition of hardwood plywood is not consistent with TSCA Title VI's statutory mandate that EPA promulgate regulations in a manner that ensures compliance with the emission standards in TSCA section 601(b)(2).

• *Providing additional de minimis exceptions.* EPA has decided not to propose an exception from any of the regulatory requirements for products containing small amounts of composite wood products, other than implementing the statutory exceptions for certain windows and doors. EPA does not have the authority to promulgate a *de minimis* exception to the statutory requirements (*e.g.,* emissions standards, or quarterly testing); rather EPA has the authority to promulgate a de minimis exception for the other regulatory provisions (*e.g.,* record keeping, chain-of-custody, quality control testing, and labeling). EPA does not know of any information that suggests that products with a de minimis amount of composite wood products would necessarily be made from panels that meet the statutory emissions standards, as required by the statute. Thus, EPA believes it is necessary to make these products subject to the already reduced regulatory requirements. EPA has concluded that, on the basis of information currently available to the Agency, excepting such products would not be consistent with TSCA Title VI's statutory mandate that EPA promulgate regulations in a manner that ensures compliance with the emission standards in TSCA section 601(b)(2).

• *Not requiring retention of tested lots.* EPA is proposing to require that panel producers retain lots of composite wood products from which quality control or quarterly samples have been selected until the samples have been tested and the results received. Without this requirement, panel producers could inadvertently sell products exceeding the emission standards in TSCA section 601(b)(2). Furthermore, EPA believes that the proposed approach may be less burdensome overall and offer better protection to importers, distributors, wholesalers, retailers, and consumers than an approach relying on after-the-fact enforcement actions and customer notifications.

Additional information on the alternatives that EPA considered is presented elsewhere in this proposal, and in the IRFA (Ref. 61).

EPA invites comments on all aspects of the proposal and its impacts on small entities.

D. Unfunded Mandates Reform Act (UMRA)

Title II of UMRA, 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their

regulatory actions on State, local, and tribal governments and the private sector. This rule contains a Federal mandate that may result in expenditures exceeding the inflation-adjusted UMRA threshold of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below (Ref. 62).

1. *Authorizing legislation.* This proposed rule is issued under the authority of section 601 of TSCA, 15 U.S.C. 2697.

2. *Cost-benefit analysis.* EPA has prepared an analysis of the costs and benefits associated with this rulemaking, a copy of which is available in the docket for this rulemaking (Ref. 46). The Economic Analysis presents the costs of the rule as well as various regulatory options and is summarized in Unit V.A. EPA has estimated that this proposal will result in a total cost of $434 million to $447 million in the first year. The cost is estimated to drop to $56 million to $65 million in the second year. The total annualized cost of this proposal is $72 million to $81 million per year when using a 3% discount rate and $80 million to $89 million per year using a 7% discount rate. When adjusted for inflation, the $100 million UMRA threshold is equivalent to approximately $143 million in 2010 dollars. Thus, the cost of the rule to the private sector and State, local, and Tribal governments in the aggregate exceeds the inflation-adjusted UMRA threshold in the first year.

This proposed rule will reduce exposures to formaldehyde, resulting in benefits from avoided adverse health effects. For the subset of health effects where the results were quantified, the estimated annualized benefits (due to avoided incidence of nasopharyngeal cancer and eye irritation) are $20 million to $48 million per year using a 3% discount rate, and $9 million to $23 million per year using a 7% discount rate. There are additional unquantified benefits due to other avoided health effects.

Net benefits are the difference between benefits and costs. The proposal is estimated to result in quantified net benefits of −$24 million to −$60 million per year using a 3% discount rate, and −$57 million to −$79 million per year using a 7% discount rate. EPA considers the additional unquantified health benefits from avoided cases of respiratory related and other effects to be potentially important non-monetized impacts that contribute to the overall net benefits of this proposed rule.

3. *State, local, and Tribal government input.* Consistent with the intergovernmental consultation provisions of section 204 of the UMRA EPA has initiated consultations with governmental entities affected by this proposed rule. EPA has met with officials from the state of California on numerous occasions to discuss aspects of the CARB ATCM and its implementation. With the assistance of the National Conference of State Legislatures, EPA has also initiated consultations with state environmental health directors.

4. *Least burdensome option.* Consistent with section 205, EPA has identified and considered a reasonable number of regulatory alternatives. TSCA Title VI establishes specific formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard and does not provide EPA with the authority to modify these standards. The statute further directs EPA to promulgate implementing regulations that address elements such as laminated products, products made with ultra low-emitting formaldehyde resins, products made with no-added formaldehyde resins, testing requirements, product labeling, chain of custody documentation and other recordkeeping requirements, and product inventory sell-through provisions. Section 601(d) of TSCA requires EPA to promulgate implementing regulations in a manner that ensures compliance with the TSCA Title VI emission standards. Within those constraints, EPA has considered a number of regulatory alternatives for regulating laminated products, as described in Unit III. and elsewhere in this unit, as well as in the Economic Analysis (Ref. 46). One of the alternative options that EPA considered, which would have exempted all laminated products from the definition of hardwood plywood, had lower costs than the proposed rule. But as explained elsewhere in this proposal, currently available information indicates that laminated products can exceed the formaldehyde emission standards. Therefore, on the basis of information currently available to the Agency, EPA has concluded that exempting all laminated products from the definition of hardwood plywood is not consistent with TSCA Title VI's statutory mandate that EPA promulgate regulations in a manner that ensures compliance with the emission standards in TSCA section 601(b)(2). EPA has determined that the proposed rule is the least burdensome option that is consistent with TSCA Title VI's statutory mandate that EPA promulgate regulations in a manner that ensures compliance with the emission standards in TSCA section 601(b)(2).

This rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA, because it neither imposes enforceable duties on State, local, or tribal governments nor reduces an authorized amount of Federal financial assistance provided to State, local, or tribal governments. And this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule would regulate entities that manufacture (including import), fabricate, distribute, or sell composite wood products. Governments do not typically engage in these activities, so government entities are not expected to be subject to the rule's requirements.

E . Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). The proposed rule would not regulate governments directly, it would regulate entities that manufacture (including import), fabricate, distribute, or sell composite wood products. Governments do not typically engage in these activities. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA has met with officials from the state of California on numerous occasions to discuss aspects of the CARB ATCM and its implementation. With the assistance of the National Conference of State Legislatures, EPA has also initiated consultations with state environmental health directors. EPA specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule would not regulate tribal governments directly, it would regulate entities that manufacture (including import), fabricate, distribute, or sell composite wood products. Tribal

governments do not typically engage in these activities. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866. Nevertheless, EPA has evaluated the environmental health effects of formaldehyde emissions from composite wood products on children. The results of this evaluation are described in the Economic Analysis (Ref. 46). The analysis shows that children aged 0 through 1 represent 3% of the individuals affected by the rule and are estimated to accrue about 2% to 10% of the proposed rule's total quantified benefits. Children aged 2 through 15 represent 20% of the individuals affected by the proposed rule and are estimated to accrue about 16% to 22% of the proposed rule's total quantified benefits. Given these results, EPA has determined that this proposed rule will not have disproportionally high and adverse human health or environmental effects on children. These proposed standards would reduce emissions of formaldehyde from composite wood products for individuals of all ages that are exposed and children may accrue higher benefits from the exposure reductions compared to adults.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to formaldehyde.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of NTTAA, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves numerous technical standards, many of which EPA is directed to use by TSCA Title VI. Technical standards identified in the statute include the two quarterly test methods, ASTM E–1333–96 and ASTM D–6007–02, a quality control test method, ASTM D–5582–00, and various standards that define specific composite wood products, such as ASTM D–5456–06 (Structural Composite Lumber Products), ASTM D–5055–05 (Prefabricated Wood I-Joists), ANSI A190.1 (Structural Glued Laminated Timber), ANSI/HPVA HP–1–2009 (Hardwood and Decorative Plywood), ANSI A208.2–2 2009 (Medium Density Fiberboard), ANSI A208.1–2009 (Particleboard), PS–1–07 (Structural Plywood), and PS–2–04 (Wood-Based Structural-Use Panels).

