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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1882

14 CFR Parts 1267, 1274

RIN 2700–AE15

NASA Implementation of OMB Guidance for Drug-Free Workplace Requirements (Financial Assistance); Technical Amendments

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: On September 22, 2014, the National Aeronautics and Space Administration (NASA) published a direct final rule which rearranged existing drug-free workplace requirements for financial assistance in the Code of Federal Regulations (CFR). The action was consistent with the Office of Management and Budget's (OMB) guidance on drug-free workplace requirements for financial assistance. This rule makes amendments for editorial purposes.

DATES: *Effective:* October 21, 2014.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio via email at *leigh.pomponio@NASA.gov,* or (202) 358–0592.

SUPPLEMENTARY INFORMATION: A direct final rule was published in the **Federal Register** on September 22, 2014 (79 FR 56486–56488). In order to correct certain elements in 2 CFR part 1882, this document makes editorial changes to the NASA Implementation of OMB Guidance for Drug-Free Workplace Requirements (Financial Assistance). The table of contents for added part 1882 contained an entry for § 1882.510, but no text for that section was provided. NASA did not intend for that section to be added. it is removed from the September 22, 2014, **Federal Register** issue by this correction.

In addition, § 1882.5 is listed incorrectly in the table of contents as § 1882.100. This document correctly redesignates § 1882.100 as § 1882.5.

List of Subjects in 2 CFR Part 1882

Grants and agreements, Administrative practice and procedure, Drug-free workplace, Grant programs, Reporting and recordkeeping requirements.

Correction

Therefore, in FR Doc. No. 22365, in the issue of September 22, 2014, make the following correction:

1. On page 56487, in the third column, in the table of contents for added part 1882, remove the entry for 1882.510.

Cynthia Boots,

Alternate Federal Register Liaison.

Therefore, NASA amends 2 CFR part 1882 with the following correction:

PART 1882—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

■ 1. The authority citation for part 1882 continues to read as follows:

Authority: 41 U.S.C. 701 *et seq.;* 51 U.S.C. 20113(e).

§ 1882.100 [Redesignateed as § 1882.5]

■ 2. Section 1882.100 is redesignated as § 1882.5.

[FR Doc. 2014–23943 Filed 10–20–14; 8:45 am]

BILLING CODE 7510–13–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 114

[Notice 2014–10]

Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission is revising its rules regarding corporate and labor organization funding of expenditures, independent expenditures, and electioneering communications. The Commission is issuing these rules in response to a Petition for Rulemaking filed by the James Madison Center for Free Speech petitioning the Commission to amend its regulations in response to the decision of the Supreme Court in *Citizens United v. FEC.*

DATES: These rules will be effective once they have been before Congress for 30 legislative days. 52 U.S.C. 30111(d) (formerly 2 U.S.C. 438(d)). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Attorneys Ms. Esther D. Gyory, Ms. Cheryl A.F. Hemsley, or Ms. Joanna S. Waldstreicher, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530. Documents relating to the rulemaking record are available on the Commission's Web site at *http://www.fec.gov/fosers/* (REG 2010–01 Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (Citizens United)).

SUPPLEMENTARY INFORMATION: The Commission is revising its regulations at 11 CFR Part 114 concerning the making of independent expenditures and electioneering communications by corporations and labor organizations. The Commission is: (1) Removing the prohibitions in 11 CFR 114.2 on the use of corporate and labor organization general treasury funds to finance independent expenditures and electioneering communications; (2) removing the prohibitions in 11 CFR 114.4 regarding express advocacy communications to the general public and revising the standards in 11 CFR 114.3 for voter registration and get-out-the-vote (''GOTV'') drives, while revising these sections to maintain certain existing exemptions for the activities addressed therein; (3) revising the regulation at 11 CFR 114.10, which currently governs the making of independent expenditures and electioneering communications by qualified nonprofit corporations; (4) removing 11 CFR 114.14 and 114.15, which prohibit corporations and labor organizations from making certain electioneering communications; and (5) revising certain provisions in 11 CFR 104.20 that govern the reporting of electioneering communications. The Commission is also making technical and conforming changes to 11 CFR 114.1 and 114.2. The Commission is

not, at this time, revising 11 CFR 114.9, which governs the use of corporate and labor organization facilities for political activity.

Transmission of Final Rules to Congress

Before final promulgation of any rules or regulations to carry out the provisions of the Federal Election Campaign Act, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period. 52 U.S.C. 30111(d) (formerly 2 U.S.C. 438(d)). The final rules that follow were transmitted to Congress on October 10, 2014.

Explanation and Justification

I. Background

The Federal Election Campaign Act of 1971, as amended [1] (the ''Act''), prohibits corporations and labor organizations from using general treasury funds to make contributions or expenditures in connection with federal elections. 52 U.S.C. 30118 (formerly 2 U.S.C. 441b). The term ''contribution or expenditure'' includes any ''direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization,'' in connection with any federal election. 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)); 11 CFR 114.1(a)(1); *see also* 52 U.S.C. 30101(8)(A), (9)(A) (formerly 2 U.S.C. 431(8)(A), (9)(A)); 11 CFR 100.52, 100.111. As enacted, the Act's prohibition on expenditures by corporations and labor organizations included ''independent expenditures,'' which are expenditures expressly advocating the election or defeat of a clearly identified candidate that are not made in concert or cooperation with, or at the request or suggestion of, a clearly identified candidate, the candidate's authorized political committee, or their agents, or a political party committee and its agents. 52 U.S.C. 30101(17) (formerly 2 U.S.C. 431(17)); 11 CFR 100.16(a).

The Bipartisan Campaign Reform Act of 2002 [2] (''BCRA'') amended the Act also to prohibit corporations and labor organizations from using general treasury funds to make electioneering communications. 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)). Electioneering communications are broadcast, cable, or satellite communications that refer to a clearly identified candidate for federal office, are publicly distributed within 60 days before a general election or 30 days before a primary election, and are targeted to the relevant electorate. 52 U.S.C. 30104(f)(3)(A)(i), (C) (formerly 2 U.S.C. 434(f)(3)(A)(i), (C)); 11 CFR 100.29(a)(1)–(3).

The Commission's regulations implementing the prohibitions on independent expenditures and electioneering communications by corporations and labor organizations are found at 11 CFR part 114.

The Act and Commission regulations require entities that make independent expenditures and electioneering communications to report certain information to the Commission, which then places the reports on the public record. 52 U.S.C. 30104(c), (f) (formerly 2 U.S.C. 434(c), (f)); 11 CFR 104.20, 109.10. The Act and Commission regulations also require communications expressly advocating the election or defeat of a clearly identified candidate, as well as electioneering communications, to include disclaimers stating who paid for the communication and whether the communication was authorized by a federal candidate or a federal candidate's authorized political committee or its agents. 52 U.S.C. 30120(a) (formerly 2 U.S.C. 441d(a)); 11 CFR 110.11.

A. The Rulemaking Record

These final rules respond to a Petition for Rulemaking filed on behalf of the James Madison Center for Free Speech and to the decision of the Supreme Court in *Citizens United v. FEC,* 558 U.S. 310 (2010), discussed below. The Commission published a Notice of Availability seeking public comment on the Petition for Rulemaking in the **Federal Register** on June 21, 2011. Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 76 FR 36001 (June 21, 2011). The comment period closed on August 22, 2011. The Commission received three comments in response to the Notice of Availability.

The Commission published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** on December 27, 2011. Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 76 FR 80803 (Dec. 27, 2011). The NPRM comment period ended on February 3, 2012, and the reply comment period ended on February 17, 2012. The Commission received nine comments from 21 commenters in response to the NPRM.

The Commission held a public hearing on March 7, 2012. Five commenters testified.

B. Citizens United

In *Citizens United,* the Supreme Court held that the Act's prohibitions on financing independent expenditures and electioneering communications with corporate general treasury funds were unconstitutional.[3] Citizens United, a non-profit corporation, released a film in January 2008 in theaters and on DVD about then-Senator Hillary Clinton, who was a candidate in the Democratic Party's 2008 presidential primary elections. Citizens United wanted to pay cable companies to make the film available to digital cable subscribers for free through video-on-demand, which allows subscribers to view programming, including movies. Citizens United planned to make the film available within 30 days before the 2008 primary elections.

Citizens United filed suit, arguing that the ban on corporate electioneering communications at 52 U.S.C. 30118(b)(2) (formerly 2 U.S.C. 441b(b)(2)) was unconstitutional as applied to payments to make the film available through video-on-demand. Citizens United also argued that the disclosure and disclaimer requirements at 52 U.S.C. 30104(f) and 30120 (formerly 2 U.S.C. 434(f) and 441d) were unconstitutional as applied to payments for the film and for three planned advertisements for the movie.

The Supreme Court invalidated section 30118's (formerly 2 U.S.C. 441b) restrictions on corporate independent expenditures and electioneering communications. 558 U.S. at 365. The Court held that the prohibition on corporate independent expenditures and electioneering communications was a ban on speech and concluded that section 30118 (formerly 2 U.S.C. 441b) was therefore ''subject to strict scrutiny.'' *Id.* at 339–40.

[1] 52 U.S.C. 30101–30146 (formerly 2 U.S.C. 431–457).

[2] Public Law 107–155, 116 Stat. 81 (2002).

[3] Although *Citizens United* did not directly address whether labor organizations also have a First Amendment right to use their general treasury funds for independent expenditures and electioneering communications, the Act and Commission regulations generally treat labor organizations similarly to corporations. *See* 52 U.S.C. 30118 (formerly 2 U.S.C. 441b); *see generally* 11 CFR part 114; *see also* Advisory Opinion 2010–11 (Commonsense Ten) at n.3. When addressing corporations, the Court in *Citizens United* often referred to labor organizations, *see, e.g.,* 558 U.S. at 318, 343, and the Court provided no basis for treating labor organization communications differently than corporate communications under the First Amendment. Therefore, as proposed in the NPRM, the final rules make the same regulatory changes for both corporations and labor organizations.

The Court noted that ''[p]olitical speech is 'indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.' '' *Id.* at 349 (quoting *First Nat'l Bank of Boston* v. *Bellotti,* 435 U.S. 765, 777 (1978)). The Court stated that the anti-distortion rationale previously used to justify restrictions on corporate speech ''interferes with the 'open marketplace of ideas' protected by the First Amendment.'' *Id.* at 354.[4] The Supreme Court also found that corporate independent expenditures could not be limited in order to protect dissenting shareholders from being compelled to fund corporate political speech. *Id.* at 361–62. Such disagreements, the Court found, could be corrected by shareholders through the procedures of corporate democracy. *Id.* ''All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech.'' *Id.* at 351. Accordingly, the Supreme Court held that ''the rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity.'' *Id.* at 350.

The Supreme Court further held that, while the government has a compelling interest in preventing corruption or the appearance of corruption, ''independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.'' *Id.* at 357. Thus, the Court invalidated section 30118's (formerly 2 U.S.C. 441b) restrictions on corporate independent expenditures and electioneering communications. *Id.* at 365.

Citizens United also challenged the Act's disclaimer and disclosure provisions at sections 30104(f) and 30120 (formerly 2 U.S.C. 434(f) and 441d) as applied to the film and three advertisements for the film. Under the Act, electioneering communications must include a statement identifying the person responsible for payment for the advertisement. 52 U.S.C. 30120(a) (formerly 2 U.S.C. 441d(a)). Also, any person who spends more than $10,000 on electioneering communications within a calendar year must file a disclosure statement with the Commission providing information about the person making the electioneering communication, the election to which the communication pertains, and certain contributors who gave $1,000 or more within a specified time period. 52 U.S.C. 30104(f)(2) (formerly 2 U.S.C. 434(f)(2)).

The Court rejected the challenge to these statutory requirements and upheld the reporting provisions because ''transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.'' *Citizens United,* 558 U.S. at 366–71. The Court recognized that the Commission's current disclaimer and disclosure requirements advance the public's ''interest in knowing who is speaking about a candidate shortly before an election.'' *Id.* at 369. ''Prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.'' *Id.* at 370.

II. Revised 11 CFR 114.2—Prohibitions on Contributions, Expenditures and Electioneering Communications

The existing Commission regulation at 11 CFR 114.2(b) implements 52 U.S.C. 30118(a) (formerly 2 U.S.C. 441b(a)) by prohibiting corporations and labor organizations from making expenditures, including independent expenditures.[5] *See* 52 U.S.C. 30101(17) (formerly 2 U.S.C. 431(17)); *see also* 11 CFR 100.16(a). This rule also prohibits corporations and labor organizations from making payments for electioneering communications unless certain criteria are met. As a result of the Supreme Court's invalidation of the prohibitions on corporate independent expenditures and electioneering communications in 52 U.S.C. 30118(a) (formerly 2 U.S.C. 441b(a)),[6] certain portions of 11 CFR 114.2(b) are no longer valid. Accordingly, the Commission is revising this regulation to remove the prohibitions on independent expenditures and electioneering communications.

A. Removal of 11 CFR 114.2(b)(2)(i)—Prohibition on Corporate and Labor Organization Expenditures

Current section 114.2(b)(2)(i) prohibits corporations and labor organizations from making ''expenditures,'' as defined in 11 CFR part 100, subpart D. With certain exceptions, this prohibition applies to all expenditures, whether they are independent, coordinated, or any other form of expenditure, including in-kind contributions.[7]

In the NPRM, the Commission proposed two alternatives for revising 11 CFR 114.2(b)(2)(i). Both alternatives proposed to permit corporations and labor organizations to make expenditures from their general treasury funds for communications that are not coordinated with a candidate or political party, and both alternatives proposed to maintain the prohibition on corporate and labor organization expenditures for all communications and other activities that are coordinated with a candidate or political party as defined in 11 CFR 109.20 or 109.21.

The alternatives differed in that Alternative A proposed removing the existing broad prohibition on corporate and labor organization expenditures from general treasury funds and replacing it with a regulation specifically prohibiting only (a) expenditures that are coordinated with a candidate or a political party committee and (b) coordinated communications. This would have permitted all corporate and labor organization communications that are made without coordinating with a candidate, a candidate's authorized committee, or a political party committee, regardless of whether the communications are express advocacy. Alternative A also proposed permitting expenditures that are not for communications as long as they were not in-kind contributions, such as expenditures that are coordinated with candidates or political party committees.

In contrast, Alternative B proposed amending the prohibition on corporate and labor organization expenditures to permit independent expenditures from

[4] The Court therefore overruled its previous decisions in *Austin v. Mich. Chamber of Commerce,* 494 U.S. 652 (1990), and, in part, *McConnell* v. *FEC,* 540 U.S. 93, 203–09 (2003).

[5] An ''independent expenditure'' is defined by the Act as ''an expenditure by a person—(A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.'' 52 U.S.C. 30101(17) (formerly 2 U.S.C. 431(17)); *see also* 11 CFR 100.16(a). ''Expressly advocating'' is defined in 11 CFR 100.22.

[6] See note 3, above, regarding the applicability of the *Citizens United* holding to labor organizations.