In addition, EPA has identified other voluntary consensus standards that EPA is proposing to incorporate into this regulation. These include the revised quarterly test method, ASTM E–1333–10, and standards that define hardboard, ANSI A135.4, ANSI A135.5, and ANSI A135.6. EPA is also proposing to allow three alternative quality control test methods that are incorporated in voluntary consensus standards, EN 717–2 (gas analysis), EN 120 (perforator), and JIS A 1460 (24-hour desiccator).

EPA is proposing the use of voluntary consensus standards issued by the International Organization for Standardization, ASTM International, the American National Standards Institute, the National Institute of Standards and Technology, the European Committee for Standardization, Georgia Pacific Chemicals LLC, and the Japanese Standards Association. Copies of the standards referenced in the proposed regulatory text at §§ 770.1, 770.3, 770.10, 770.15, 770.17, and 770.20 have been placed in the docket for this proposed rule. You may also obtain copies of these standards from:

(1) International Organization for Standardization, Case postale 56, CH·1211, Geneve 20, Switzerland, telephone +41–22–749–01–11, *http://www.iso.org.*

(2) ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428–2959 USA, telephone (877) 909–ASTM, *http://www.astm.org.*

(3) ANSI, American National Standards Institute, 1899 L Street, NW., 11th Floor, Washington, DC 200036, telephone (202) 293–9287, *http://ansi.org/.*

(4) National Institute of Standards and Technology, Technology Administration, U.S. Department of Commerce, 100 Bureau Drive, MS 2150, Gaithersburg, MD 20899–2150; *http://ts.nist.gov/docvps.*

(5) CEN, European Committee for Standardization, CEN–CENELEC Management Centre, 4th Floor, Avenue Marnix 17, B–1000 Brussels, telephone +32–3–550–08–11, *http://www.cen.eu/cen/pages/default.aspx.*

(6) Georgia-Pacific Chemicals LLC, 133 Peachtree Street, Atlanta, GA 30303, telephone (877) 377–2737, *http://www.gp-dmc.com/default.aspx.*

(7) Japanese Standards Association, Japanese Industrial Standards, 1–24, Akasaka 4, Minatoku, Tokyo 107–8440, Japan, telephone +81–3–3583–8000, *http://www.jsa.or.jp/.*

In the final rule, EPA intends to seek approval from the Director of the Federal Register for the incorporation by reference of the standards referenced in the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify additional potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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

EPA has determined that this proposed rule will not have disproportionally high and adverse human health or environmental effects on any population, including any minority or low-income population. These proposed standards would reduce emissions of formaldehyde from composite wood products for all populations that are exposed, with slightly larger benefits for individuals

from minority or low-income affected populations.

This proposed rule establishes standards that reduce emissions of formaldehyde from composite wood products. Formaldehyde exposure may cause a range of health effects including nasopharyngeal cancer, sensory irritation, respiratory related and other effects.

The Economic Analysis (Ref. 46), described in Unit V.A., monetizes the benefits from reducing the number of cases of nasopharyngeal cancer and sensory irritation. Benefits valuation is done for formaldehyde exposure in five climate zones from nine different housing types (five types of new housing and four types of renovated housing), allowing for off-gassing of up to 10 years, as well as occupational, school, and outside formaldehyde exposure. The population in these climate zones and housing types is broken down into broad age and employment categories to assess exposure.

The Economic Analysis (Ref. 46) includes an environmental justice analysis that expands on the primary benefits analysis by analyzing the monetized impacts specifically for minority and low-income populations. Results indicate that disaggregation of total benefits by population groups leads to variation in the range of individual benefits, by minority population. Benefits estimates are reported in 2010 dollars, annualized at a 3% rate. The population of all individuals affected by the proposed rule shows the same estimates reported in the total benefits analysis; quantified benefits for the proposed rule range from $20 million to $48 million, and average $0.19 to $0.45 per individual. The affected Non-Hispanic White population account for 65% of the total affected population, accrue 60% to 61% of the quantified benefits, and experience average annualized quantified benefits ranging from $0.18 to $0.42 per individual. In comparison, benefits for minority populations are higher. Minority populations represent about 35% of the individuals affected by the rule and are estimated to accrue about 40% of the proposed rule's quantified benefits. The affected Non-Hispanic Black population account for 12% of the total affected population, accrue 13% of the quantified benefits, and experience average annualized quantified benefits ranging from $0.21 to $0.49 per individual. The affected Hispanic population account for 15% of the total affected population, accrue 18% of the quantified benefits, and experience average annualized quantified benefits ranging from $0.22 to $0.51 per individual. The affected Non-Hispanic Native American or Alaskan Indian population account for 0.6% of the total affected population, accrue 0.6% of the quantified benefits, and experience average annualized quantified benefits ranging from $0.19 to $0.43 per individual. The affected low-income population account for 12% of the total affected population, accrue 14% to 15% of the quantified benefits, and experience average annualized quantified benefits ranging from $0.22 to $0.53 per individual.

To further improve the analysis for the final rule, the public is invited to submit comments or identify peer-reviewed studies and data that assess the exposures of minority or low-income populations to formaldehyde emissions from composite wood products, and the health effects of those exposures.

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Reporting and recordkeeping requirements, Toxic substances, Wood.

Dated: May 23, 2013.

Bob Perciasepe,

Acting Administrator.

Therefore, 40 CFR part 770 is proposed to be amended to read as follows

■ 1. The authority citation for part 770 continues to read as follows:

Authority: 15 U.S.C. 2697(d).

■ 2. Section 770.1 is amended by adding paragraphs (b) through (e) to read as follows:

§ 770.1 Scope and applicability.

* * * * *

(b) This subpart applies to any hardwood plywood, particleboard, or medium-density fiberboard, or finished goods containing these materials, that are sold, supplied, offered for sale, or manufactured (including imported) in the United States.

(c) This subpart does not apply to the following:

(1) Any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale, *e.g.,* an antique or secondhand furniture.

(2) Hardboard, unless the hardboard is used as a core for hardwood plywood.

(3) Structural plywood, as specified in PS–1–07, Voluntary Product Standard—Structural Plywood.

(4) Structural panels, as specified in PS–2–04, Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels.

(5) Structural composite lumber, as specified in ASTM D5456–06, Standard Specification for Evaluation of Structural Composite Lumber Products.

(6) Oriented strand board.

(7) Glued laminated lumber, as specified in ANSI A190.1–2002, Structural Glued Laminated Timber.

(8) Prefabricated wood I-joists, as specified in ASTM D5055–05, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists.

(9) Finger-jointed lumber.

(10) Wood packaging, including pallets, crates, spools, and dunnage.

(11) Composite wood products used inside the following:

(i) New vehicles (other than recreational vehicles) that are constructed entirely from new parts and that have never been the subject of a retail sale or registered with the applicable State or other governmental agency.

(ii) New rail cars.

(iii) New boats.

(iv) New aerospace craft.

(v) New aircraft.

(d) The emission standards in § 770.10 do not apply to windows that contain composite wood products, if the windows contain less than 5% by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished window.

(e) The emission standards in § 770.10 do not apply to exterior doors and garage doors that contain composite wood products, if:

(1) The doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

(2) The doors contain less than 3% by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished exterior door or garage door.

■ 3. Section 770.2 is amended by adding paragraphs (d) and (e) to read as follows:

§ 770.2 Effective dates.

* * * * *

(d) After [*date 1 year after publication of the final rule in the* **Federal Register**], all hardwood plywood, particleboard, and medium-density fiberboard, and finished goods containing these materials, sold, supplied, offered for sale, or manufactured (including imported) in the United States must comply with this subpart. Except: Hardwood plywood, particleboard, and

medium-density fiberboard manufactured (including imported) before [*date 1 year after publication of the final regulations in the* **Federal Register**] may be sold, supplied, offered for sale, or used to fabricate component parts or finished goods at any time.

(e) After [*date 1 year after publication of the final rule in the* **Federal Register**], all manufacturers (including importers), fabricators, suppliers, distributors, and retailers of hardwood plywood, particleboard, and medium-density fiberboard, and finished goods containing these materials, must comply with this subpart.

■ 4. Section 770.3 is amended by revising the definition for ''Panel producer'' and alphabetically adding the definitions for ''Article'', ''Bundle'', ''Component part'', ''Distributor'', ''Fabricator'', ''Finished good'', ''Hardboard'', ''Hardwood plywood'', ''Importer'', ''Intended for interior use'', ''Laminated product'', ''Laminated product producer'', ''Lot'', ''Medium-density fiberboard'', ''No-added formaldehyde-based resin'', ''Non-complying lot'', ''Panel'', ''Panel producer'', ''Particleboard'', ''Product type'', ''Product line'', ''Purchaser'', ''Quality control limit'', ''Recreational vehicle'', ''Retailer'', ''Scavenger'', ''Stockpiling'', ''Thin medium-density fiberboard'', ''Ultra low-emitting formaldehyde resin'', ''Veneer'', and ''Woody grass'' to read as follows:

§ 770.3 Definitions.

* * * * *

Article means a manufactured item which:

(1) Is formed to a specific shape or design during manufacture.

(2) Has end use functions dependent in whole or in part upon its shape or design during the end use.

(3) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in 19 CFR 12.120(a)(2); except that fluids and particles are not considered articles regardless of shape or design.

Bundle means more than one composite wood product panel, component part, or finished good fastened together for transportation or sale.

Component part means a part that contains one or more composite wood products and is used in the assembly of finished goods.

* * * * *

Distributor means an entity that supplies composite wood products, component parts, or finished goods to others.

* * * * *

Fabricator means an entity that incorporates composite wood products into component parts or into finished goods.

Finished good means any good or product, other than a panel, that contains hardwood plywood, particleboard, or medium-density fiberboard and that is not a component part or other part used in the assembly of a finished good.

Hardboard means a panel composed of cellulosic fibers made by dry or wet forming and hot pressing of a fiber mat, either without resins, or with a phenolic resin (*e.g.,* a phenol-formaldehyde resin) or a resin system in which there is no added formaldehyde as part of the resin cross-linking structure, as determined under one of the following ANSI standards: ANSI A135.4 (Basic Hardboard), ANSI A135.5 (Prefinished Hardboard Paneling), or ANSI A135.6 (Hardboard Siding).

Hardwood plywood means a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP–1–2009) an assembly of layers or plies of veneer, joined by an adhesive with a lumber core, a particleboard core, a medium-density fiberboard core, a hardboard core, a veneer core, or any other special core or special back material. Hardwood plywood does not include military-specified plywood, curved plywood, or any plywood specified in PS–1–07, Voluntary Product Standard—Structural Plywood, or PS–2–04, Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels. In addition, hardwood plywood does not include laminated products that are made by attaching a wood or woody grass veneer with a no-added formaldehyde-based resin to a core that has been manufactured in compliance with this subpart and that is either certified in accordance with § 770.15, manufactured with no-added formaldehyde-based resins under § 770.17, or manufactured with ultra low-emitting formaldehyde-based resins under § 770.18(d).

Importer means an entity that imports composite wood products, component parts that contain composite wood products, or finished goods that contain composite wood products into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States). Importer includes:

(1) The entity primarily liable for the payment of any duties on the products, or

(2) An authorized agent acting on the entity's behalf.

Intended for interior use means intended for use or storage inside a building or recreational vehicle, or constructed in such a way that it is not suitable for long term use in a location exposed to the elements.

* * * * *

Laminated product means a product in which a wood or woody grass veneer is affixed to a particleboard platform, a medium-density fiberboard platform, or a veneer core platform. A laminated product is a component part used in the construction or assembly of a finished good.

Laminated product producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) laminated products on the premises.

Lot means the particular batch of a product type made during a single production run.

Medium-density fiberboard means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under ANSI A208.2–2009).

No-added formaldehyde-based resin means a resin formulated with no added formaldehyde as part of the resin cross-linking structure in a composite wood product that meets the emission standards in § 770.17(c).

Non-complying lot means any lot or batch of composite wood product represented by a quarterly or quality control test value that exceeds the applicable standard for the particular composite wood product. In the case of a quarterly test value, only the particular lot or batch from which the sample was taken would be considered a non-complying lot. However, future production of the product type(s) represented by a failed quarterly test are not considered certified and must be treated as a non-complying lot until the product type(s) are re-qualified through a successful quarterly test.

Panel means a flat or raised piece of composite wood product.

Panel producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) composite wood products on the premises. This includes laminated products not excluded from the definition of hardwood plywood.

Particleboard means a panel composed of cellulosic material in the form of discrete particles (as

distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1–2009). Particleboard does not include any product specified in PS–2–04, Performance Standard for Wood-Based Structural-Use Panels.

* * * * *

Product type means a type of composite wood product that differs from another, made by the same panel producer, based on wood type, composition, thickness, number of plies (if hardwood plywood), or resin used. Products with similar emissions made with the same resin system may be considered to be the same product type. Factors to consider in determining whether products belong to the same product type include those factors likely to affect emissions, such as wood type, resin type, core type, veneer type, and press time.

Production line means a set of operations and physical industrial or mechanical equipment used to produce a composite wood product.