[7] An in-kind contribution is an expenditure. 11 CFR 100.111(e)(1). Except as discussed below in the context of independent-expenditure-only committees and accounts, corporate and labor organization contributions, including in-kind contributions, continue to be prohibited after *Citizens United. United States* v. *Danielczyk,* 683 F.3d 611, 614 (4th Cir. 2012). Coordinated communications and coordinated expenditures continue to be prohibited because they are forms of in-kind contributions. 52 U.S.C. 30116(a)(7)(B), 30118(a), (b)(2) (formerly 2 U.S.C. 441a(a)(7)(B), 441b(a), (b)(2)); 11 CFR 109.20(b), 109.21(b).

general treasury funds for non-coordinated communications, but this proposal would have continued to prohibit non-communicative expenditures (including in-kind contributions) and coordinated communications. Alternative B, therefore, would have distinguished expenditures for communications from other types of expenditures.[8]

The Commission sought comment on which of the two alternatives was consistent with *Citizens United.* The Commission also sought comment on whether each alternative eliminated too much or too little of the prohibition on corporate and labor organization expenditures, and whether each alternative provided clear guidance on the types of expenditures that corporations and labor organizations may make in accordance with *Citizens United.*

The majority of commenters who addressed the two proposed alternatives for section 114.2(b)(2)(i) supported Alternative A, on the ground that *Citizens United* did not distinguish between speech and non-speech activities. The only relevant distinction, those commenters argued, is whether spending is coordinated with a candidate or political party. One commenter argued that *Citizens United* stands for the principle ''that activities independent of a campaign lack the potential corruptive influence of coordinated activities'' and therefore all independent spending is entitled to First Amendment protection. Another commenter posited that ''the distinction between 'non-expressive' or 'non-speech' and 'communicative' elements of political activities is illusory and constitutionally impermissible.''

Another commenter argued, however, that the Commission should adopt Alternative B, permitting corporations and labor organizations to make independent communicative expenditures only, because *Citizens United's* holding protects only political speech.

Based on the comments and testimony received and the Commission's reading of *Citizens United* and the existing regulations, the Commission concludes that the Court's holding applies to all non-coordinated corporate and labor organization expenditures, regardless of whether they fall within the narrower statutory definition of an ''independent expenditure.'' The primary basis for this conclusion is the Supreme Court's finding that expenditures that are not coordinated with candidates or political party committees are not sufficiently corruptive to constitutionally justify their prohibition. Accordingly, the Commission has decided that the regulations should not contain a prohibition on non-communicative expenditures by corporations and labor organizations. Rather than adopt Alternative A, which would have revised paragraph 114.2(b)(2)(i), however, the Commission is removing this paragraph. This will prevent any potential for confusion over what types of expenditures corporations and labor organizations are permitted to make, consistent with the Court's holding that such entities may not constitutionally be prohibited from making independent expenditures.

Proposed Alternative A included language that would have prohibited corporations and labor organizations from making expenditures for communications or other expenditures in coordination with a candidate, a candidate's authorized committee, or a political party committee. The Commission believes that it is unnecessary to include these prohibitions in this section. In-kind contributions, coordinated expenditures, and coordinated communications constitute contributions under the existing regulations at sections 100.52(d)(1), 109.20, and 109.21, respectively, and the prohibition on corporate and labor organization contributions at current section 114.2(b)(1) (redesignated as section 114.2(b) by this final rule) remains in force (except as indicated in the new note to section 114.2(b), discussed below). Adding the proposed language to section 114.2(b)(2)(i) therefore would be redundant.

The Commission is, however, appending a note to 11 CFR 114.2 to reflect the fact that corporations and labor organizations may make contributions to non-connected political committees that make only independent expenditures, and to separate accounts maintained by non-connected political committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b). In two cases, courts held that the contribution limits at 52 U.S.C. 30116 (formerly 2 U.S.C. 441a) may not be applied to contributions from individuals to these ''independent-expenditure-only'' political committees and accounts. *SpeechNow.org* v. *FEC,* 599 F.3d 686 (D.C. Cir. 2010) (en banc) (holding contribution limits inapplicable to individual contributions to non-connected political committees making only independent expenditures); *Carey* v. *FEC,* 791 F. Supp. 2d 121 (D.D.C. 2011) (enjoining application of contribution limits to contributions to separate accounts maintained by non-connected political committees for the purpose of making only independent expenditures). In light of these decisions and the Supreme Court's decision in *Citizens United,* the Commission has recognized that the statutory and regulatory prohibitions on contributions by corporations and labor organizations to such independent-expenditure-only political committees and accounts are no longer enforceable. *See* Advisory Opinion 2010–11 (Commonsense Ten); *see also* FEC Statement on *Carey* v. *FEC,* Oct. 5, 2011, available at *http://www.fec.gov/press/press2011/20111006postcarey.shtml.* The Commission intends to engage in a separate rulemaking in response to the *SpeechNow* and *Carey* decisions, but to avoid confusion regarding the prohibition on contributions by corporations and labor organizations, the Commission is now appending a note to 11 CFR 114.2—and to the parallel provision in 11 CFR 114.10, discussed below—to accurately reflect the scope of that prohibition.

B. Removal of 11 CFR 114.2(b)(2)(ii) and (b)(3)—Prohibitions on Corporate and Labor Organization Express Advocacy Communications and Electioneering Communications to Those Outside the Restricted Class

Current 11 CFR 114.2(b)(2)(ii) prohibits corporations and labor organizations from ''making expenditures with respect to a Federal election . . . for communications to those outside the restricted class that expressly advocate the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party.'' Because the Supreme Court held in *Citizens United* that corporations and labor organizations have a constitutional right to make expenditures for express advocacy communications to the general public, the Commission proposed in the NPRM to remove paragraph (b)(2)(ii) of section 114.2.

Similarly, current 11 CFR 114.2(b)(3) prohibits corporations and labor organizations ''from making payments for electioneering communications to those outside their restricted classes unless permissible under 11 CFR 114.10 or 114.15.'' Because *Citizens United* held that corporations may make electioneering communications to the

[8] The Commission's coordination regulations distinguish between communications (*e.g.,* advertisements, mass mailings, phone banks), 11 CFR 109.21, and ''non-communication'' expenditures (*e.g.,* rent or computers), 11 CFR 109.20(b). *See* Coordinated and Independent Expenditures, 68 FR 425–26 (Jan. 3, 2003).

general public, the Commission proposed in the NPRM to remove paragraph (b)(3) of section 114.2.

The few commenters who addressed the proposed removal of paragraphs (b)(2)(ii) and (b)(3) all supported removal.

The Commission is removing 11 CFR 114.2(b)(2)(ii) because that paragraph's prohibition of corporate and labor organization expenditures for express advocacy communications was invalidated by *Citizens United.* Likewise, because *Citizens United* invalidated the prohibition on corporate and labor organization payments for electioneering communications, the Commission is removing 11 CFR 114.2(b)(3). The remaining provision at current 11 CFR 114.2(b)(1) is being redesignated as 114.2(b).

The Commission is also making a technical revision to section 114.2(a)(1) to maintain the existing prohibitions on certain activity by national banks and federally chartered corporations. Current section 114.2(a) provides that national banks and federally chartered corporations are prohibited from making contributions and expenditures, while paragraph (a)(2) provides that such national banks and corporations are generally subject to the provisions of part 114. Thus, the current prohibitions on expenditures, electioneering communications, and other activity in 11 CFR 114.2(b)(2) and (3) have applied to national banks and federally chartered corporations by reference through section 114.2(a)(2). As discussed above, however, the Commission is removing 11 CFR 114.2(b)(2) and (3) to permit a wider range of activities by corporations and labor organizations and to exclude certain such activities from the definitions of contributions and expenditures. In order to retain the existing prohibition on national banks and federally chartered corporations making contributions, expenditures, or electioneering communications, therefore, the Commission is revising section 114.2(a)(1) to provide that such entities may engage in activities permitted by part 114 except to the extent that they constitute contributions, expenditures, or electioneering communications.

The Commission is also revising section 114.2(c) to conform with changes the Commission is making to sections 114.3 and 114.4, as described below. Current section 114.2(c) provides that disbursements for ''activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions or expenditures, even when coordinated with [candidates or political party committees] to the extent permitted in those sections.'' Because some of the activities conducted under revised sections 114.3 and 114.4 may constitute expenditures, *see infra* Sections III–IV, the Commission is revising section 114.2(c) to remove this reference to expenditures, while preserving the existing rule that disbursements for activities described in sections 114.3 and 114.4 may be coordinated with candidates or political parties to the extent currently permitted under those sections without constituting contributions. In addition, the Commission is shortening the second sentence of section 114.2(c), which currently provides that ''[c]oordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the restricted class to be considered contributions or expenditures.'' For clarity, the Commission is removing ''or expenditures'' from this sentence to reflect that the regulatory criteria for coordinated expenditures and communications are used to determine whether the entity making the disbursement has made a contribution, not whether the entity has made an expenditure. *See* 11 CFR 109.20(b) (providing that a coordinated expenditure is an in-kind contribution), 109.21(b) (providing that coordinated communication is in-kind contribution). This latter revision is merely a technical clarification and is not intended to substantively amend the rule in any way.

III. Revised 11 CFR 114.3—Disbursements for Communications to the Restricted Class by Corporations and Labor Organizations in Connection With a Federal Election

The Commission is revising the regulations at 11 CFR 114.3 covering disbursements by corporations and labor organizations for communications with their restricted classes. The Commission is maintaining the existing regulatory structure that covers disbursements for communications to the restricted class in 11 CFR 114.3 and expenditures for communications beyond the restricted class in 11 CFR 114.4. The Commission is removing the requirement currently at 11 CFR 114.3(c)(4) that corporations and labor organizations not make decisions regarding whether to provide voter registration or GOTV assistance on the basis of support for or opposition to particular candidates or a particular political party. The Commission is not making any substantive changes to the reporting requirements for disbursements for communications to the restricted class in 11 CFR 114.3(b).

A. Structure of 11 CFR 114.3 and 114.4

Current 11 CFR 114.3 implements certain statutory exceptions to the general ban on contributions and expenditures by corporations and labor organizations. Before *Citizens United,* corporations and labor organizations could make express advocacy communications only to their restricted classes. 52 U.S.C. 30118(a), (b)(2)(A) (formerly 2 U.S.C. 441b(a), (b)(2)(A)). Section 114.3 implements these provisions of the Act and sets out the requirements for and restrictions on restricted-class communications, including publications; candidate and party appearances; phone banks; and voter registration and GOTV drives. The Act establishes specific reporting requirements for communications made by corporations and labor organizations to their restricted classes and exempts disbursements for such communications from the definition of expenditure, regardless of whether the communications are express advocacy. 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii)).

The Commission's current regulation at 11 CFR 114.4 sets out the restrictions and prohibitions for communications by corporations and labor organizations outside of the restricted class.

The NPRM proposed maintaining the current structure, with 11 CFR 114.3 addressing disbursements for communications made to the restricted class and 11 CFR 114.4 addressing disbursements for communications outside the restricted class.

The Commission received comments from two commenters on the structure of 11 CFR 114.3 and 114.4. One commenter said that 11 CFR 114.3 and 114.4 could be made more understandable by combining and shortening the provisions. Another commenter, however, recommended that the Commission maintain the current division. That commenter noted that important reporting and coordination-related distinctions remain between how corporations and labor organizations communicate with their restricted classes and with the general public. The commenter said that the current division between the provisions provides useful clarity to corporations and labor organizations.

The Commission has decided that the regulations should continue to distinguish between communications to the restricted class and communications to the general public because, as the commenter noted, the Act imposes differing reporting regimes for each such

communication. Therefore, while the Commission is revising both 11 CFR 114.3 and 114.4, it is maintaining the structure of those provisions.

B. Revised 11 CFR 114.3(b)—Reporting of Disbursements for Communications to the Restricted Class

Section 114.3(b) of the Commission's regulations requires that corporations and labor organizations report, in accordance with 11 CFR 100.134 and 104.6, disbursements for express advocacy communications made to the restricted class. The Act exempts express advocacy communications made by corporations and labor organizations to their restricted class from the definition of ''expenditure.'' 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii)). The Act requires, however, that corporations and labor organizations that make disbursements for express advocacy communications to their restricted class in excess of $2,000 for any election file quarterly reports in an election year and pre-election reports for any general election. 52 U.S.C. 30101(9)(B)(iii), 30104(a)(4)(A)(i), (ii) (formerly 2 U.S.C. 431(9)(B)(iii), 434(a)(4)(A)(i), (ii)). This statutory requirement is implemented in the Commission's regulations at current 11 CFR 100.134(a), 104.6(a), and 114.3(b).

For communications beyond the restricted class, section 30104(c) of Title 52 (formerly 2 U.S.C. 434(c)) requires that ''every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year'' report such expenditures to the Commission. Because corporations and labor organizations are ''persons'' under the Act, they are subject to the reporting requirements of 52 U.S.C. 30104(c) (formerly 2 U.S.C. 434(c)).

The NPRM did not propose any changes to 11 CFR 114.3(b) because *Citizens United* did not affect the provision of the Act at 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii)) that exempts disbursements for express advocacy communications to the restricted class from the definition of ''expenditure'' and establishes the reporting requirement for such communications. The NPRM sought comments, however, on how a corporation or labor organization should report spending for express advocacy communications directed both to the restricted class and outside the restricted class. Specifically, the NPRM asked whether a single disbursement for an express advocacy communication that is made both to the general public and the restricted class results in the entire disbursement being treated as an independent expenditure for reporting purposes, or whether instead the disbursement should be allocated between the cost of reaching the restricted class and the cost of reaching outside the restricted class. Under the latter approach, the corporation or labor organization would report the allocated expenses separately under the two reporting regimes.

The Commission received comments on this topic from four commenters. None recommended eliminating or revising 11 CFR 114.3(b).

One commenter said that when an independent expenditure reaches both the general public and members of the restricted class the entire disbursement should be treated as an independent expenditure. Another commenter opined that most organizations will report broadcast communications to the general public as independent expenditures because even if the communication reaches members of the restricted class, the majority of recipients will be members of the general public. A third commenter pointed out that independent expenditures by separate segregated funds already likely reach members of the restricted class, yet there is no suggestion that these communications should be subject to any special reporting requirement. This commenter suggested that, as a practical matter, any non-targeted mass communication (such as broadcast communications) should be reported as an independent expenditure, while targeted communications can be allocated. Another commenter, however, disagreed and argued that because, by statute, communications to the restricted class are neither contributions nor expenditures, mass communications should not be automatically reported entirely as independent expenditures but perhaps should be subject to some form of allocation.

Several of the commenters said that allocating between disbursements for communications to the restricted class and independent expenditures would not be burdensome. Most of the commenters, however, emphasized that organizations already are allocating between these types of communications, and suggested that the Commission need not create a mandatory allocation regime. One commenter noted that under section 501(c) of the Internal Revenue Code, many organizations currently track communications to their members for tax reporting reasons.

Several commenters said that allocating between restricted class communications and communications to the general public would not be difficult for targeted communications, such as email, direct mail, and telephone calls. One of these commenters recommended that if the Commission were to require allocation for communications that reach both the restricted class and the general public, such a requirement should be subject to several exceptions. First, any allocation should require only a reasonable estimation of the numbers of potential recipients of each class. Second, because qualified non-profit corporations (''QNCs''), discussed further below, were permitted to make express advocacy communications both to the restricted class and to the general public prior to *Citizens United,* they should remain able to do so and not be subject to mandatory allocation. Third, if an express advocacy communication is not specifically targeted to the restricted class, the corporation or labor organization should not be required to allocate and should have the option of treating the entire cost as an independent expenditure. Finally, this commenter recommended that any allocation regulation include a safe harbor provision that would specify that a communication to the restricted class that entails *de minimis* dissemination to the public may be treated entirely as a disbursement for a communication to the restricted class.