Purchaser means an entity that acquires composite wood products in exchange for money or its equivalent.

Quality control limit means the quality control method test formaldehyde value that is the correlative equivalent to the applicable emission standard based on the ASTM E1333–10 method.

Recreational vehicle means a vehicle which is:

(1) Built on a single chassis.

(2) Four hundred square feet or less when measured at the largest horizontal projections.

(3) Self-propelled or permanently towable by a light duty truck.

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Retailer means an entity that generally sells smaller quantities of composite wood products directly to consumers.

Scavenger means a chemical or chemicals that can be applied to resins or composite wood products to reduce the amount of formaldehyde that can be emitted from composite wood products.

Stockpiling means manufacturing or purchasing composite wood products, whether in the form of panels or incorporated into finished goods, between July 7, 2010 and [*date 180 days after publication of the final rule in the* **Federal Register**] at an average rate at least 20% greater than the average rate of manufacture or purchase during the 2009 calendar year for the purpose of circumventing the emission standards and other requirements of this subpart.

Thin medium-density fiberboard means medium-density fiberboard that has a thickness less than or equal to 8 millimeters or 0.315 inches.

* * * * *

Ultra low-emitting formaldehyde resin means a resin in a composite wood product that meets the emission standards in § 770.18(c).

Veneer means a thin sheet of wood or woody grass that is rotary cut, sliced, or sawed from a log, bolt, flitch, block, or culm.

Woody grass means a plant of the family *Poaceae* (formerly *Gramineae*) with hard lignified tissues or woody parts.

■ 5. Subpart C is added to read as follows:

Subpart C—Composite Wood Products

Sec.
770.10 Formaldehyde emission standards.
770.12 Stockpiling.
770.15 Composite wood product certification.
770.17 No-added formaldehyde-based resins.
770.18 Ultra low-emitting formaldehyde resins.
770.20 Testing requirements.
770.22 Non-complying lots.
770.24 Samples for testing.
770.30 Importers, fabricators, laminated product producers, distributors, and retailers.
770.40 Reporting and recordkeeping.
770.45 Labeling.
770.55 Prohibited acts.

Subpart C—Composite Wood Products

§ 770.10 Formaldehyde emission standards.

(a) Except as provided in §§ 770.1 and 770.17, the emission standards in this section apply to composite wood products sold, supplied, offered for sale, or manufactured (including imported) in the United States. These emission standards apply regardless of whether the composite wood product is in the form of a panel, a component part, or incorporated into a finished good.

(b) The emission standards are based on test method ASTM E1333–10, and are as follows:

(1) For hardwood plywood, 0.05 parts per million (ppm) of formaldehyde.

(2) For medium-density fiberboard, 0.11 ppm of formaldehyde.

(3) For thin medium-density fiberboard, 0.13 ppm of formaldehyde.

(4) For particleboard, 0.09 ppm of formaldehyde.

§ 770.12 Stockpiling.

(a) The sale of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into finished goods, is prohibited after [*date 1 year after publication of the final rule in the* **Federal Register**].

(b) To determine whether stockpiling has occurred, the rate of manufacture or purchase is measured as follows:

(1) For composite wood products in the form of panels, the rate is measured in terms of square footage of panels produced.

(2) For composite wood products incorporated into component parts or finished goods, the rate is measured in terms of the square footage of composite wood product panels purchased for the purpose of incorporating them into component parts or finished goods.

(c) Manufacturers or purchasers who can demonstrate that they have a greater than 20% increase in manufacturing or purchasing composite wood products for some reason other than circumventing the emissions standards would not be in violation of this section. Such reasons may include, but are not limited to:

(1) A quantifiable immediate increase in customer demand or sales.

(2) A documented and planned business expansion.

(3) The manufacturer or purchaser was not in business at the beginning of calendar year 2009.

(4) An increase in production to meet increased demand resulting from an emergency event or natural disaster.

§ 770.15 Composite wood product certification.

(a) Only certified composite wood products, whether in the form of panels or incorporated into component parts or finished goods, are permitted to be sold, supplied, offered for sale, or manufactured (including imported) in the United States, unless the product is specifically exempted by this subpart.

(b) Certified composite wood products are those that are produced or fabricated in accordance with all of the provisions of this subpart.

(c) To obtain product certification, a panel producer must apply to a TSCA Title VI Accredited TPC. The application must contain the following:

(1) The panel producer's name, address, telephone number, and other contact information.

(2) A copy of the panel producer's quality control manual as required by § 770.20(e)(1).

(3) Name and contact information for the panel producer's quality control manager.

(4) An identification of the specific products for which certification is requested, and the chemical formulation of the resins, including base resins, catalysts, and other additives used in panel production.

(5) At least one test conducted in accordance with § 770.20(c).

(6) Three months of routine quality control tests conducted in accordance with § 770.20(b).

(d) The TSCA Title VI Accredited TPC must act on a panel producer's complete application within 90 days of receipt.

(1) If the application demonstrates that the candidate product achieves the applicable emission standards described in § 770.10, the TSCA Title VI Accredited TPC will approve the application.

(2) If the application does not demonstrate that the candidate product achieves the applicable emission standards described in § 770.10, the TSCA Title VI Accredited TPC will disapprove the application. A new application may be submitted for the candidate product at any time.

(e) If a panel producer fails a quarterly test, certification for any product types represented by the sample is suspended until a compliant quarterly test result is obtained.

§ 770.17 No-added formaldehyde-based resins.

(a) Producers of composite wood product panels made with no-added formaldehyde-based resins may apply to a TSCA Title VI Accredited TPC for a 2-year exemption from the testing and certification requirements in § 770.20. A copy of the application must be sent to EPA. The application must contain the following:

(1) The panel producer's name, address, telephone number, and other contact information.

(2) An identification of the specific product and the chemical formulation of the resins, including base resins, catalysts, and other additives as used in manufacturing.

(3) At least one test conducted under the supervision of a TSCA Title VI Accredited TPC pursuant to test method ASTM E1333–10 or ASTM D6007–02. Test results obtained by ASTM D6007–02 must include a showing of equivalence in accordance with § 770.20(d)(1).

(4) Three months of routine quality control tests under § 770.20, including a showing of equivalence in accordance with § 770.20(d)(2).

(b) The TSCA Title VI Accredited TPC will approve a panel producer's application within 90 days of receipt if the application is complete and demonstrates that the candidate product achieves the emission standards described in paragraph (c) of this section.

(c) As measured according to paragraphs (a)(3) and (a)(4) of this section, the emission standards for composite wood products made with no-added formaldehyde-based resins are as follows:

(1) No test result higher than 0.05 parts per million (ppm) of formaldehyde for hardwood plywood and 0.06 ppm for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(2) No higher than 0.04 ppm of formaldehyde for 90% of the 3 months of routine quality control testing data required under paragraph (a)(4) of this section.

(d) After the initial 2-year period, and every 2 years thereafter, in order to continue to qualify for the exemption from the testing and certification requirements, the panel producer must reapply to a TSCA Title VI Accredited TPC and obtain at least one test result in accordance with paragraph (a)(3) of this section that complies with the emission standards in paragraph (c)(1) of this section.

(e) Any change in the resin formulation, the core material, or any other part of the manufacturing process that may affect formaldehyde emission rates invalidates the exemption for any product produced after such a change.

§ 770.18 Ultra low-emitting formaldehyde resins.

(a) Producers of composite wood product panels made with ultra low-emitting formaldehyde resins may apply to a TSCA Title VI Accredited TPC for approval either to conduct less frequent testing than is specified in § 770.20 or approval for a 2-year exemption from the testing and certification requirements in § 770.20. A copy of the application must be sent to EPA. The application must contain the following:

(1) The panel producer's name, address, telephone number, and other contact information.

(2) An identification of the specific product and the chemical formulation of the resins, including base resins, scavenger resins, scavenger additives, catalysts, and other additives as used in manufacturing.

(3) At least two tests conducted under the supervision of a TSCA Title VI Accredited TPC pursuant to test method ASTM E1333–10 or ASTM D6007–02. Test results obtained by ASTM D6007–02 must include a showing of equivalence in accordance with § 770.20(d)(1).

(4) Six months of routine quality control tests under § 770.20, including a showing of equivalence in accordance with § 770.20(d)(2).

(b) The TSCA Title VI Accredited TPC will approve a panel producer's application within 90 days of receipt if the application is complete and demonstrates that the candidate product achieves the emission standards required for reduced testing as described in paragraph (c) of this section or the emission standards required for a 2-year exemption as described in paragraph (d) of this section.

(c) As measured according to paragraphs (a)(3) and (a)(4) of this section, the emission standards for reduced testing for composite wood products made with ultra low-emitting formaldehyde resins are as follows:

(1) No test result higher than 0.05 parts per million (ppm) of formaldehyde for hardwood plywood, 0.08 ppm for particleboard, 0.09 ppm for medium-density fiberboard, and 0.11 ppm for thin medium-density fiberboard.

(2) For 90% of the 6 months of routine quality control testing data required under paragraph (a)(4) of this section, no higher than 0.05 ppm of formaldehyde for particleboard, no higher than 0.06 ppm of formaldehyde for medium-density fiberboard, and no higher than 0.08 ppm of formaldehyde for thin medium-density fiberboard.

(d) As measured according to paragraphs (a)(3) and (a)(4) of this section, the emission standards for an exemption from the testing and certification requirements of § 770.20 for composite wood products made with ultra low-emitting formaldehyde resins are as follows:

(1) No test result higher than 0.05 ppm of formaldehyde for hardwood plywood or 0.06 ppm of formaldehyde for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(2) For 90% of the 6 months of routine quality control testing data required under paragraph (a)(4) of this section, no higher than 0.04 parts per million of formaldehyde.

(e) After the initial 2-year period, and every 2 years thereafter, in order to continue to qualify for an exemption from the testing and certification requirements, the panel producer must reapply to a TSCA Title VI Accredited TPC and obtain at least one test result in accordance with paragraph (a)(3) of this section that complies with the emission standards in paragraph (c)(1) of this section.

(f) Any change in the resin formulation, the core material, or any other part of the manufacturing process that may affect formaldehyde emission rates invalidates the exemption from the testing and certification requirements for any product resulting from such a

change and produced after such a change.

§ 770.20 Testing requirements.

(a) *General requirements*—(1) All panels must be tested in an unfinished condition, prior to the application of a finishing or topcoat.

(2) Facilities that conduct the formaldehyde testing required by this section must follow the procedures and specifications, such as testing conditions and loading ratios, of the test method being used.

(3) All equipment used in the formaldehyde testing required by this section must be calibrated and otherwise maintained and used in accordance with the equipment manufacturer's instructions.

(b) *Quality control testing*—(1) *Allowable methods.* Quality control testing may be performed using any of the following methods, with a showing of equivalence for each method pursuant to paragraph (d) of this section:

(i) ASTM D6007–02.

(ii) ASTM D5582.

(iii) EN 717–2 (Gas Analysis Method).

(iv) DMC (Dynamic Micro Chamber).

(v) EN 120 (Perforator Method).

(vi) JIS A 1460 (24-hr Desiccator Method).

(2) *Frequency of testing*—(i) Particleboard and medium-density fiberboard must be tested at least once per shift (8 or 12 hours, plus or minus 1 hour of production) for each production line for each product type. Quality control tests must also be conducted whenever:

(A) A product type production ends, even if 8 hours of production has not been reached.

(B) The resin formulation is changed so that the formaldehyde to urea ratio is increased.

(C) There is an increase by more than 10% in the amount of formaldehyde resin used, by square foot or by panel.

(D) There is a decrease in the designated press time by more than 20%.

(E) The quality control manager or quality control employee has reason to believe that the panel being produced may not meet the requirements of the applicable standards.

(ii) Particleboard and medium-density fiberboard panel producers are eligible for reduced quality control testing if they demonstrate consistent operations and low variability of test values. To qualify, panel producers must:

(A) Apply in writing to a TSCA Title VI Accredited TPC.

(B) Maintain a 30 panel running average.

(C) If the 30 panel running average remains 2 standard deviations below the designated quality control limit for 60 days or more, the TSCA Title VI Accredited TPC may approve a reduction to 1 quality control test per 24-hour production period.

(D) If the 30 panel running average remains 3 standard deviations below the designated quality control limit for 60 days or more, the TSCA Title VI Accredited TPC may approve a reduction to 1 quality control test per 48-hour production period.

(E) The TSCA Title VI Accredited TPC will approve a request for reduced quality control testing as long as the data submitted by the panel producer demonstrates compliance with the criteria and the TSCA Title VI Accredited TPC does not otherwise have reason to believe that the data are inaccurate or the panel producer's production processes are inadequate to ensure continued compliance with the emission standards.

(iii) Hardwood plywood must be tested as follows:

(A) At least one test per week per product type and production line if the weekly hardwood plywood production at the panel producer is more than 100,000 but less than 200,000 square feet.

(B) At least two tests per week per product type and production line if the weekly hardwood plywood production at the panel producer is 200,000 square feet or more, but less than 400,000 square feet.

(C) At least four times per week per product type and production line if the weekly hardwood plywood production at the panel producer is 400,000 square feet or more.

(D) If weekly production of hardwood plywood at the panel producer is 100,000 square feet or less, at least one test per 100,000 square feet for each product type produced; or, if less than 100,000 square feet of a particular product type in a single production run is produced, one quality control test of that product type per production run or lot produced.

(iv) Composite wood products that have been approved by TSCA Title VI Accredited TPC for reduced testing under § 770.18(b) through (c) must be tested at least once per week per product type and production line, except that hardwood plywood panel producers who qualify for less frequent testing under paragraph (b)(2)(iii)(D) of this section may continue to perform quality control testing under that provision.

(3) *Lots selected for sampling.* All lots from which samples are selected for quality control testing must be retained at the panel producer's facility until the quality control test results are received by the panel producer.

(i) Lots represented by passing quality control test results may be shipped as soon as the test results are received by the panel producer.