One of the commenters addressed the actual mechanics of reporting payments for both types of communications to the Commission. The commenter stated that having corporations and labor organizations report disbursements for communications to the restricted class and independent expenditures together on the same form would be confusing because filers are required to certify on Form 5 (the form for reporting independent expenditures by persons other than political committees) that independent expenditures are not coordinated with any candidate or party, while communications to the restricted class may be coordinated. The commenter also pointed out that unlike some independent expenditures, disbursements for communications to the restricted class are not required to be reported within 24 or 48 hours of when they are made.

The Commission is sensitive to the concerns of many of the commenters that imposing any rigid allocation regime would complicate reporting for many corporations and labor organizations. The Commission is therefore not revising the reporting requirements at 11 CFR 114.3(b). The Commission notes that allocation is possible only for express advocacy

communications that are specially targeted to known recipients in the restricted class. Communications such as telephone, direct mail, and email communications may be so targeted since the recipients are generally known and can be identified either as members of the restricted class or as members of the general public. Therefore, these communications may be allocated. In contrast, communications such as some broadcast, print, Internet, and outdoor advertising cannot be suitably targeted, since the recipients are not identifiable. For such communications, the entire cost should be reported as an independent expenditure.

The final rule does include a minor change to the heading of 11 CFR 114.3(b) to clarify that the provision applies only to express advocacy communications that are made to the restricted class.

C. Revised 11 CFR 114.3(c)(4)—Voter Drives and Get-Out-the-Vote Activity Directed at the Restricted Class

The Commission is revising 11 CFR 114.3(c)(4) to remove the requirement that corporations and labor organizations conducting voter registration or GOTV drives aimed at the restricted class not make decisions regarding whether to provide assistance on the basis of support for or opposition to particular candidates or a particular political party.

For purposes of the Act's corporate and labor organization prohibitions, ''contribution or expenditure'' is defined to exclude ''nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families.'' 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). The Act further excludes from the definition of ''expenditure'' ''communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject.'' 52 U.S.C. 30118(b)(2)(A) (formerly 2 U.S.C. 441b(b)(2)(A)).

Current 11 CFR 114.3(c)(4) provides that a corporation or a labor organization may conduct voter registration and GOTV drives ''aimed at its restricted class.'' Section 114.3(c)(4) states that voter registration and GOTV drives include providing transportation to the place of registration and to the polls. The current provision further permits such drives to include express advocacy communications, ''such as urging individuals to register with a particular political party or to vote for a particular candidate.'' 11 CFR 114.3(c)(4). The current provision, however, also prohibits corporations and labor organizations from withholding or refusing to give information and other assistance regarding registering or voting ''on the basis of support for or opposition to particular candidates, or a particular political party.'' *Id.*

The NPRM proposed two alternatives to revise paragraph (c)(4). Alternative A proposed removing the existing prohibition on corporations and labor organizations withholding or refusing to give information or other assistance on the basis of support for or opposition to particular candidates or a particular political party. Alternative B would not have made any changes to current 11 CFR 114.3(c)(4) and therefore would have retained the current prohibition on tying the provision of information and other assistance to positions on candidates or political parties.

1. Alternative A

This alternative proposed to permit voter registration and GOTV activities in which the corporation or labor organization withholds or refuses to provide information or other assistance regarding registering or voting based on support for or opposition to particular candidates or a particular party—*i.e.,* activities that do not qualify as ''nonpartisan.'' Instead, Alternative A proposed to prohibit corporations and labor organizations from acting in ''cooperation, consultation, or concert with, or at the request or suggestion of'' any candidate or political party in conducting voter registration or GOTV drives.

Alternative A also would have retained nonpartisan voter registration and GOTV drives as an exception to the definition of ''contribution or expenditure.'' *See* 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). Corporations and labor organizations currently do not have to report to the Commission under 52 U.S.C. 30104(c)(1) (formerly 2 U.S.C. 434(c)(1)) disbursements for nonpartisan voter registration and GOTV, since such disbursements are not expenditures. Thus, voter registration and GOTV drives would have been permissible under Alternative A, regardless of whether the drives met the conditions of the statutory ''nonpartisan'' exception, but corporations or labor organizations conducting nonpartisan drives would not have been required to report disbursements for them (unless they otherwise met the requirement to be reported as disbursements for express advocacy communications to the restricted class under 52 U.S.C. 30101(9)(B)(iii) (formerly 2 U.S.C. 431(9)(B)(iii))).

2. Alternative B

Alternative B proposed making no changes to the existing regulation at 11 CFR 114.3(c)(4). Thus, under Alternative B, as under Alternative A, a corporation or labor organization would have continued to be able to make voter registration or GOTV *communications,* including express advocacy, to its restricted class under 11 CFR 114.3(c)(4). Furthermore, under both alternatives, voter registration and GOTV drives conducted in accordance with proposed 11 CFR 114.3(c)(4) would have remained exempt from the definition of ''expenditure'' under 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). Alternative B, however, would have maintained the prohibition on withholding or refusing to provide information or other assistance regarding registration or voting based on support for or opposition to particular candidates or a particular party. Additionally, corporations and labor organizations would have continued to be prohibited from engaging in non-communicative *activities* related to voter registration and GOTV drives other than those conducted in accordance with proposed 11 CFR 114.3(c)(4).

As discussed in Section II.A, above, one alternative proposed in the NPRM for conforming the Commission's regulation at 11 CFR 114.2(b)(2)(i) to the decision in *Citizens United* was to specifically exclude expenditures for communications (*i.e.,* ''independent expenditures'') from the broader prohibition on expenditures, while still prohibiting corporate and labor organization in-kind contributions, coordinated expenditures, and expenditures that do not involve communications. In promulgating the current regulation at 11 CFR 114.3(c)(4), the Commission similarly distinguished between the '' 'pure speech' aspects of the drives [that] may be partisan,'' and the non-speech activity aspects of the drives that ''must be conducted in a nonpartisan manner.'' Explanation and Justification for Part 114, H.R. Doc. No. 95–44, at 105 (1977) (''1977 E&J''). The Commission's implementation of section 30118(b)(2)(B)'s (formerly U.S.C. 441b(b)(2)(B)) nonpartisan requirement reflects this distinction between ''pure speech'' and non-speech elements of voter registration and GOTV drives. Thus, as with proposed Alternative B for 11 CFR 114.2(b)(2)(i) discussed

above, Alternative B for 11 CFR 114.3(c)(4) would have distinguished between speech and non-speech activity by leaving intact the regulation's current distinction between communicative advocacy and other advocacy.

The Commission received six comments on the proposed revisions to 11 CFR 114.3(c)(4). The majority of the commenters supported Alternative A, arguing that it was consistent with the Court's decision and rationale in *Citizens United.* Several of these commenters argued that Alternative B was not consistent with *Citizens United* because its holding extends to both communicative and non-communicative forms of independent expenditures. One commenter stated that the distinction between communicative and non-communicative expenditures was ''particularly inapplicable to the targeting of voters based on likely political preferences'' for voter registration and GOTV drives, given that such activity expressing support for or opposition to a candidate or party is inherently communicative. Another commenter also stated that voter registration activity is highly regulated at the federal, state, and local levels under other laws, and that the Commission should defer to those laws and bodies in regulating voter registration activity. Another commenter noted that voter registration drives and GOTV activity implicate associational rights.

One commenter opined that the proposal in Alternative A that would exempt only nonpartisan voter drives and GOTV activities aimed at the restricted class from the definition of expenditure was inconsistent with the statute. That commenter argued that the Act permits a corporation or labor organization to communicate with its restricted class on *any* subject. The commenter further noted that 11 CFR 114.3(c)(4) has long provided that voter registration and GOTV drives ''may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular party or to vote for a particular candidate,'' and that such activities may be coordinated with candidates and political parties. The commenter went on to state that Alternative A erred in suggesting that the Commission can require a corporation or labor organization to report its spending on voter registration or GOTV activity directed at the restricted class that failed to meet the nonpartisan criteria at proposed 11 CFR 114.3(c)(4)(ii). The commenter argued that absent express advocacy, there is no requirement under the Act that a corporation or labor organization report its voter registration or GOTV activities aimed at the restricted class.

One commenter supported Alternative B, stating that corporations and labor organizations should have a strong incentive to provide voter registration and GOTV activities without regard for candidate or party preference because minority and low-income voters frequently register to vote through non-governmental voter registration drives. The commenter also opined that nonpartisan GOTV activities are more effective than partisan ones. The commenter went on to argue that Alternative B is consistent with the holding in *Citizens United* because voter registration and GOTV activities are non-communicative, and the holding in *Citizens United* applies only to speech.

As discussed above, the Commission finds that the holding in *Citizens United* applies to all corporate and labor organization expenditures that are not coordinated and do not otherwise constitute in-kind contributions. Therefore, the Commission is removing the requirement that corporations and labor organizations not withhold or refuse to provide information or other assistance regarding registering or voting based on support for or opposition to particular candidates or a particular party.

Accordingly, the Commission is revising 11 CFR 114.3(c)(4) to follow the approach in proposed Alternative A, although the final rule is not identical to the language proposed in Alternative A. Revised section 114.3(c)(4)(i) tracks the language of current 11 CFR 114.3(c)(4), stating that corporations and labor organizations may conduct voter registration and GOTV drives aimed at the restricted class, that such drives include providing transportation to the place of registration or to the polls, and that these drives may include express advocacy.

Revised section 114.3(c)(4)(ii) sets out the exemption for nonpartisan drives from the definition of ''contributions or expenditures'' pursuant to 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)). The paragraph describes nonpartisan drives in the same way as the current regulation: To qualify for the exemption, the drive must be conducted so that information and other assistance in registering or voting is not withheld or refused based on support for or opposition to particular candidates or a particular party.

The Commission agrees with the commenter that the Act exempts from the definition of ''contribution or expenditure'' communications on any subject (including communications that are express advocacy) between a corporation or a labor organization and its restricted class. 52 U.S.C. 30118(b)(2)(A) (formerly 2 U.S.C. 441b(b)(2)(A)). However, because the Act specifically exempts only *nonpartisan* voter registration and GOTV drives aimed at the restricted class from the definition of ''contribution or expenditure,'' 52 U.S.C. 30118(b)(2)(B) (formerly 2 U.S.C. 441b(b)(2)(B)), the Commission concludes that such nonpartisan voter registration and GOTV drives must be treated differently from other drives. Thus, new section 114.3(c)(4)(iii) affirms that corporations and labor organizations may make disbursements for voter registration and GOTV drives aimed at the restricted class that do not qualify as nonpartisan, but the revised regulation does not categorically exempt these disbursements from the definition of ''expenditure.''

Although 11 CFR 114.3(c)(4) does not expressly address reporting, express advocacy communications to the restricted class are subject to the requirements at 52 U.S.C. 30101(9)(B)(iii), 30104(a)(4)(A)(i)–(ii), (c)(1) (formerly 2 U.S.C. 431(9)(B)(iii), 434(a)(4)(A)(i)–(ii), (c)(1)); 11 CFR 100.134(a) (requiring reporting when disbursements for express advocacy communications to restricted class aggregate in excess of $2000 per election), 104.6 (same), 114.3(b) (same). Disbursements made under new section 114.3(c)(4), therefore, will be reported as express advocacy communications to the restricted class if the activity includes express advocacy (and exceeds the $2000 reporting threshold).

Because the Act still prohibits corporations and labor organizations from making contributions,[9] new paragraph (c)(4)(iii) provides that disbursements by corporations and labor organizations for voter registration and GOTV drives may not constitute coordinated expenditures, coordinated communications, or contributions, as those terms are defined in Commission regulations.

IV. Revised 11 CFR 114.4—Disbursements for Communications in Connection With a Federal Election by Corporations and Labor Organizations Beyond the Restricted Class

The Commission is revising 11 CFR 114.4, which covers disbursements for communications by corporations and labor organizations beyond the

[9] As discussed in Section II.A, above, corporations and labor organizations may make contributions to independent-expenditure-only committees and accounts.

restricted class in connection with a federal election. Prior to *Citizens United,* corporations and labor organizations were prohibited from making independent expenditures and electioneering communications. Current section 114.4 carves out certain communications from that prohibition and the prohibition on coordinated communications by corporate and labor organizations. The regulation permits certain communications and activities directed outside the restricted class, both to employees outside the restricted class and to the general public. This section also permits certain communications made to those outside the restricted class to be coordinated, to a limited extent, with candidates. For example, section 114.4(b) covers candidate and party appearances on corporate or labor organization premises or at a meeting, convention, or other function that is attended by employees outside the restricted class, 114.4(c)(6) covers endorsements, and 114.4(c)(7) covers candidate appearances at certain educational institutions.

Current section 114.4(c) identifies the types of communications that corporations and labor organizations are permitted to make to the general public: (1) Voter registration and voting communications; (2) official registration and voting information; (3) voting records; (4) voter guides; (5) endorsements; (6) candidate appearances on educational institution premises; and (7) electioneering communications. It also sets forth the relevant requirements and restrictions that apply to each of these types of communication.

The Commission is removing all prohibitions on express advocacy in the communications described in 11 CFR 114.4(c). The Commission is also reorganizing 11 CFR 114.4(c) to include an explicit prohibition on corporations and labor organizations coordinating with candidates or party committees, pursuant to the Commission's coordination regulations, on communications to the general public. Finally, the Commission is making several minor revisions to 11 CFR 114.4, discussed below.

A. Revised 11 CFR 114.4(a)—General

The Commission is making minor clarifying changes to paragraph (a). Current 11 CFR 114.4(a) provides that any communications that a corporation or labor organization makes to the general public may also be made to the restricted class and to its employees outside the restricted class. Current paragraph (a) also provides that communications described in section 114.4 may be coordinated with candidates and political committees only to the extent permitted in section 114.4.

The NPRM proposed reorganizing paragraph (a) and making several clarifying language changes. The Commission received one comment on the proposal to revise 11 CFR 114.4(a). The commenter agreed with the proposal and suggested inserting ''the phrase 'among others' before 'the general public' in proposed [section] 114.4(a) . . . [i]n order to conform with the general division of individuals between the 'restricted class' and the 'general public.' ''

The Commission is adopting the changes proposed in the NPRM without the additional language proposed by the commenter. Although the Commission agrees with the commenter that communications made to the general public as described in 11 CFR 114.4 may also be made to the restricted class, the Commission believes that 11 CFR 114.4(a) already makes this clear. Like current 11 CFR 114.4(a), the revised provision states that communications by a corporation or labor organization beyond its restricted class, addressed in paragraphs (b) and (c), may be coordinated with candidates and political committees only to the extent permitted by section 114.4.

Revised 11 CFR 114.4(a) also states that voter registration and GOTV drives, further addressed in paragraph (d), may not include coordinated expenditures, coordinated communications, or contributions, as those terms are defined in Commission regulations. This language is meant to indicate that corporations and labor organizations remain prohibited from making contributions under the Act and Commission regulations.[10] 52 U.S.C. 30118(a), (b)(2) (formerly 2 U.S.C. 441b(a), (b)(2)); 11 CFR 114.2(a).

B. Revised 11 CFR 114.4(c)—Communications by a Corporation or Labor Organization to the General Public

The Commission is making several revisions to 11 CFR 114.4(c). The Commission is removing the prohibitions on express advocacy and is adding a provision to explicitly state that corporations and labor organizations may make independent expenditures and electioneering communications. The Commission is also consolidating into revised section 114.4(c)(1) the prohibition on corporations and labor organizations coordinating with candidates and political party committees in making communications to the general public, thereby replacing the multiple references to this prohibition in current section 11 CFR 114.4(c). However, the final rules maintain the existing exemption from the definitions of contribution and expenditure for activities that meet certain criteria, such as not constituting express advocacy and not being coordinated with any candidate or political party. The final rules thus reflect the fact that corporations and labor organizations may make independent expenditures and electioneering communications after *Citizens United,* while the final rules also maintain the status quo regarding the activities that, under the current regulations, are not contributions or expenditures. *See infra* Section VIII (discussing conforming amendment to 11 CFR 114.1(a)(2)(x)). Finally, the Commission is removing 11 CFR 114.4(c)(8), which states that corporations and labor organizations may make only certain electioneering communications.

Current 11 CFR 114.4(c) addresses communications by corporations and labor organizations to the general public and includes specific provisions on seven types of such communications, listed above. With certain exceptions, each of the provisions within paragraph (c) currently prohibits coordinating any such communication with a candidate or a candidate's committee or agent.

1. Revised 11 CFR 114.4(c)—Communications by a Corporation or Labor Organization to the General Public

The NPRM proposed adding to paragraph (c)(1) a general prohibition on corporations or labor organizations acting in cooperation, consultation, or concert with or at the request or suggestion of a candidate, a candidate's committee or agent, or a political party committee or its agent regarding the preparation, content, and distribution of any of the specific types of communications described at proposed 11 CFR 114.4(c)(2)–(6). The proposed general prohibition would replace the separate prohibitions on coordination contained in each paragraph of current 11 CFR 114.4(c)(2)–(6).

Current 11 CFR 114.4(c)(2)–(6) govern voter registration and GOTV communications; official voter registration and voting information; voting records; voter guides; and endorsements. The NPRM proposed generally retaining these paragraphs to

[10] As discussed in Section II.A, above, corporations and labor organizations may make contributions to independent-expenditure-only committees and accounts.

provide specific information about some of the types of communications that corporations and labor organizations might wish to make. The current versions of these paragraphs, however, each prohibit corporations or labor organizations from expressly advocating the election or defeat of clearly identified candidates in these communications. Proposed 11 CFR 114.4(c)(2)–(6) would have eliminated the prohibition on express advocacy in each paragraph for communications that are not coordinated with any candidate or political party.

Four commenters commented on the proposed changes to 11 CFR 114.4(c). One commenter supported the proposed sentence stating that corporations and labor organizations may make independent expenditures and electioneering communications because a change is required by *Citizens United.* Another commenter did not support adding that proposed sentence, believing it superfluous given the Commission's proposal to add similar language in 11 CFR 114.10.

Several commenters did not favor the proposed changes to 11 CFR 114.4(c)(1) and (c)(2)–(6), instead preferring removal of 11 CFR 114.4(c)(2)–(6). These commenters reasoned that a list of certain permissible communications to the general public is no longer necessary because corporations and labor organizations may now make independent expenditures and electioneering communications. Because Commission regulations already contain criteria for when a communication is ''coordinated,'' these commenters further argued, adding a prohibition on coordination is unnecessary. One commenter contended that 11 CFR 114.4(c)(1) should be revised to include a reference to the regulations that set out the tests for coordinated expenditures and coordinated communications, at 11 CFR 109.20 and 109.21, respectively. The commenter expressed concern that the proposed regulation appeared to create a new coordination test for activities relating particularly to the communications in 114.4(c)(2)–(6).

Another commenter suggested that to the extent that the Commission retains text from current 11 CFR 114.4(c)(2)–(6), it should be placed with similar provisions elsewhere in the regulations and combined to avoid redundancy. Another commenter said that the Commission should clarify that communications of the types listed in 11 CFR 114.4(c)(2)–(6) are not subject to reporting, absent express advocacy.

The Commission is revising 11 CFR 114.4(c)(1) by removing the explicit authorization for QNCs (as defined at 11 CFR 114.10(c)) to make communications containing express advocacy to the general public. *See infra* Section VI. After *Citizens United,* corporations and labor organizations may make express advocacy communications to the general public that are not coordinated with candidates or political parties. Hence, this permission for QNCs is now superfluous. In its place, the Commission is adding an explicit regulatory acknowledgment that corporations and labor organizations may make independent expenditures and electioneering communications and directing corporations and labor organizations to revised 11 CFR 114.10.[11]

Additionally, the Commission is adding to 11 CFR 114.4(c)(1) a general reference to the existing prohibition on corporations and labor organizations coordinating with candidates or political party committees, as provided for in the Commission's coordination regulations, in making any of the communications covered by 11 CFR 114.4(c)(2)–(6). Revised section 114.4(c)(1) does not alter the status quo with respect to the coordination of activities described in section 114.4(c)(2)–(6).[12] The Commission is not extending the coordination restriction to the activities permitted in paragraph 114.4(c)(2)(7) because that provision—which governs ''candidate appearances on educational institution premises''—necessarily entails a certain amount of coordination between the hosting institution and a candidate. *See* 11 CFR 114.4(c)(7)(ii)(A) (requiring institution to ''make [ ] reasonable efforts to ensure'' that certain aspects of candidate's appearance ''are not conducted as campaign rallies or events''). Pursuant to revised section 114.4(a), discussed above, these candidate appearances at educational institutions ''may be coordinated with candidates and political committees only to the extent permitted'' by paragraph 114.4(c)(7).

The Commission recognizes that, after *Citizens United,* corporations and labor organizations are free to make independent expenditures and electioneering communications, even without regulatory language to that effect. Nonetheless, the Commission believes that the language being added to 11 CFR 114.4(c)(1) to codify and implement the primary holding of *Citizens United* makes the regulations more clear in this regard.

The Commission is retaining paragraphs (c)(2)–(6) to provide specific information about some of the other types of communications that corporations and labor organizations might make.[13] The Commission agrees with the commenters that corporations and labor organizations are not limited to the types of communications enumerated in paragraphs (c)(2)–(6). The Commission believes, however, that it is helpful to corporations and labor organizations to retain a non-exhaustive list of types of communications that corporations and labor organizations might permissibly make. The Commission also intends these regulations, as revised, to make clear that the activities that have been exempt from the definitions of contribution and expenditure under the current regulations remain exempt under the revised regulations. Corporations and labor organizations that were previously familiar with the regulations setting out constraints on making certain communications may find it helpful to have an affirmative acknowledgment of their ability to make the listed communications, as well as clarification regarding the continuing exemption from the definition of contribution and expenditure for activities that were exempt even before *Citizens United.*

All five of these paragraphs currently prohibit corporations or labor organizations from expressly advocating the election or defeat of clearly identified candidates in these communications and from coordinating with candidates or political party committees in making the communications. The Commission is removing the prohibitions on express advocacy in 11 CFR 114.4(c)(2)–(6) but continuing the prohibition on corporations and labor organizations coordinating with any candidate or political party in making these

[11] As discussed further in Section VI, below, the Commission is revising 11 CFR 114.10 to provide clear guidance on the regulatory requirements applicable to corporations and labor organizations that make independent expenditures and electioneering communications, including reporting and disclaimers.

[12] In addition, as to 11 CFR 114.4(c)(6), concerning a corporation's or labor organization's endorsement of a candidate, the Commission notes that the prohibition on coordinating with a candidate or political party committee applies to the communication of that endorsement to the general public. *See infra* Section IV.B.5 (explaining how the general prohibition on coordination does not apply to endorsement-related communications to the restricted class). However, the Commission has previously recognized ''organizations need to discuss various issues with candidates and their staff when deciding [whom] to endorse.'' Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, 60 FR 64260, 64270 (Dec. 14, 1995).

[13] The NPRM did not propose any changes to paragraph 11 CFR 114.4(c)(7), and the Commission is retaining this provision, as well.

communications. The Commission agrees with the commenter that the revisions are consistent with the decision in *Citizens United.*

2. Revised 11 CFR 114.4(c)(2)—Voter Registration and Get-Out-The-Vote Communications

The Commission is maintaining the provision at 114.4(c)(2), which states that corporations and labor organizations may make voter registration and GOTV communications to the general public, but is making several revisions to the provision.

For the reasons previously stated, the Commission agrees with the commenters that corporations and labor organizations are not limited to the types of communications set out in 114.4(c)(2)–(6), including voter registration and GOTV communications. The Commission believes, however, that maintaining this list of types of communications as revised may provide helpful guidance. Thus, the Commission is revising and retaining 11 CFR 114.4(c)(2) in the final rules.

As discussed above, the Commission is revising 11 CFR 114.4(c)(2) to remove the prohibitions on express advocacy and coordination in voter registration and GOTV communications made by corporations and labor organizations. However, the final rules maintain the existing exemption from the definition of contribution and expenditure for voter registration and GOTV communications that do not constitute express advocacy and that are not coordinated with any candidate or political party regarding the preparation and distribution of such communications. The final rule thus reflects that, after *Citizens United,* corporations and labor organizations may make independent expenditures and electioneering communications, while the final rule also maintains the status quo regarding the communications that, under the current regulations, are not contributions or expenditures.

The Commission is also revising 11 CFR 114.4(c)(2) by removing the list of media currently in that provision. Current 11 CFR 114.4(c)(2) contains a list of media through which corporations and labor organizations may make voter registration and GOTV communications to the general public. The list currently includes: ''posters, billboards, broadcasting media, newspapers, newsletter[s], brochures, or similar means of communication with the general public.'' 11 CFR 114.4(c)(2).

The NPRM proposed adding to the list mail, Internet communications, emails, text messages, and telephone calls, and sought comment on whether any other methods of communications should be included. The NPRM also asked whether a list of media through which corporations and labor organizations may make voter registration and GOTV communications to the general public is necessary at all, or whether the Commission should simply state generically that such communications to the general public are permissible. Besides the comments on the general proposal to revise 11 CFR 114.4(c), discussed above, the Commission did not receive comments on the specific proposed changes to 11 CFR 114.4(c)(2).

The Commission recognizes that corporations are free to make any independent expenditures or electioneering communications to the general public, including voter registration and GOTV communications. A list of certain media through which corporations and labor organizations might make these communications—a list that would likely need to be periodically updated as technology and media evolve—is not necessary. Therefore, the final rule at 11 CFR 114.4(c)(2) does not include the list that appears in the current provision.

3. Revised 11 CFR 114.4(c)(3)—Official Registration and Voting Information and Revised 11 CFR 114.4(c)(4)—Voting Records

Other than the comments on the general proposal to revise 114.4(c), described above, the Commission did not receive comments on the specific proposed revisions to 114.4(c)(3) and (c)(4). For the reasons explained above, the Commission is revising the provisions at 11 CFR 114.4(c)(3) and (c)(4) to remove the prohibitions on express advocacy, consistent with *Citizens United.* Additionally, as discussed in Section IV.B.1 above, the Commission is removing the prohibitions on coordination in the making of such communications because those specific prohibitions are unnecessary in light of the general prohibition on coordinated communications and coordinated expenditures in the final rule at 11 CFR 114.4(c)(1).

Revised 11 CFR 114.4(c)(3) and (c)(4) do, however, maintain the existing exemptions from the definition of contribution and expenditure for the corporate and labor organization activity addressed in those provisions. Thus, under both current and revised 11 CFR 114.4(c)(3), a payment by a corporation or labor organization for the distribution of official voter registration or voting information does not constitute a contribution or expenditure, provided that the corporation or labor organization does not, in connection with such activity (1) expressly advocate the election or defeat of a clearly identified federal candidate or candidates of a clearly identified political party, (2) encourage registration with any particular political party, or (3) coordinate with any candidate or political party concerning the reproduction and distribution of the information. Similarly, the preparation and distribution of voting records under 11 CFR 114.4(c)(4) is not a contribution or expenditure, provided that the voting records do not expressly advocate the election or defeat of a clearly identified federal candidate or candidates of a clearly identified political party, and that the corporation or labor organization does not coordinate with any candidate, group of candidates, or political party as to the content and distribution of such voting records. The final rules thus reflect that after *Citizens United,* corporations and labor organizations may make independent expenditures and electioneering communications, while the final rules also maintain the status quo regarding the communications that, under the regulations, are not contributions or expenditures.

4. Revised 11 CFR 114.4(c)(5)—Voter Guides

The Commission is making several revisions to conform the voter guide rules in 11 CFR 114.4(c)(5) to the decision in *Citizens United* that corporations and labor organizations may make independent expenditures and electioneering communications to the general public.

Current 11 CFR 114.4(c)(5) sets forth certain requirements for and restrictions on the preparation and distribution to the general public of voter guides by corporations and labor organizations. This provision currently requires that voter guides present the positions of two or more candidates on campaign issues and requires that all candidates for a particular seat or office be given an equal opportunity to respond. It further prohibits the corporation or labor organization from giving greater prominence to any one candidate or substantially more space for a candidate's responses, and from including an electioneering message in the voter guide or accompanying materials. The NPRM proposed eliminating each of these requirements and prohibitions.

In addition to the comments on the general proposal to revise 11 CFR 114.4(c)(2)–(6), discussed above, the Commission received comments on its

proposed changes to 11 CFR 114.4(c)(5) from one commenter. The commenter supported the proposed changes on the basis that they are consistent with *Citizens United.*

The Commission agrees and is adopting the revisions proposed in the NPRM, with certain changes. As discussed above, the Commission believes that maintaining a non-exhaustive list of types of communications that corporations and labor organizations may wish to make to the general public may provide guidance to corporations and labor organizations. However, the Commission is removing the requirements and restrictions in current 114.4(c)(5), as proposed, to reflect that after *Citizens United* corporations and labor organizations may make independent expenditures and electioneering communications. Additionally, as discussed in Section IV.B.1 above, the Commission is removing the prohibitions on coordination in the making of such communications because a prohibition on coordinated communications and coordinated expenditures is in the final rule at 11 CFR 114.4(c)(1).

However, the final rule maintains the existing exemption from the definition of contribution and expenditure for payments by a corporation or labor organization for the preparation and distribution of voter guides that meet the historical criteria for permissibility under current 11 CFR 114.4(c)(5)(i) and (ii). The Commission is transferring these criteria to paragraph (c)(5)(ii) and rewording them to account for their revised purpose—that is, to determine whether the activity is exempt from the definitions of contribution or expenditure, rather than to determine whether the activity is permissible—but is otherwise leaving the provisions unchanged. The final rule thus reflects that after *Citizens United,* corporations and labor organizations may make independent expenditures and electioneering communications, while the final rule also maintains the status quo regarding the communications that, under the current regulations, are not contributions or expenditures.

5. Revised 11 CFR 114.4(c)(6)—Endorsements

The Commission is making several revisions to conform its rule on endorsements to the decision in *Citizens United* that corporations and labor organizations may make independent expenditures and electioneering communications targeted to the general public.