(ii) Lots represented by failing quality control test results must be handled as non-complying lots in accordance with § 770.22

(4) *Results.* Any sample that exceeds the quality control limit established pursuant to this section must be reported to the TSCA Title VI Accredited TPC in writing within 24 hours. Any lot or batch represented by a quality control sample that exceeds the quality control limit must be handled in accordance with § 770.22.

(c) *Quarterly testing.* Quarterly testing must be supervised by TSCA Title VI Accredited TPCs and performed by laboratories accredited under § 770.7.

(1) *Allowable methods.* Quarterly testing must be performed using ASTM E1333–10 or, with a showing of equivalence pursuant to paragraph (d) of this section, ASTM D6007–02.

(2) *Sample selection*—(i) Samples must be randomly chosen by a TSCA Title VI Accredited TPC from a single lot or group of lots that is ready for shipment by the panel producer.

(ii) Lots may be grouped for quarterly testing purposes. For hardwood plywood samples, the samples must be randomly selected from products that have the highest potential to emit formaldehyde.

(iii) Samples must not include the top or the bottom composite wood product of a bundle.

(iv) All lots from which samples are selected for quarterly testing must be retained at the panel producer's facility until the quarterly test results are received by the panel producer. This includes lots that are grouped for purposes of quarterly testing.

(A) Lots represented by passing quarterly test results may be shipped as soon as the test results are received by the panel producer.

(B) Lots represented by failing quarterly test results must be disposed of as non-complying lots in accordance with § 770.22

(3) *Sample handling.* Samples must be dead-stacked or air-tight wrapped between the time of sample selection and the start of test conditioning. Samples must be labeled as such, signed by the TSCA Title VI Accredited TPC, bundled air-tight, wrapped in polyethylene, protected by cover sheets, and promptly shipped to the laboratory testing facility. Conditioning must begin

as soon as possible, but no later than 30 days after the samples were produced.

(4) *Results.* Any sample that exceeds the applicable formaldehyde emission standard in § 770.10 must be reported by the TSCA Title VI Accredited TPC to the panel producer and to EPA in writing within 24 hours. Any lot or batch represented by a sample result that exceeds the applicable formaldehyde emission standard must be disposed of in accordance with § 770.22. Where lots are grouped for testing, this includes all lots in the group represented by the sample.

(5) *Reduced testing frequency.* Composite wood products that have been approved by TSCA Title VI Accredited TPC for reduced testing under § 770.18(b) through (c) need only undergo quarterly testing every six months.

(d) *Equivalence.* Equivalence between ASTM E1333–10 and any other test method used for quality control or quarterly testing must be demonstrated by TSCA Title VI Accredited TPCs at least once each year or whenever there is a significant change in equipment, procedure, or the qualifications of testing personnel.

(1) *Equivalence between ASTM E1333–10 and ASTM D6007–02.* Equivalence must be demonstrated for at least five comparison sample sets, which compare the results of the two methods.

(i) *Samples*—(A) For the ASTM E1333–10 method, each comparison sample must consist of the result of simultaneously testing panels, using the applicable loading ratios specified in the ASTM E1333–10 method, from the same batch of panels tested by the ASTM D6007–02 method.

(B) For the ASTM D6007–02 method, each comparison sample shall consist of testing specimens representing portions of panels tested in the ASTM E1333–10 method and matched to their respective ASTM E1333–10 method comparison sample result.

(C) The five comparison sample sets must consist of testing a minimum of five sample sets as measured by the ASTM E1333–10 method.

(ii) *Average and standard deviation.* The arithmetic mean, $\bar{x}$, and standard deviation, *S,* of the difference of all comparison sets must be calculated as follows:

$$\overline{X} = \sum_{i=1}^{n} D_i / n \qquad S = \sqrt{\sum_{i=1}^{n} (D_i - \overline{X})^2 / (n-1)}$$

Where $\bar{x}$ = arithmetic mean;
S = standard deviation;
n = number of sets;
Di = difference between the ASTM E1333–10 and ASTM D6007–02 method values for the *i*th set; and
i ranges from 1 to n.

(iii) *Equivalence determination.* The ASTM D6007–02 method is considered equivalent to the ASTM E1333–10 method if the following condition is met:

$$\left|\overline{X}\right| + 0.88S \leq C$$

Where C is equal to 0.026.

(2) *Equivalence Between ASTM E1333–10 and any quality control test method other than ASTM D6007–02.* Equivalence must be demonstrated by establishing an acceptable correlation coefficient (''r'' value).

(i) *Correlation.* The correlation must be based on a minimum sample size of five data pairs and a simple linear regression where the dependent variable (Y-axis) is the quality control test value and the independent variable (X-axis) is the ASTM E1333–10 test value. Either composite wood products or formaldehyde emission reference materials can be used to establish the correlation.

(ii) *Minimum acceptable correlation coefficients (''r'' values).* The minimum acceptable correlation coefficients for equivalency correlations are as follows, where ''n'' is equal to the number of data pairs, and ''r'' is the correlation coefficient:

Degrees of freedom (n-2)	r Value
3	0.878
4	0.811
5	0.754
6	0.707
7	0.666
8	0.632
9	0.602
10 or more	0.576

(iii) *Variation from previous results.* If data from a TSCA Title VI Accredited TPC's quarterly test results and a panel producer's quality control test results do not fit the previously established correlation, the TSCA Title VI Accredited TPC must establish a new correlation, and new quality control limits.

(iv) *Failed quarterly tests.* If a panel producer fails two quarterly tests in a row for the same product type, the TSCA Title VI Accredited TPC must establish a new correlation curve.

(e) *Quality assurance and quality control requirements for panel producers.* Panel producers are responsible for product compliance with the applicable emission standards.

(1) *Quality control manual*—(i) Each panel producer must have a written quality control manual containing, at a minimum, the following:

(A) A description of the organizational structure of the quality control department, including the names of the quality control manager and quality control employees.

(B) A description of the sampling procedures to be followed.

(C) A description of the method of handling samples.

(D) A description of the frequency of quality control testing.

(E) A description of the procedures used to identify changes in formaldehyde emissions resulting from production changes (*e.g.,* increase in the percentage of resin, increase in formaldehyde/urea molar ratio in the resin, or decrease in press time).

(F) A description of provisions for additional testing.

(G) A description of recordkeeping procedures.

(H) The average percentage of resin and press time for each product type.

(I) A description of product grouping, if applicable.

(J) Procedures for reduced quality control testing, if applicable.

(ii) The quality control manual must be approved by a TSCA Title VI Accredited TPC.

(2) *Quality control facilities.* Each panel producer must designate a quality control facility for conducting quality control formaldehyde testing.

(i) The quality control facility must be a laboratory owned and operated by the panel producer, a TSCA Title VI Accredited TPC, or a contract laboratory.

(ii) Each quality control facility must have quality control employees with adequate experience and/or training to conduct accurate chemical quantitative analytical tests. The quality control manager must identify each person conducting formaldehyde quality control testing to the TSCA Title VI Accredited TPC.

(3) *Quality control manager.* Each panel producer must designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emission quality control. The quality control manager must:

(i) Have the authority to take actions necessary to ensure that applicable formaldehyde emission standards are being met on an ongoing basis.