Current 11 CFR 114.4(c)(6) permits endorsement of candidates by corporations and labor organizations and sets out certain requirements for and restrictions on such endorsements. Current 11 CFR 114.4(c)(6) permits a corporation or labor organization to communicate the endorsement only to its restricted class through specific types of publications and prohibits these publications from being distributed to the general public other than at a *de minimis* level. Current 11 CFR 114.4(c)(6) then sets out the circumstances under which a corporation and labor organization may announce an endorsement to the general public.

The NPRM proposed removing the restrictions on the manner of announcing a corporation's or labor organization's endorsement of a candidate and the reference to publishing endorsements only to the restricted class to conform to the Court's decision in *Citizens United.*

The Commission received comments on its proposed changes to 11 CFR 114.4(c)(6) from two commenters. One commenter agreed with the proposed changes because the commenter said they are consistent with *Citizens United.* The other commenter disagreed with the proposal to keep the list of types of communication at 11 CFR 114.4(c)(2)–(6) generally, because, after *Citizens United,* there is no reason to enumerate specific examples of permissible communications. The commenter went on to state, however, that to the extent that the Commission were to decide to retain the list, 11 CFR 114.4(c)(6) should be revised to remove the reference to communications with the restricted class. The commenter noted that section 114.4 addresses communications to the general public, and therefore the reference to the restricted class is misplaced. Furthermore, because of the proposed language in 11 CFR 114.4(c)(1) that would prohibit coordination in the making of the communications listed in 11 CFR 114.4(c)(2)–(6), the regulation, as proposed, could be read to prohibit coordination in coordinating endorsements to the restricted class.

The Commission agrees with the commenter that supported the revisions because they were consistent with the decision in *Citizens United.* As discussed above, the Commission believes that it is helpful to corporations and labor organizations to maintain a non-exhaustive list of types of communications corporations and labor organizations may wish to make to the general public. Thus, the Commission is adopting the revisions proposed in the NPRM, with several changes. First, the Commission agrees with the commenter that argued that the reference to communications with the restricted class in 11 CFR 114.4(c)(6) could be read to prohibit coordination in communicating endorsements to the restricted class. Accordingly, the Commission is revising this provision to note that communications of endorsements to the restricted class may be coordinated as provided in 11 CFR 114.3(a). Second, the final rule maintains the existing exemption from the definitions of contribution and expenditure for disbursements to finance public announcements of endorsements by a corporation or labor organization. Under the final rule, such disbursements that meet the historical criteria for permissibility under current 11 CFR 114.4(c)(6)—criteria relating to the manner of announcing the endorsement and restricting coordination thereof—will remain exempt from the definitions of contribution and expenditure. The final rule thus reflects that after *Citizens United,* corporations and labor organizations may make independent expenditures and electioneering communications, while the final rule also maintains the status quo regarding the communications that, under the current regulations, are not contributions or expenditures.

6. Removal of 11 CFR 114.4(c)(8)—Electioneering Communications

The Commission is removing 11 CFR 114.4(c)(8) to conform the regulations to the decision in *Citizens United.*

Current 11 CFR 114.4(c)(8) permits corporations and labor organizations to make electioneering communications to the general public only to the extent permitted under current 11 CFR 114.15. Section 114.15, in turn, permits corporations and labor organizations to make electioneering communications unless the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified federal candidate. As discussed in Section VII.B below, the Commission is removing section 114.15. Current 11 CFR 114.4(c)(8) further permits QNCs to make electioneering communications to the general public in accordance with current 11 CFR 114.10. As discussed below, the Commission is also removing the portions of section 114.10 that address QNCs.

The NPRM proposed eliminating 11 CFR 114.4(c)(8) in its entirety because *Citizens United* struck down the prohibition on corporations and labor organizations making electioneering communications. The Commission received one comment in support of the

proposed deletion, stating that the proposal is consistent with *Citizens United.* The Commission agrees. Because *Citizens United* struck down the prohibition on corporations and labor organizations making electioneering communications, the exceptions to the prohibition at current 11 CFR 114.4(c)(8) are superfluous.

C. Revised 11 CFR 114.4(d)—Voter Registration and Get-Out-The-Vote Drives

The Commission is revising 11 CFR 114.4(d) to remove the requirements that corporations and labor organizations engaging in voter registration or GOTV drives directed at the general public: (1) not withhold or refuse to provide assistance on the basis of support for or opposition to particular candidates or a particular political party; and (2) not make any communication expressly advocating the election or defeat of any clearly identified candidate or political party as part of those drives. The final rules will continue to exempt nonpartisan voter registration and GOTV drives from the definition of ''expenditure,'' in accordance with 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)).

For purposes of the prohibition on expenditures by corporations and labor organizations, the Act defines ''expenditure'' to include ''any purchase, payment, distribution . . . or anything of value . . . for the purpose of influencing any election for Federal office.'' 52 U.S.C. 30101(9)(A)(i), 30118(b)(2) (formerly 2 U.S.C. 431(9)(A)(i), 441b(b)(2)). The Act exempts from the definition of expenditure ''nonpartisan activity designed to encourage individuals to vote or to register to vote.'' 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)). Current 11 CFR 114.4(d) permits corporations and labor organizations to conduct voter registration and GOTV drives aimed at the general public and states that such drives include providing transportation to the place of registration and to the polls. The current provision prohibits such drives from including express advocacy communications and states that the drives may not be coordinated with any candidate or political party. The current provision also prohibits corporations or labor organizations from: (1) withholding or refusing to give information and other assistance regarding registering or voting on the basis of support for or opposition to particular candidates or a particular political party; (2) directing the drives primarily at individuals based on registration with a particular party; and (3) paying individuals conducting such drives on the basis of number of individuals registered or transported to the polls who support a particular candidate or candidates or political party.

The NPRM proposed two alternatives to revise 11 CFR 114.4(d). Both alternatives would have removed the prohibition on communications expressly advocating the election or defeat of candidates or political parties made in connection with a voter registration or GOTV drive. Alternative A, which the Commission is adopting in part as its final rule, also would have removed all of the existing requirements and prohibitions regarding voter registration and GOTV drives, with the exception of the prohibition on coordination with candidates or political parties. Alternative A also would have maintained the exemption from the definition of ''expenditure'' under 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)) for voter registration and GOTV drives that meet the existing requirements and prohibitions.

Alternative B would have made no changes to the existing regulation at 11 CFR 114.4(d), except to remove the prohibition on corporations and labor organizations making communications expressly advocating the election or defeat of clearly identified candidates currently at 11 CFR 114.4(d)(1).

The Commission received comments from five commenters on the proposed changes to 11 CFR 114.4(d). All five of the commenters generally supported Alternative A over Alternative B, although several commenters expressed concerns with Alternative A, as discussed further below. None of the commenters supported Alternative B. Many of the commenters noted that after *Citizens United* corporations and labor organizations are free to engage in independent political spending. One commenter stated that the Commission has no statutory basis to treat voter registration or GOTV activity that is not ''nonpartisan'' as an expenditure, absent express advocacy. This commenter argued that Alternative A was thus incorrect to the extent that it proposed to do so. One commenter contended that voter registration is subject to extensive regulation at both the federal and state levels, and that the Commission should defer to these other laws absent a clear directive. The commenter went on to argue that as a matter of policy, the Commission should craft its rules to promote civic engagement and political participation by giving ''wide berth'' to voter registration and GOTV activity, except where the Act explicitly imposes restraints on it.

Two commenters stated that Alternative B was not consistent with the Court's decision in *Citizens United.*

The Commission agrees with the commenters that proposed Alternative A is consistent with the Court's decision in *Citizens United* because that alternative reflects corporations' and labor organizations' right to now make independent expenditures and electioneering communications beyond the restricted class. The Commission is therefore revising 11 CFR 114.4(d) to remove the prohibition on express advocacy, as well as the other restrictions on corporations and labor organizations engaging in voter registration drives and GOTV activity directed at the general public. These restrictions are: withholding or refusing to provide assistance on the basis of support for or opposition to particular candidates or a particular party; directing the drives primarily at individuals based on registration with a particular party; and paying individuals conducting such drives on the basis of number of individuals registered or transported to the polls who support a particular candidate or candidates or political party. Revised 11 CFR 114.4(d) does not include a prohibition on coordination because, as discussed above, the prohibition on coordination in the context of voter registration and GOTV drives is addressed in 11 CFR 114.4(a).

Additionally, the Commission notes that 52 U.S.C. 30101(9)(B)(ii) (formerly 2 U.S.C. 431(9)(B)(ii)) exempts ''nonpartisan'' voter registration drives and GOTV activity from the definition of ''expenditure.'' Therefore, the Commission is also revising 11 CFR 114.4(d) to implement that statutory exemption by providing that voter registration and GOTV drives that meet the historical criteria for permissibility under current paragraphs 114.4(d)(1)–(6) (which, except for the coordination prohibition being consolidated in section 114.4(a), are being transferred to paragraphs 114.4(d)(2)(i)–(v)) continue to constitute nonpartisan activity exempt from the definition of ''expenditure.'' This revision is not intended to indicate that all voter registration and GOTV drives falling outside the ''nonpartisan'' exemption are necessarily expenditures or that they must always be reported. Voter registration and GOTV drives that are not ''nonpartisan'' are governed by the general statutory and regulatory definitions of ''expenditure'' and any attendant reporting obligations in the Act and Commission regulations. *See* 52

U.S.C. 30101(9)(A), 30104(c), 30118(b)(2) (formerly 2 U.S.C. 431(9)(A), 434(c), 441b(b)(2)); 11 CFR 100.111(a), 104.4(a), 109.10(b)–(e).

V. No Changes to 11 CFR 114.9—Use of Corporate or Labor Organization Facilities

The Commission is not, at this time, revising 11 CFR 114.9, which governs the use of corporate and labor organization facilities for political activity. The NPRM did not propose any changes to the regulation but asked whether 11 CFR 114.9 should be revised in light of *Citizens United.*

The Commission's regulations generally treat the unreimbursed use of corporate or labor organization facilities in connection with federal elections as expenditures and, in certain circumstances, contributions. *See* 11 CFR 114.9(a)–(d) (detailing reimbursement requirements for use of corporate or labor organization facilities). Such expenditures and contributions were generally prohibited before *Citizens United. See* 52 U.S.C. 30118(a) (formerly 2 U.S.C. 441b(a)). Section 114.9, however, established certain limited exceptions to the prohibition, allowing minimal usage of these facilities by certain individuals. For more than minimal usage, section 114.9 requires corporations and labor organizations to obtain reimbursement from individuals who use these facilities in connection with federal elections. 1977 E&J, H.R. Doc. No. 95–44, at 115; *see also* Internet Communications, 71 FR 18589, 18611 (Apr. 12, 2006); Advisory Opinion 1985–26 (General Mills) (concluding that employee's failure to reimburse corporation for corporation's distribution of campaign materials could result in prohibited corporate expenditure). Though *Citizens United* invalidated the prohibition on independent expenditures by corporations and labor organizations, it did not call into question the prohibition on contributions by corporations and labor organizations.[14] 558 U.S. at 358.

The Commission received two comments on 11 CFR 114.9. One commenter implied that the Commission should change its regulation because the Commission should not limit independent political speech after *Citizens United.* The other commenter urged the Commission to wait to consider any changes to 11 CFR 114.9 in a future rulemaking. The commenter contended that the regulation warrants revisiting after *Citizens United* but also recognized that the rule remains pertinent for setting guidelines for corporations and labor organizations to know when they must potentially report an individual's activity as an independent expenditure by the corporation or labor organization. The commenter further noted that to the extent that 11 CFR 114.9 implements the contribution prohibition at 52 U.S.C. 30118(a) (formerly 2 U.S.C. 441b(a)), it remains valid after *Citizens United.*

The Commission agrees that 11 CFR 114.9 remains relevant after *Citizens United* and that changes are not necessary at this time. The holding of *Citizens United,* however, moots the application of 11 CFR 114.9 as an exception to the independent expenditure ban struck down in that case.

VI. Revised 11 CFR 114.10—Corporations and Labor Organizations Making Independent Expenditures and Electioneering Communications

The Commission is revising 11 CFR 114.10 to provide cross-references to the regulations applicable to corporate and labor organization independent expenditures and electioneering communications. Such independent expenditures and electioneering communications are now subject to various requirements, including reporting obligations and disclaimers, and the Commission intends to facilitate the identification of the relevant regulations on these topics by listing them in revised section 114.10. The revised regulation is not designed to impose any new requirements on the making of independent expenditures and electioneering communications, but simply to provide a single regulation that will outline the various requirements.

The Commission promulgated current 11 CFR 114.10 primarily in response to the Supreme Court's decision in *Massachusetts Citizens For Life, Inc.* v. *FEC,* 479 U.S. 238 (1986) (''*MCFL*''). The Court there considered the application of the independent expenditure prohibition in 52 U.S.C. 30118 (formerly 2 U.S.C. 441b) to MCFL, a nonprofit corporation organized to promote certain ideological views. The Court concluded that nonprofit, ideological groups such as MCFL did not pose the potential for corruption through ''unfair deployment of wealth for political purposes'' and therefore did not implicate the concerns that prompted regulation of corporate electoral activity by Congress. *See MCFL,* 479 U.S. at 259–61. In response to *MCFL,* the Commission adopted 11 CFR 114.10, creating a regulatory exception to the independent expenditure ban in section 30118 (formerly 2 U.S.C. 441b) for organizations with the same characteristics as MCFL, referred to as QNCs. After Congress enacted BCRA's electioneering communications provisions in 2002, which included the prohibition on electioneering communications by corporations, the Commission added an exception in 11 CFR 114.10 to allow QNCs to make electioneering communications.

Because *Citizens United* made these exceptions for QNCs unnecessary, the NPRM proposed to revise 11 CFR 114.10, or, alternatively, to delete the regulation in its entirety. The NPRM specifically sought comments on a proposal to remove current paragraphs (a) through (c) and (e)(1), as these regulations specifically apply only to QNCs. The NPRM proposed to redesignate the provisions currently at 11 CFR 114.10(d), (e)(2), and (f) through (i)—each of which currently relates to permissible independent expenditures and electioneering communications by QNCs—and expand them to apply to *all* corporations and labor organizations that make independent expenditures and electioneering communications. These provisions include: (1) the reporting requirements for independent expenditures or electioneering communications at 11 CFR 114.10(e)(2); (2) the solicitation disclaimer requirement at 11 CFR 114.10(f); (3) the non-authorization disclaimer requirement at 11 CFR 114.10(g); (4) the provision in 11 CFR 114.10(h) permitting establishment of segregated bank accounts for electioneering communication disbursements; and (5) 11 CFR 114.10(i), which states that nothing in section 114.10 authorizes any organization exempt from taxation under 26 U.S.C. 501(a) to carry out any activity that it is prohibited from undertaking by the Internal Revenue Code. The NPRM asked whether maintaining these regulations, as revised to apply to corporations and labor organizations in general, would be necessary or appropriate.

The Commission received comments on the general proposal to delete and revise certain provisions of current 11 CFR 114.10 from three commenters. All three commenters expressed the view that the exception for QNCs is no longer necessary after *Citizens United.* One commenter generally supported the proposal to maintain certain provisions of 11 CFR 114.10 as a ''guide'' to corporations and labor organizations making independent expenditures and

[14] As discussed in Section II.A, above, corporations and labor organizations may make contributions to independent-expenditure only committees and accounts.

electioneering communications. This commenter noted that ''affirmatory regulatory language can serve important public information purposes.'' The commenter did not agree with the proposed changes to current 11 CFR 114.10(c), discussed further below. Another commenter opined that to the extent that the Commission retained any of current 11 CFR 114.10(d)–(i), those provisions should be placed with similar provisions elsewhere in the regulations and combined to avoid repetition.

The Commission is revising 11 CFR 114.10 as described below.

A. Removal of Current 11 CFR 114.10(a)–(c)

The Commission is removing the provisions currently located at 11 CFR 114.10(a)–(c) in their entirety. These provisions currently contain the exemption for QNCs from the prior prohibition on corporations making independent expenditures and electioneering communications. Specifically, current 11 CFR 114.10(a) sets out the scope of section 114.10 as applying to ''those nonprofit corporations that qualify for an exemption'' from the corporate contribution and expenditure prohibition in 11 CFR 114.2. Current paragraph 114.10(b) defines certain terms and phrases relevant to the QNC exception, and current 11 CFR 114.10(c) sets out the criteria for being a QNC.

As discussed above, several commenters noted that an exception to the ban on independent expenditures and electioneering communications for QNCs is not necessary after *Citizens United.* The Commission agrees. Because *Citizens United* struck down the statutory bans on independent expenditures and electioneering communications for all corporations and labor organizations, the regulatory exceptions for QNCs are now superfluous. The Commission is therefore removing current 11 CFR 114.10(a)–(c).

B. Revised 11 CFR 114.10(a)—Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations

The Commission is revising current 11 CFR 114.10(d) and redesignating it as 11 CFR 114.10(a).

Current 11 CFR 114.10(d) specifically permits QNCs to make independent expenditures and electioneering communications. The NPRM proposed expanding certain provisions of current 11 CFR 114.10(d) to cover all corporations and labor organizations. As discussed above, the NPRM sought comments on whether it would be helpful for corporations and labor organizations to have a regulation explicitly recognizing their ability to make independent expenditures and electioneering communications. The NPRM asked whether the regulation should instead more broadly state that corporations and labor organizations may make any communication in connection with an election so long as it is not a coordinated communication under 11 CFR 109.21, or, alternatively, whether it would be sufficient to remove the current prohibitions in 11 CFR 114.2(b)(2) and (b)(3) on corporations and labor organizations making disbursements for independent expenditures and electioneering communications using general treasury funds.

The Commission received comments from two commenters on the specific proposal to recognize explicitly that corporations and labor organizations are free to make independent expenditures and electioneering communications. One commenter argued that such a provision would be helpful even if explicit regulatory recognition was not necessary. The commenter expressed the view that the Commission's proposal would help the public understand how the law has changed after *Citizens United* and could provide reassurance to those seeking to engage in political speech. The other commenter also supported the Commission's proposal, stating that the proposed revision would succinctly communicate the core holding of *Citizens United.* The commenter also suggested that the Commission add language to proposed 11 CFR 114.10(a) to state that corporations and labor organizations may make ''other public communications as defined in 11 CFR [100.26] in connection with an election,'' in addition to independent expenditures and electioneering communications.

The Commission agrees that a regulation stating that corporations and labor organizations may make independent expenditures and electioneering communications is not necessary. The Commission also agrees, however, that providing such a regulation alongside the other new regulations will provide guidance and reassurance to entities seeking to engage in political speech after *Citizens United.* The Commission is therefore revising current 11 CFR 114.10(d) to state explicitly that corporations and labor organizations may make independent expenditures and electioneering communications and to indicate that such communications are subject to certain regulatory requirements applicable to all entities that make such communications.

The Commission is not, however, adding the language suggested by the commenter to specifically state that corporations and labor organizations may make ''other public communications'' as that term is defined in 11 CFR 100.26. Unlike independent expenditures and electioneering communications, which are specific *categories* of communications subject to regulation under the Act and Commission regulations, the term ''public communication'' merely identifies certain *means* of communication. *Compare* 11 CFR 100.26 (definition of ''public communication''), *with* 11 CFR 100.16 (definition of ''independent expenditure''), *and* 100.29 (definition of ''electioneering communication''). Although some public communications may constitute independent expenditures or electioneering communications based upon other characteristics of the communications, no provision of the Act or Commission regulations addresses the permissibility of public communications *per se.* Thus, the Commission determines that it is unnecessary to include specific language permitting corporations and labor organizations to make public communications.

Revised 11 CFR 114.10(d) (now being redesignated paragraph 114.10(a), as proposed in the NPRM) also restates the prohibition on corporations and labor organizations making coordinated expenditures, coordinated communication, or contributions, as those terms are defined in Commission regulations. As discussed in Section II.A, above, the Commission is appending a note to section 114.10 to reflect the fact that this prohibition (regarding which the Commission intends to undertake a separate rulemaking) does not apply to contributions to non-connected political committees that make only independent expenditures or to separate accounts maintained by non-connected political committees for making only independent expenditures.

C. Revised 11 CFR 114.10(b)—Reporting Independent Expenditures and Electioneering Communications

The Commission is revising current 11 CFR 114.10(e)(2) by removing the reference to QNCs and by expanding the language of the provision to state that all corporations and labor organizations that make independent expenditures or electioneering communications above threshold amounts must file reports

according to other applicable regulations. The Commission is also redesignating 11 CFR 114.10(e)(2) as 11 CFR 114.10(b) and removing current 11 CFR 114.10(e)(1) in its entirety.

Current 11 CFR 114.10(e)(1) sets out the procedures for demonstrating QNC status. Current 11 CFR 114.10(e)(2) sets forth the reporting requirements for QNCs making independent expenditures or electioneering communications. The NPRM proposed expanding the language in current 11 CFR 114.10(e)(2) to include independent expenditures and electioneering communications made by all corporations and labor organizations and to remove the reference to QNCs. The reporting regulations cross-referenced in proposed 11 CFR 114.10(e) apply to ''every person'' who makes independent expenditures or electioneering communications in excess of certain amounts. 11 CFR 104.4(a), 104.20(b). The definition of ''person'' includes corporations and labor organizations. *See* 52 U.S.C. 30101(11) (formerly 2 U.S.C. 431(11)); 11 CFR 100.10. The NPRM asked whether it is necessary or helpful to have an additional regulation that specifically states that corporations and labor organizations are subject to these reporting requirements.

The Commission received comments from two commenters on the specific proposal to revise current 11 CFR 114.10(e). Both commenters supported the proposal, with one commenter arguing that it would communicate the application of current statutory and regulatory reporting requirements to corporate and labor organization independent expenditures and electioneering communications. The other commenter stated that corporations and labor organizations should be explicitly informed of their rights after *Citizens United.*

The Commission agrees with the commenters. Although the revised provision at 11 CFR 114.10(b) is not necessary given that the reporting requirements currently apply to corporations and labor organizations making independent expenditures or electioneering communications, the Commission has determined that it would be helpful to corporations and labor organizations making such communications to have a single provision at 11 CFR 114.10 that directs those entities to other relevant regulations. The Commission is therefore revising current 11 CFR 114.10(e)(2) and redesignating it as section 114.10(b) as proposed in the NPRM. New 11 CFR 114.10(b)(1) states that corporations and labor organizations that make independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year must file reports according to 11 CFR part 114 and sections 104.4(a) and 109.10(b)–(e). Revised 11 CFR 114.10(b)(2) states that corporations or labor organizations that make electioneering communications aggregating in excess of $10,000 in a calendar year must file the statements required by 11 CFR 104.20(b).

D. Removal of 11 CFR 114.10(f)—Solicitation; Disclosure of Use of Contributions for Political Purposes

Current 11 CFR 114.10(f) requires that a QNC's solicitations for donations disclose to potential donors that their donations may be used for political purposes, such as supporting or opposing candidates.

The NPRM proposed revising 11 CFR 114.10(f) by maintaining this requirement and expanding it to cover solicitations for donations that may be used for political purposes where the solicitations are made by any corporation or labor organization. Even though the QNC exception is no longer necessary, the NPRM asked whether the current solicitation disclosure requirement for QNCs should be expanded to cover all corporations and labor organizations to ensure that recipients of solicitations have information about how their donations may be used, in order to make informed decisions. The NPRM further sought comment as to whether the Commission should require corporations and labor organizations to state in such disclosures that the funds received may be used specifically for independent expenditures or electioneering communications, as opposed to for ''political purposes'' generally.

The NPRM also asked whether the regulatory requirement that QNC solicitations include disclaimers is now superfluous in light of *Citizens United* and should be deleted in its entirety or whether language in that opinion regarding disclosure and disclaimers means that the Commission may and should continue to specifically require that QNCs disclose to potential donors and contributors the potential uses of their funds. The NPRM then asked whether, if the Commission were to retain the solicitation disclaimer requirement for QNCs, it should also retain the definition of ''QNC'' at current 11 CFR 114.10(c) to identify the corporations subject to the disclaimer requirement.

The requirement at current section 114.10(f) derives from the Supreme Court's decision in *MCFL.* Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 FR 35292, 35303 (July 6, 1995). In holding the prohibition on corporate independent expenditures unconstitutional as applied to QNCs, the Supreme Court reasoned that ''[t]he rationale for regulation is not compelling with respect to independent expenditures by [MCFL]'' because ''[i]ndividuals who contribute to [MCFL] are fully aware of its political purposes, and in fact contribute precisely because they support those purposes.'' *MCFL,* 479 U.S. at 260–61. ''*Given a contributor's awareness of the political activity of [MCFL],* as well as the readily available remedy of refusing further donations, the interest [of] protecting contributors is simply insufficient to support § 441b's [now 52 U.S.C. 30118's] restriction on the independent spending of MCFL.'' *Id.* at 262 (emphasis added).

In *Citizens United,* the Court upheld the disclaimer requirements of 52 U.S.C. 30120(d)(2) (formerly 2 U.S.C. 441d(d)(2)) and the disclosure requirements of 52 U.S.C. 30104(f) (formerly 2 U.S.C. 434(f)). 558 U.S. at 366–71. In analyzing the disclaimer requirements, the Court recognized that ''[t]he disclaimers required by [section 30120(d)(2)] 'provide the electorate with information,' *McConnell* [v. *FEC,* 540 U.S. 93,196 (2003)], and thereby 'insure that the voters are fully informed' about the person or group who is speaking, *Buckley* [v. *Valeo,* 424 U.S. 1,76 (1976)].'' *Citizens United,* 558 U.S. at 368 (additional citation omitted). Regarding disclosure requirements, the Court reiterated its previous explanation that ''disclosure is a less restrictive alternative to more comprehensive regulations of speech.'' *Id.* at 369 (citing *MCFL,* 479 U.S. at 262). The Court further recognized that ''disclosure permits citizens and shareholders to react to the [political] speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.'' *Id.* at 371.

The Commission received comments from four commenters on the Commission's proposed retention and revision of current 11 CFR 114.10(f). None of the commenters supported the Commission's proposal. Several commenters argued that the Commission lacks statutory authority to expand the disclaimer requirement for a number of reasons. First, the Act's disclaimer requirement applies only to solicitations for contributions as defined under the Act, while the Commission's proposal would also apply to

solicitations for donations that are not contributions. Furthermore, the proposed disclaimer that funds may be used for ''political purposes'' would go beyond the information required by the Act, namely, that a solicitation state who paid for the solicitation and whether it was authorized by a candidate or a candidate's political committee. One commenter opined that the Court's upholding of the disclaimer requirements at issue in *Citizens United* cannot be read to approve the imposition of ''new disclaimer requirements whenever [the Commission] believes there is a reason to do so.''

One commenter argued that the characteristics of QNCs that made the current disclaimer requirement important—that QNCs are ''established specifically 'for the promotion of political ideas' '' (quoting 60 FR at 35297)—do not apply to other types of organizations that would be covered by the proposed regulation. The commenter went on to note that contrary to the Court's observation in *MCFL* that the class of organizations affected by the Court's decision ''may . . . be small,'' 479 U.S. at 264, the proposed solicitation rule would apply to every corporation and labor organization, ''many and perhaps most of which will not use their funds for 'political purposes' however that term is defined.'' Another commenter argued that the existing requirements of 11 CFR 114.10(f) were neither based on a statutory directive nor compelled by the Supreme Court's decision in *MCFL.*

Another commenter noted that all so-called 501(c)(4), (c)(5), and (c)(6) organizations are permitted to engage in political campaign activity and therefore '' 'may' use the funds for that purpose.'' The proposed disclaimer language would be misleading, this commenter contended, if the organization does not actually use the funds for political purposes. Yet another commenter discussed the operation of the proposed regulation alongside the requirement at 11 CFR 104.20(c)(9), which requires corporations that report electioneering communications to disclose each person who donates for the purpose of furthering such communications. The commenter stated that because of the reporting requirement at 11 CFR 104.20(c)(9), some corporations may specifically choose *not* to seek donations specifically for the purpose of furthering electioneering communications, yet the corporations would be required by the proposed regulation to inform potential donors that their donations may be used for political purposes such as supporting or opposing candidates. This commenter further contended that an interest in protecting donors from funding speech with which they disagree is not a valid basis for regulation after *Citizens United.*

Several commenters also expressed concern about the difficulty of implementing the Commission's proposal. These commenters opined that several of the terms proposed by the Commission were vague or overbroad. Specifically, commenters stated that ''solicitation,'' ''donation,'' and ''political purposes'' are not clearly defined in the Act and Commission regulations for purposes of the proposed disclaimer. One commenter stated that the proposed regulation did not define ''donation,'' and that although ''contribution'' is defined, the Act does not require a solicitation of a contribution to include any statements concerning the potential use of the funds solicited. The commenter noted that ''donation'' is defined in the Commission's regulations, but that this definition applies only to 11 CFR part 300. *See* 11 CFR 300.2(e). Moreover, the commenter opined, the definition is broad and does not require any nexus to an election: As defined, the term ''donation'' could ''reach even union solicitations of dues payments from members.'' The commenter went on to state that this application ''would intrude upon a complex and longstanding federal labor law framework.'' The commenter further stated that the proposed use of ''solicit'' was unclear. In the commenter's view, the broad definition of that term provided in the candidate/party context in BCRA and applied to solicitations of contributions to separate segregated funds could turn routine statements by labor organizations during organizing campaigns and other non-election related contexts into ''solicitations'' that would trigger the proposed disclaimer. Finally, the commenter argued that the term ''political purposes,'' if undefined, would fail to correspond with any of the ''precise categories of political behavior'' that the Act identifies and regulates, such as independent expenditures and electioneering communications.

Another commenter indicated that the proposal might be acceptable if it were limited to requiring disclosure by those who might use donations for independent expenditures and electioneering communications. The commenter asserted that this would be consistent with the decision in *FEC* v. *Survival Education Fund,* 65 F.3d 285 (2d Cir. 1995), which allowed requiring disclosure of contributions earmarked for political speech that the Supreme Court has held may be regulated, even where the speaker is not a political committee.

Finally, the Commission received one comment in response to the NPRM's question as to whether to retain the disclaimer requirement applicable only to QNCs. The commenter did not support that approach, stating that ''retaining a solicitation disclaimer for organizations that could have qualified for QNCs in the past would be confusing at best.'' The commenter went on to state that there is no reason why a 501(c)(4) organization would be treated differently in this context from other nonprofit organizations, business corporations, and labor organizations.