(ii) Be identified to the TSCA Title VI Accredited TPC that will be overseeing the quality control testing. The panel producer must notify the TSCA Title VI Accredited TPC in writing within 10 days of any change in the identity of the quality control manager and provide the TSCA Title VI Accredited TPC with the new quality control manager's qualifications.

(iii) Review and approve all reports of quality control testing conducted on the production of the panel producer.

(iv) Ensure that the samples are collected, packaged, and shipped according to the procedures specified in the quality control manual.

(v) Immediately inform the TSCA Title VI Accredited TPC in writing of any significant changes in production that could affect formaldehyde emissions.

§ 770.22 Non-complying lots.

(a) Non-complying lots are not certified composite wood products and they may not be sold, supplied or offered for sale in the United States except in accordance with this section.

(b) Non-complying lots must be isolated from certified lots.

(c) Non-complying lots may be retested using the same test method if each panel is treated with a scavenger or handled by other means of reducing formaldehyde emissions, such as aging. Tests must be performed as follows:

(1) At least three test panels must be selected from three separate bundles. They must be selected so that they are representative of the entire lot. Test samples must not be selected from the top or bottom panels of a bundle.

(2) The average of all samples must test at or below the applicable emission standards in § 770.10.

(d) Information on the disposition of non-complying lots, including product type and amount of composite wood products affected, lot or batch numbers, mitigation measures used, results of retesting, and final disposition, must be provided to the TSCA Title VI Accredited TPC within 7 days of final disposition.

§ 770.24 Samples for testing.

(a) Composite wood product panels may be shipped into and transported across the United States for quality control or quarterly tests.

(1) Such panels may not be sold, offered for sale or supplied to any entity other than a TSCA Title VI Accredited TPC laboratory or a contract laboratory before testing in accordance with § 770.20.

(2) If test results for such panels demonstrate compliance with the emissions standards in this subpart, the panels may be relabeled in accordance with § 770.50 and sold, offered for sale, or supplied.

(b) [Reserved]

§ 770.30 Importers, fabricators, laminated product producers, distributors, and retailers.

(a) Importers, fabricators, laminated product producers whose products are exempt from the definition of hardwood plywood, distributors, and retailers must take reasonable precautions to ensure that they are purchasing composite wood products, whether in the form of panels, component parts, or finished goods, that comply with the emission standards and other requirements of this subpart.

(b) For importers, fabricators, and laminated product producers, taking reasonable precautions means specifying TSCA Title VI compliant products when ordering or purchasing from suppliers and obtaining the following records:

(1) Records identifying the panel producer and the date the composite wood products were produced.

(2) Records identifying the date the composite wood products were purchased.

(3) Bills of lading or invoices that include a written affirmation from the supplier that the composite wood products are compliant with this subpart.

(c) Importers of articles that are composite wood products, or articles that contain composite wood products, must comply with the import certification regulations for ''Chemical Substances in Bulk and As Part of Mixtures and Articles,'' as found at 19 CFR 12.118 through 12.127 or as later promulgated.

(d) Records required by this section must be maintained in accordance with § 770.40(d).

§ 770.40 Reporting and recordkeeping.

(a) Panel producers must maintain the following records for a period of 3 years. The following records must also be made available to the panel producers' TSCA Title VI Accredited TPCs. Records described in paragraph (a)(1) of this section must also be made available to purchasers of their composite wood products.

(1) Records of all quarterly emission testing and all ongoing quality control testing. These records must identify the TSCA Title VI Accredited TPC conducting or overseeing the testing and the laboratory or quality control facility actually performing the testing. These records must also include the date, the product type tested, the lot or batch number that the tested material represents, the test method used, and the test results.

(2) Production records, including a description of the composite wood product(s), the date of manufacture, lot or batch numbers, and tracking information allowing each product to be traced to a specific lot number or batch produced.

(3) Records of changes in production, including changes of more than 10% in the resin use percentage, changes in resin composition that result in a higher ratio of formaldehyde to other resin components, and changes in the process, such as changes in press time by more than 20%.

(4) Records demonstrating initial and continued eligibility for the reduced testing provisions in §§ 770.17 and 770.18, if applicable. These records must include:

(i) Approval for reduced testing from a TSCA Title VI Accredited TPC.

(ii) Amount of resin use reported by volume and weight.

(iii) Production volume reported as square feet per product type.

(iv) Resin trade name, resin manufacturer contact information, and resin supplier contact information.

(v) Any changes in the formulation of the resin.

(5) Purchaser information for each composite wood product, if applicable, including the name, contact person, address, telephone number, email address if available, purchase order or invoice number, and amount purchased.

(6) Transporter information for each composite wood product, if applicable, including name, contact person, address, telephone number, email address if available, and shipping invoice number.

(7) Information on the disposition of non-complying lots, including product type and amount of composite wood products affected, lot or batch numbers,

mitigation measures used, results of retesting, and final disposition.

(8) Copies of labels used.

(b) Panel producers must provide their TSCA Title VI Accredited TPC with monthly product data reports for each production facility, production line, and product type, maintain copies of the reports for a minimum of 3 years from the date that they are produced. Monthly product data reports must contain a data sheet for each specific product type with test and production information, and a quality control graph containing the following:

(1) Quality Control Limit (QCL).

(2) Shipping QCL (if applicable).

(3) Results of quality control tests.

(4) Retest values.

(c) Laminated product producers whose products are exempt from the definition of hardwood plywood must keep records demonstrating eligibility for the exemption. These records include:

(1) Resin trade name, resin manufacturer contact information, resin supplier contact information, and resin purchase records.

(2) Panel producer contact information and panel purchase records.

(3) For panels produced in-house, records demonstrating that the panels have been certified by an accredited TPC.

(4) For resins produced in-house, records demonstrating the production of NAF resins.

(d) Importers, fabricators, and laminated product producers whose products are exempt from the definition of hardwood plywood must maintain the records described in § 770.30 and copies of labels used. These records must be maintained for a minimum of 3 years from the date that they are produced.

(e) Distributors and retailers must retain invoices and bills of lading and copies of labels used. These records must be maintained for a minimum of 3 years from the date that they are produced.

§ 770.45 Labeling.

(a) Panels or bundles of panels that are sold, supplied, or offered for sale in the United States must be labeled with the panel producer's name, the lot or batch number, the number of the TSCA Title VI Accredited TPC, and a statement that the products are TSCA Title VI certified.

(1) A panel producer number may be used instead of a name to protect identity, so long as the identity of the panel producer can be determined at the request of EPA.

(2) Panels or bundles of panels manufactured in accordance with § 770.17 must also be labeled that they were made with no-added formaldehyde-based resins in addition to the other information required by this section.

(3) Panels or bundles of panels manufactured in accordance with § 770.18 must also be labeled that they were made with ultra low-emitting formaldehyde in addition to the other information required by this section.

(b) Panels imported into or transported across the United States for quarterly or quality control testing purposes in accordance with § 770.20 must be labeled ''For TSCA Title VI testing only, not for sale in the United States.'' The panels may be re-labeled if test results are below the applicable emissions standards in this subpart.