The Commission concludes that it should not maintain the disclaimer requirement of current section 114.10(f) or expand it to cover solicitations made by other corporations or labor organizations. The Commission agrees with the commenters who noted that the proposed disclaimer requirement, which previously applied only to QNCs, is unclear. There is also no longer any reason to specifically regulate the activities of QNCs (as discussed above). Therefore, the Commission is not adopting the revised regulation as proposed in the NPRM, and is removing current 11 CFR 114.10(f).

E. Revised 11 CFR 114.10(c)—Non-Authorization Notice

The Commission is revising current 11 CFR 114.10(g) as described below and redesignating the provision as 11 CFR 114.10(c).

Current 11 CFR 114.10(g) requires that QNCs comply with the disclaimer requirements of 11 CFR 110.11. Section 110.11, in turn, implements 52 U.S.C. 30120 (formerly 2 U.S.C. 441d), which requires that certain communications identify the person who paid for the communication and state whether the communication is authorized by any candidate or candidate's committee, and which sets out the technical requirements for these disclaimers. The requirements of 52 U.S.C. 30120 (formerly 2 U.S.C. 441d) and 11 CFR 110.11 apply to express advocacy public communications and to electioneering communications made by *any person.* Because the Act defines ''person'' to include corporations and labor organizations, these provisions apply equally to corporations and labor organizations. 52 U.S.C. 30101(11) (formerly 2 U.S.C. 431(11)). The Court in *Citizens United* upheld the disclaimer provisions of 52 U.S.C. 30120 (formerly 2 U.S.C. 441d). 558 U.S. at 366–72.

The NPRM proposed revising current 11 CFR 114.10(g) by expanding it to require that all corporations and labor organizations comply with 11 CFR 110.11. The NPRM asked whether such a regulation would be useful, given that the requirements at 52 U.S.C. 30120 (formerly 2 U.S.C. 441d) and 11 CFR 110.11 already apply to corporations and labor organizations because they are ''persons'' under the Act.

The Commission received one comment on the specific proposal to revise current 11 CFR 114.10(g). The commenter supported the proposal because it would succinctly communicate the disclaimer requirement applicable to corporations and labor organizations making express advocacy public communications and electioneering communications.

The Commission is revising the regulation at current 11 CFR 114.10(g) as proposed in the NPRM. As noted above, the Commission acknowledges that 52 U.S.C. 30120 (formerly 2 U.S.C. 441d) and the corresponding regulatory provision at 11 CFR 110.11 already apply to ''any person'' making express advocacy public communications or electioneering communications, and so a specific regulation stating that corporations and labor organizations are subject to the disclaimer requirements at 11 CFR 110.11 is not necessary. The Commission agrees with the commenter, however, that including such a provision in the list of applicable provisions at 11 CFR 114.10 would be a helpful guide for corporations and labor organizations. The Commission is also redesignating current 11 CFR 114.10(g) as 11 CFR 114.10(c).

F. Revised 11 CFR 114.10(d)—Segregated Bank Account

The Commission is revising current 11 CFR 114.10(h) to state that a corporation or labor organization may establish a segregated bank account for funds to be used for the making of electioneering communications. The Commission is also redesignating current 11 CFR 114.10(h) as 11 CFR 114.10(d).

Current 11 CFR 114.10(h) states that a QNC ''may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by individuals, as described in 11 CFR part 104, from which it makes disbursements for electioneering communications.'' The current regulation at 11 CFR 114.10(h) implements 52 U.S.C. 30104(f)(2)(E) (formerly 2 U.S.C. 434(f)(2)(E)), which sets out the reporting requirements for disbursements to pay for electioneering communications out of segregated bank accounts. Aside from this reporting requirement, however, the Act does not otherwise affirmatively state that a person may establish such a segregated account. Furthermore, 11 CFR 114.10(h) is the only place in the current regulations that affirmatively states that a person may, but is not required to, set up such a segregated bank account, and this regulation is limited to QNCs.

The NPRM proposed revising current 11 CFR 114.10(h) by removing the reference to QNCs and by expanding the provision to state that all corporations or labor organizations may establish such accounts. The NPRM asked whether such a regulation is necessary, given that the reporting requirements in the Act already contemplate the existence of these segregated bank accounts. The NPRM further asked whether the Commission should adopt a broader regulation that would permit, but not require, any person (other than a political committee [15]) to establish such an account. Finally, the NPRM asked whether, in the alternative, the Commission should require corporations and labor organizations that make independent expenditures and electioneering communications to use a segregated bank account.

The Commission received one comment on the specific proposal to revise current 11 CFR 114.10(h). The commenter agreed with the Commission's proposal to revise the provision to explicitly provide the segregated-account option to all corporations or labor organizations that make disbursements for electioneering communications. The Commission also received one comment stating that the Commission should not create a requirement that persons must use a segregated bank account for funds used to make electioneering communications. The commenter opined that the Act explicitly makes such an account permissive, rather than mandatory. The commenter went on to state that even as to voluntary segregated bank accounts, the Act contemplates such accounts only for electioneering communications and not for independent expenditures. The commenter argued that requiring the use of such accounts would be ''highly burdensome.'' Finally, the commenter noted that even without such a segregated account, corporations and labor organizations are subject to the Act's reporting and disclaimer requirements for independent expenditures and electioneering communications.

[15] Political committees do not file electioneering communication reports. *See* 11 CFR 104.20(b).

The Commission agrees with the commenter who supported the proposed changes to 11 CFR 114.10(h) and shares many of the concerns of the commenter who advised against making the use of segregated bank accounts mandatory. The Commission is therefore revising current 11 CFR 114.10(h) as proposed in the NPRM to state affirmatively that a corporation or labor organization *may* establish a segregated bank account for funds to be disbursed for electioneering communications. For the reasons stated above, the Commission is also removing the reference to QNCs and redesignating the provision as 11 CFR 114.10(d), and, as explained below in Section IX, is conforming this paragraph to section 104.20(c)'s clarification regarding the sources of funds that permissibly may be deposited into such accounts.

G. Revised 11 CFR 114.10(e)—Activities Prohibited by the Internal Revenue Code

The Commission is revising current 11 CFR 114.10(i) by removing the reference to QNCs, and by redesignating the provision as 11 CFR 114.10(e).

Current 11 CFR 114.10(i) states that nothing in section 114.10 shall be construed to authorize any organization exempt from taxation under 26 U.S.C. 501(a), ''including any [QNC],'' to carry out any activity that the organization is prohibited from undertaking by the Internal Revenue Code. The NPRM proposed the removal of the reference to QNCs because, as discussed above, maintaining QNCs as a separate category of entity is unnecessary after *Citizens United*.

The Commission received no comments on the specific proposal to revise current 11 CFR 114.10(i). The Commission is now adopting that proposal for the reasons stated above and in the NPRM.

VII. Removal of 11 CFR 114.14 and 114.15

In the NPRM, the Commission proposed to remove existing 11 CFR 114.14 and 114.15 in their entirety. These sections prohibit corporations and labor organizations from using general treasury funds to finance electioneering communications that are the functional equivalent of express advocacy and permit using such funds to finance other electioneering communications. Because *Citizens United* held that corporations and labor organizations may use their general treasury funds to make all electioneering communications, the Commission is removing these sections that distinguished between permissible and impermissible electioneering communications.

A. Removal of 11 CFR 114.14—Restrictions on Corporate and Labor Organization Funds

The Commission is removing section 114.14 from the regulations. Section 114.14 provides that corporations and labor organizations may not give or provide funds to any person for the purpose of paying for electioneering communications that are not permissible under 11 CFR 114.15, *i.e.,* for electioneering communications that are functionally equivalent to express advocacy. Because section 114.14 is a prophylactic regulation designed to prohibit corporations and labor organizations from doing through other persons what they could not do directly, the decision in *Citizens United* has rendered the prohibition unnecessary. The Commission therefore proposed in the NPRM to remove this section. The Commission received one comment addressing the proposed removal of section 114.14, which supported the proposed removal.

As a result of *Citizens United,* corporations and labor organizations may now finance electioneering communications. Section 114.14, which prohibits corporations and labor organizations from providing funds to other persons for the purpose of making electioneering communications, is therefore no longer necessary as a means of preventing circumvention of the prohibition on corporate and labor organization electioneering communications. The Commission is removing that section.

B. Removal of 11 CFR 114.15—Permissible Use of Corporate and Labor Organization Funds for Certain Electioneering Communications

The Commission is removing section 114.15 from the regulations. This section currently sets forth the criteria for electioneering communications that corporations and labor organizations may permissibly finance from their general treasuries because they are not the ''functional equivalent'' of express advocacy. *See generally Wis. Right to Life, Inc.* v. *FEC,* 551 U.S. 449 (2007) (''*WRTL*''). Because corporations and labor organizations are no longer prohibited from making electioneering communications following *Citizens United,* the Commission sought comment on whether this section or portions of it should be removed. The NPRM noted that a number of other regulations contain references to section 114.15 and sought comment on whether such cross-references should be removed.

The Commission received three comments addressing the proposed removal of section 114.15. Two commenters supported removal because the ''functional equivalent'' test codified in that provision is no longer relevant to whether a corporation or labor organization may make an electioneering communication. One commenter argued that the Commission should retain the ''functional equivalent'' test because the concept is utilized but not fully set forth at 11 CFR 109.21, as discussed below.

The Commission is removing section 114.15. Because *Citizens United* invalidated the prohibition on corporations and labor organizations making electioneering communications, this section's delineation between permissible and impermissible electioneering communications is no longer necessary.

One commenter addressed the issue of cross-references to section 114.15 in other regulations and stated that the multi-factor test set forth in section 114.15 for determining whether communications constitute the functional equivalent of express advocacy would still be useful for purposes of determining when communications are coordinated with a candidate or political party committee under 11 CFR 109.21. The commenter argued that section 109.21 relies on a test similar to section 114.15 to determine whether speech is the functional equivalent of express advocacy. Retaining the test at section 114.15, the commenter continued, would be helpful because section 109.21 does not contain the same test set forth at section 114.15.

Although section 109.21 includes ''the functional equivalent of express advocacy'' as part of the ''content'' prong of the Commission's coordination standard, that section does not refer to section 114.15. When the Commission added the ''functional equivalent'' language to section 109.21, the Commission stated that it would ''be guided by the Supreme Court's reasoning and application of the test'' as explained in *WRTL* and *Citizens United,* and declined to incorporate into section 109.21 the factors set forth at section 114.15. Coordinated Communications, 75 FR 55947, 55953–94 (Sept. 15, 2010). The Commission therefore concludes that no change to section 109.21 is necessary.

In sum, the Commission is removing section 114.15. As discussed in Section IX, below, the Commission is also revising the reporting regulations at 11 CFR 104.20(c) to reflect the removal of section 114.15 and to otherwise implement the Court's decision in *Citizens United.*

VIII. Revised 11 CFR 114.1(a)—Definitions

The Commission is making two technical revisions to the general provisions of 11 CFR 114.1(a) to conform this regulation to the other changes to part 114 described above. First, the Commission is revising 11 CFR 114.1(a)(2)(ii) to clarify the cross-reference to certain voter registration and GOTV activity that is exempt from the definitions of ''contribution'' and ''expenditure''; the reference will now be to revised paragraph 114.3(c)(4)(ii), rather than to section 114.3. *See supra* Section III.C. Second, the Commission is revising paragraph 114.1(a)(2)(x) to reflect the revisions throughout part 114 regarding permissible corporate and labor organization activity. As revised, paragraph 114.1(a)(2)(x) will continue to provide that activity that was permissible under part 114 prior to these revisions (such as activity specified in paragraphs 114.4(b) and 114.4(c)(7)) remains exempt from the definitions of ''contribution'' and ''expenditure,'' and therefore from the definition of ''independent expenditure,'' while previously impermissible activity that is now permissible pursuant to *Citizens United* and the instant revisions will be subject to this definitional exemption only as provided in the revised provisions themselves.

In addition, the Commission is removing the reference in 11 CFR 114.1(a) to the Public Utility Holding Company Act (formerly 15 U.S.C. 79*l*(h)), as that statute was repealed in 2005. Public Law 109–58, section 1263, 119 Stat. 974 (2005).

IX. Revised 11 CFR 104.20(c)—Contents of Electioneering Communication Disclosure Statements

In the NPRM, the Commission requested comments on whether it should amend its disclosure rules for electioneering communications, 11 CFR 104.20, in light of *Citizens United.*

Current section 104.20(c) specifies the contents of reports that persons making electioneering communications must file. The information that must be reported under that section varies depending on how the electioneering communication is financed. *See* 11 CFR 104.20 (c)(1)–(9).[16] Specifically,

[16] Paragraphs (c)(7)(i) and (c)(8) were promulgated as part of the implementation of the electioneering communication provisions of BCRA. The Commission later added paragraphs (c)(7)(ii) and (c)(9), and slightly revised paragraphs (c)(7)(i) and

Continued

paragraph (c)(7)(i) provides that if the electioneering communication disbursements are paid from a segregated bank account consisting solely of funds contributed by individuals (other than foreign nationals), the reporting entity must disclose the name and address of each person who donated at least $1,000 to that segregated bank account since the first day of the preceding calendar year. Paragraph (c)(7)(ii) also applies to electioneering communication disbursements paid from a segregated bank account and requires the same disclosure but permits the reporting entity to receive funds into the account from labor organizations and corporations, provided that any electioneering communications financed from the account do not constitute the functional equivalent of express advocacy under current section 114.15. Paragraph (c)(8) provides that if a person other than a corporation or labor organization makes an electioneering communication without using the segregated account option under paragraph (c)(7), the person must disclose the name and address of each donor who donated at least $1,000 to the reporting person since the first day of the preceding calendar year. Finally, paragraph (c)(9) requires corporations and labor organizations that make electioneering communications ''pursuant to 11 CFR 114.15'' to disclose the name and address of each donor who donated at least $1,000 to the corporation or labor organization since the first day of the preceding calendar year for the purpose of furthering electioneering communications.

The Commission requested comments on whether section 104.20(c)(7) should continue to distinguish funds donated by individuals from those donated by corporations or labor organizations. The Commission received one comment in response to this request. The commenter questioned the basis for any continued distinction after *Citizens United*'s holding that corporations and labor organizations may finance electioneering communications. The Commission agrees with the commenter that the current division of section 104.20(c)(7) into separate provisions distinguishing individual funds from corporate and labor organization funds is no longer necessary. Because an electioneering communication—regardless of whether it is functionally equivalent to express advocacy—may now be financed with individual, corporate, or labor organization funds, there is no longer any need for the Commission's regulations to distinguish accounts based on which persons contribute to them or whether the electioneering communications they finance are functionally equivalent to express advocacy.