(c) Fabricators of finished goods containing composite wood products must label every finished good they produce, or every box containing finished goods.

(1) The label may be applied as a stamp, tag, sticker, or bar code.

(2) The label must include, at a minimum, the fabricator's name, the date the finished good was produced, and a statement that the finished goods are TSCA Title VI compliant.

(d) Distributors and wholesalers who receive labeled bundles of regulated composite wood products and then divide and repackage them, whether in bundles or separately, must label each separate bundle or item with the same information as required on the original label. Labels on bundles that are not so repackaged must be kept intact by distributors, wholesalers, and retailers.

§ 770.55 Prohibited acts.

(a) The following are prohibited acts under TSCA section 15:

(1) Manufacturing (including import) non-certified composite wood products unless the products are specifically exempted by this subpart.

(2) Manufacturing (including import) composite wood products without complying with the testing provisions in § 770.20, unless the products are specifically exempted by this subpart.

(3) Selling, offering for sale, or supplying non-certified composite wood products unless the products are specifically exempted by this subpart.

(4) Selling, offering for sale, or supplying composite wood products belonging to non-complying lots without first complying with the provisions of § 770.22.

(5) Selling, offering for sale, or supplying certified composite wood products that are not labeled in accordance with § 770.45.

(6) Selling, offering for sale, or supplying composite wood products that exceed the applicable emission standards of § 770.10.

(7) Failing to comply with the recordkeeping requirements of § 770.40.

■ 6. Section 770.99 is revised to read as follows:

§ 770.99 Incorporation by reference.

The materials listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, a document must be published in the **Federal Register** and the material must be available to the public. All approved materials are available for inspection at the OPPT Docket in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA, West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. In addition, these materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* These materials may also be obtained from the sources listed in this section.

(a) *ANSI material.* Copies of these materials may be obtained from the American National Standards Institute, 1899 L Street NW., 11th Floor, Washington, DC 20036, or by calling (202) 293–8020, or at *http://ansi.org/.*

(1) ANSI A135.4- 2004, American National Standard, Basic Hardboard, IBR approved for § 770.3.

(2) ANSI A135.5–2004, American National Standard, Prefinished Hardboard Paneling, IBR approved for § 770.3.

(3) ANSI A135.6–2006, American National Standard, Hardboard Siding, IBR approved for § 770.3.

(4) ANSI A190.1–2002, American National Standard for Wood Products, Structural Glued Laminated Timber, IBR approved for § 770.1.

(5) ANSI A208.1–2009, American National Standard, Particleboard, IBR approved for § 770.3.

(6) ANSI A208.2–2–2009, American National Standard, Medium Density Fiberboard (MDF) for Interior Applications, IBR approved for § 770.3.

(7) ANSI/HPVA HP–1–2009, American National Standard for Hardwood and Decorative Plywood, IBR approved for § 770.3.

(b) *ASTM material.* Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA, 19428–2959, or by calling (877) 909–ASTM, or at *http://www.astm.org.*

(1) ASTM D5055–05 (2005), Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists, IBR approved for § 770.1.

(2) ASTM D5456–06 (2006), Standard Specification for Evaluation of Structural Composite Lumber Products, IBR approved for § 770.1.

(3) ASTM D5582–00 (Reapproved 2006), October 1, 2006, Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator, IBR approved for §§ 770.7(a) through (c) and 770.20.

(4) ASTM D6007–02 (Reapproved 2008), October 1, 2008, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber, IBR approved for §§ 770.7(a) through (c), 770.15, 770.17, and 770.20.

(5) ASTM E1333–10 (Approved 2010), Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber, IBR approved for §§ 770.7(a) through (c), 770.10, 770.15, 770.17, and 770.20.

(c) *CEN materials.* Copies of these materials are not directly available from the European Committee for Standardization, but from one of CEN's National Members, Affiliates, or Partner Standardization Bodies. To purchase a standard, go to CEN's Web site, *http://www.cen.eu,* and select ''Products'' for more detailed information.

(1) EN 120:1992, Wood based panels. Determination of formaldehyde content-Extraction method called the perforator method, English Version, IBR approved for § 770.20.

(2) EN 717–2:1995, Wood-based panels. Determination of formaldehyde release-Formaldehyde release by the gas analysis method, English Version, IBR approved for § 770.20.

(d) *Georgia Pacific material.* Copies of this material may be obtained from Georgia-Pacific Chemicals LLC, 133 Peachtree Street, Atlanta, GA 30303, or by calling (877) 377–2737, or at *http://www.gp-dmc.com/default.aspx.*

(1) GP DMC (Dynamic Micro Chamber) Manual, 2011 Edition, IBR approved for § 770.20.

(2) [Reserved]

(e) *ISO material.* Copies of these materials may be obtained from the International Organization for Standardization, 1, ch. de la Voie-Creuse, CP 56, CH–1211, Geneve 20, Switzerland, or by calling +41–22–749–01–11, or at *http://www.iso.org.*

(1) ISO/IEC 17011:2004(E), Conformity Assessments—General Requirements for Accreditation Bodies Accrediting Conformity Assessments Bodies (First Edition), IBR approved for § 770.7(a) through (c).

(2) ISO/IEC 17020:1998(E), General Criteria for the Operation of Various Types of Bodies Performing Inspections (First Edition), IBR approved for § 770.7(a) through (c).

(3) ISO/IEC 17025:2005(E), General Requirements for the Competence of Testing and Calibration Laboratories (Second Edition), May 15, 2005, IBR approved for § 770.7(a) through (c).

(4) ISO/IEC Guide 65:1996(E), General Requirements for Bodies Operating Product Certification Systems (First Edition), 1996, IBR approved for § 770.7(a) through (c).

(f) *Japanese Standards Association.* Copies of this material may be obtained from Japanese Industrial Standards, 1–24, Akasaka 4, Minatoku, Tokyo 107–8440, Japan, or by calling +81–3–3583–8000, or at *http://www.jsa.or.jp/.*

(1) JIS A 1460:2001 Building boards Determination of formaldehyde emission-Desiccator method, English Version, IBR approved for § 770.20.

(2) [Reserved]

(g) *NIST material.* Copies of these materials may be obtained from the National Institute of Standards and Technology (NIST) by calling (800) 553–6847 or from the U.S. Government Printing Office (GPO). To purchase a NIST publication you must have the order number. Order numbers may be obtained from the Public Inquiries Unit at (301) 975–NIST. Mailing address: Public Inquiries Unit, NIST, 100 Bureau Dr., Stop 1070, Gaithersburg, MD 20899–1070. If you have a GPO stock number, you can purchase printed copies of NIST publications from GPO. GPO orders may be mailed to: U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197–9000, placed by telephone at (866) 512–1800 (DC Area only: (202) 512–1800), or faxed to (202) 512–2104. Additional information is available online at: *http://www.nist.gov.*

(1) Voluntary Product Standard PS–1–07 (2007), Structural Plywood, IBR approved for §§ 770.1 and 770.3.

(2) Voluntary Product Standard PS–2–04 (2004), Performance Standard for Wood-Based Structural-Use Panels, IBR approved for §§ 770.1 and 770.3.

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