Accordingly, the Commission is combining paragraphs (c)(7)(i) and (c)(7)(ii) into new paragraph (c)(7). As revised, paragraph (c)(7) permits any person (including a corporation or labor organization) making electioneering communications to do so from a segregated account consisting of donations from all persons who may lawfully finance electioneering communications. A reporting entity using this option would report the name and address of each person who donated at least $1,000 to the segregated account since the first day of the preceding calendar year, as under the current regulation. For clarity, the revised regulation also specifically lists the entities that may not contribute to the segregated accounts because they are prohibited from financing electioneering communications: foreign nationals (as defined at 11 CFR 110.2(a)(3)), national banks, and corporations created by a law of Congress.[17]

In paragraphs 104.20(c)(8) and (9), the Commission is removing the references to 11 CFR 114.15 to conform the paragraphs to the removal of 11 CFR 114.15, discussed in Section VII, above. Finally, the Commission is adding language to paragraph 104.20(c)(9) to clarify that that paragraph applies when the reporting entity does not use the segregated account option of paragraph (c)(7).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the rules will not have a significant economic impact on a substantial number of small entities. There are some small entities that will be affected by these rules,[18] but the rules will not have a significant economic impact on them. The primary impact of the changes is to relieve a funding restriction that had applied to labor organizations and most corporations. To the extent that any of these affected entities are small entities, the rules will allow them to engage in activity that they were previously prohibited from funding with their general treasury funds. While one likely effect of the rules will be to increase the number of corporations and labor organizations that use general treasury funds to make independent expenditures or electioneering communications, these entities will do so voluntarily and not because of any new requirement in these rules. The affected entities will incur some costs in complying with the reporting requirements for independent expenditures and electioneering communications, but these costs will not constitute a ''significant economic impact'' for purposes of the Regulatory Flexibility Act. Further, the reporting obligations of entities that currently meet the criteria for treatment as qualified non-profit corporations will not become more burdensome because of this rulemaking. Therefore, the attached rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, Subchapter A of Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 1. The authority citation for part 104 is revised to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

■ 2. Revise the part heading to read as shown above.

■ 3. In § 104.20, the heading and paragraphs (c)(7) through (c)(9) are revised to read as follows:

§ 104.20 Reporting electioneering communications (52 U.S.C. 30104(f)).

* * * * *

(c) * * *

(7) If the disbursements were paid exclusively from a segregated bank account consisting of funds provided solely by persons other than national banks, corporations organized by authority of any law of Congress, or

(c)(8), to implement the Supreme Court's decision in *WRTL,* 551 U.S. 449.

[17] 52 U.S.C. 30118(a), (b)(2), 30121(a) (formerly 2 U.S.C. 441b(a), (b)(2), 441e(a)); 11 CFR 114.2(a), 110.20. Rather than restating the relevant portion of the definition of ''foreign national,'' as does current section 104.20(c)(7)(i), the revised regulation simply cross-references that definition.

[18] The Commission's revisions may affect some for-profit corporations, labor organizations, individuals, and some non-profit organizations. Individuals and labor organizations are not ''small entities'' under 5 U.S.C. 601(6).

foreign nationals as defined in 11 CFR 110.20(a)(3), the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

(8) If the disbursements were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section and were not made by a corporation or labor organization, the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(9) If the disbursements were made by a corporation or labor organization and were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section, the name and address of each person who made a donation aggregating $1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, which was made for the purpose of furthering electioneering communications.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 4. The authority citation for part 114 is revised to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8), 30118.

■ 5. Section 114.1 is amended by revising the introductory text in paragraph (a) and paragraphs (a)(2)(ii) and (a)(2)(x) to read as follows:

§ 114.1 Definitions.

(a) For purposes of part 114—

* * * * *

(2) * * *

(ii) Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel, and their families, or by a labor organization aimed at its members and executive or administrative personnel, and their families, as described in 11 CFR 114.3(c)(4)(ii);

* * * * *

(x) Any activity that is specifically permitted by part 114, but this exception does not apply to activities permitted by 11 CFR 114.3(c)(4), 114.4(a), (c)(1)–(6), and (d), and 114.10(a), other than as provided specifically in those sections.

* * * * *

■ 6. Section 114.2 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Removing paragraphs (b)(2) and (b)(3);

■ c. Redesignating paragraph (b)(1) as (b);

■ d. Adding a note to paragraph (b); and

■ e Revising paragraph (c).

The revisions and additions read as follows:

§ 114.2 Prohibitions on contributions, expenditures and electioneering communications.

(a) * * *

(1) Such national banks and corporations may engage in the activities permitted by 11 CFR part 114, except to the extent that such activity constitutes a contribution, expenditure, or electioneering communication or is foreclosed by provisions of law other than the Act.

* * * * *

Note to paragraph (b): Pursuant to *SpeechNow.org* v. *FEC,* 599 F.3d 686 (D.C. Cir. 2010) (en banc), and *Carey* v. *FEC,* 791 F. Supp. 2d 121 (D.D.C. 2011), corporations and labor organizations may make contributions to non-connected political committees that make only independent expenditures, or to separate accounts maintained by non-connected political committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b) and 11 CFR 114.10(a). The Commission has not conducted a rulemaking in response to these cases.

(c) Disbursements by corporations and labor organizations for the election-related activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions when coordinated with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee to the extent permitted in those sections. Coordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the restricted class to be considered contributions. However, such coordination may be considered evidence that could negate the independence of subsequent communications to those outside the restricted class by the corporation, labor organization or its separate segregated fund, and could result in an in-kind contribution. *See* 11 CFR 100.16 regarding independent expenditures and coordination with candidates.

* * * * *

■ 7. Section 114.3 is amended by revising paragraphs (b) and (c)(4) to read as follows:

§ 114.3 Disbursements for communications to the restricted class in connection with a Federal election.

* * * * *

(b) *Reporting communications containing express advocacy to the restricted class.* Disbursements for communications expressly advocating the election or defeat of one or more clearly identified candidate(s) made by a corporation, including a corporation described in paragraph (a)(2) of this section, or labor organization to its restricted class shall be reported in accordance with 11 CFR 100.134(a) and 104.6.

(c) * * *

(4) *Registration and get-out-the-vote drives.* (i) A corporation or labor organization may conduct voter registration and get-out-the-vote drives aimed at its restricted class, except as provided in paragraph (c)(4)(iii) of this section. Voter registration and get-out-the-vote drives include providing transportation to the place of registration and to the polls. Such drives may include communications containing express advocacy, such as urging individuals to register with a particular party or to vote for a particular candidate or candidates.

(ii) Disbursements for a voter registration or get-out-the-vote drive conducted under paragraph (c)(4)(i) of this section are not contributions or expenditures if the drive is nonpartisan. *See* 52 U.S.C. 30118(b)(2)(B). A drive is nonpartisan if it is conducted so that information and other assistance regarding registering or voting, including transportation and other services offered, is not withheld or refused on the basis of support for or opposition to particular candidates or a particular political party.

(iii) A corporation or labor organization may make disbursements to conduct voter registration and get-out-the-vote drives that are aimed at its restricted class and that do not qualify as nonpartisan under paragraph (c)(4)(ii) of this section, provided that the disbursements do not constitute coordinated expenditures as defined in 11 CFR 109.20, coordinated communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR part 100, subpart B. *See also* note to 11 CFR 114.2(b), 114.10(a).

■ 8. Section 114.4 is amended by removing paragraph (c)(8) and by revising the section heading and paragraphs (a), (c)(1) through (c)(6), and (d) to read as follows:

§ 114.4 Disbursements for communications by corporations and labor organizations beyond the restricted class in connection with a Federal election.

(a) *General.* A corporation or labor organization may communicate beyond the restricted class in accordance with

this section. Communications that a corporation or labor organization may make only to its employees (including its restricted class) and their families, but not to the general public, are set forth in paragraph (b) of this section. Any communications that a corporation or labor organization may make to the general public under paragraph (c) of this section may also be made to the corporation's or labor organization's restricted class and to other employees and their families. Communications that a corporation or labor organization may make only to its restricted class are set forth at 11 CFR 114.3. The activities described in paragraphs (b) and (c) of this section may be coordinated with candidates and political committees only to the extent permitted by this section. For the otherwise applicable regulations regarding independent expenditures and coordination with candidates, see 11 CFR 100.16, 109.21, and 114.2(c). Voter registration and get-out-the-vote drives as described in paragraph (d) of this section must not include coordinated expenditures as defined in 11 CFR 109.20, coordinated communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR part 100, subpart B. *See also* note to 11 CFR 114.2(b), 114.10(a). Incorporated membership organizations, incorporated trade associations, incorporated cooperatives, and corporations without capital stock will be treated as corporations for the purpose of this section.

* * * * *

(c) *Communications by a corporation or labor organization to the general public*—(1) *General.* A corporation or labor organization may make independent expenditures or electioneering communications pursuant to 11 CFR 114.10. This section addresses specific communications, described in paragraphs (c)(2) through (c)(7) of this section, that a corporation or labor organization may make to the general public. The general public includes anyone who is not in the corporation's or labor organization's restricted class. The preparation, contents, and distribution of any of the communications described in paragraphs (2) through (6) below must not include coordinated expenditures as defined in 11 CFR 109.20, coordinated communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR part 100, subpart B. *See also* note to 11 CFR 114.2(b), 114.10(a).

(2) *Voter registration and get-out-the-vote communications.* (i) A corporation or labor organization may make voter registration and get-out-the-vote communications to the general public.

(ii) Disbursements for the activity described in paragraph (c)(2)(i) of this section are not contributions or expenditures, provided that:

(A) The voter registration and get-out-the-vote communications to the general public do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party; and

(B) The preparation and distribution of voter registration and get-out-the-vote communications is not coordinated with any candidate(s) or political party.

(3) *Official registration and voting information.* (i) A corporation or labor organization may distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, that has been produced by the official election administrators.

(ii) A corporation or labor organization may distribute official registration-by-mail forms to the general public. A corporation or labor organization may distribute absentee ballots to the general public if permitted by the applicable State law.

(iii) A corporation or labor organization may donate funds to State or local government agencies responsible for the administration of elections to help defray the costs of printing or distributing voter registration or voting information and forms.

(iv) Disbursements for the activity described in paragraphs (c)(3)(i) through (iii) of this section are not contributions or expenditures, provided that:

(A) The corporation or labor organization does not, in connection with any such activity, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and does not encourage registration with any particular political party; and

(B) The reproduction and distribution of registration or voting information and forms is not coordinated with any candidate(s) or political party.

(4) *Voting records.* (i) A corporation or labor organization may prepare and distribute to the general public the voting records of Members of Congress.

(ii) Disbursements for the activity described in paragraph (c)(4)(i) of this section are not contributions or expenditures, provided that:

(A) The voting records of Members of Congress and all communications distributed with it do not expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party; and

(B) The decision on content and the distribution of voting records is not coordinated with any candidate, group of candidates, or political party.

(5) *Voter guides.* (i) A corporation or labor organization may prepare and distribute to the general public voter guides, including voter guides obtained from a nonprofit organization that is described in 26 U.S.C. 501(c)(3) or (c)(4).

(ii) Disbursements for the activity described in paragraph (c)(5)(i) of this section are not contributions or expenditures, provided that the voter guides comply with either paragraph (c)(5)(ii)(A) or (c)(5)(ii)(B)(*1*) through (*5*) of this section:

(A) The corporation or labor organization does not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide, and no portion of the voter guide expressly advocates the election or defeat of one or more clearly identified candidate(s) or candidates of any clearly identified political party; or

(B)(*1*) The corporation or labor organization does not act in cooperation, consultation, or concert with or at the request or suggestion of the candidates, the candidates' committees or agents regarding the preparation, contents and distribution of the voter guide;

(*2*) All of the candidates for a particular seat or office are provided an equal opportunity to respond, except that in the case of Presidential and Vice Presidential candidates the corporation or labor organization may choose to direct the questions only to those candidates who—

(*i*) Are seeking the nomination of a particular political party in a contested primary election; or

(*ii*) Appear on the general election ballot in the state(s) where the voter guide is distributed or appear on the general election ballot in enough states to win a majority of the electoral votes;

(*3*) No candidate receives greater prominence in the voter guide than other participating candidates, or substantially more space for responses;

(*4*) The voter guide and its accompanying materials do not contain an electioneering message; and

(*5*) The voter guide and its accompanying materials do not score or rate the candidates' responses in such a way as to convey an electioneering message.

(6) *Endorsements.* (i) A corporation or labor organization may endorse a candidate, and may communicate the endorsement to the restricted class and the general public. The Internal Revenue Code and regulations promulgated thereunder should be consulted regarding restrictions or prohibitions on endorsements by nonprofit corporations described in 26 U.S.C. 501(c)(3).

(ii) Disbursements for announcements of endorsements to the general public are not contributions or expenditures, provided that:

(A) The public announcement is not coordinated with a candidate, a candidate's authorized committee, or their agents; and

(B) Disbursements for any press release or press conference to announce the endorsement are de minimis. Such disbursements shall be considered de minimis if the press release and notice of the press conference are distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing non-political press releases or holding press conferences for other purposes.

(iii) Disbursements for announcements of endorsements to the restricted class may be coordinated pursuant to 114.3(a) and are not contributions or expenditures provided that no more than a *de minimis* number of copies of the publication that includes the endorsement are circulated beyond the restricted class.

* * * * *

(d) *Voter registration and get-out-the-vote drives*—(1) *Voter registration and get-out-the-vote drives permitted.* A corporation or labor organization may support or conduct voter registration and get-out-the-vote drives that are aimed at employees outside its restricted class and the general public. Voter registration and get-out-the-vote drives include providing transportation to the polls or to the place of registration.

(2) *Disbursements for certain voter registration and get-out-the-vote drives not expenditures.* Voter registration or get-out-the-vote drives that are conducted in accordance with paragraphs (d)(2)(i) through (d)(2)(v) of this section are not expenditures.

(i) The corporation or labor organization shall not make any communication expressly advocating the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party as part of the voter registration or get-out-the-vote drive.

(ii) The voter registration drive shall not be directed primarily to individuals previously registered with, or intending to register with, the political party favored by the corporation or labor organization. The get-out-the-vote drive shall not be directed primarily to individuals currently registered with the political party favored by the corporation or labor organization.

(iii) These services shall be made available without regard to the voter's political preference. Information and other assistance regarding registering or voting, including transportation and other services offered, shall not be withheld or refused on the basis of support for or opposition to particular candidates or a particular political party.

(iv) Individuals conducting the voter registration or get-out-the-vote drive shall not be paid on the basis of the number of individuals registered or transported who support one or more particular candidates or political party.

(v) The corporation or labor organization shall notify those receiving information or assistance of the requirements of paragraph (d)(2)(iii) of this section. The notification shall be made in writing at the time of the registration or get-out-the-vote drive.

* * * * *

■ 9. Section 114.10 is revised to read as follows:

§ 114.10 Corporations and labor organizations making independent expenditures and electioneering communications.

(a) *General.* Corporations and labor organizations may make independent expenditures, as defined in 11 CFR 100.16, and electioneering communications, as defined in 11 CFR 100.29. Corporations and labor organizations are prohibited from making coordinated expenditures as defined in 11 CFR 109.20, coordinated communications as defined in 11 CFR 109.21, or contributions as defined in 11 CFR part 100, subpart B.

Note to paragraph (a): Pursuant to *SpeechNow.org* v. *FEC,* 599 F.3d 686 (D.C. Cir. 2010) (en banc), and *Carey* v. *FEC,* 791 F. Supp. 2d 121 (D.D.C. 2011), corporations and labor organizations may make contributions to non-connected political committees that make only independent expenditures, or to separate accounts maintained by non-connected political committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b) and 11 CFR 114.10(a). The Commission has not conducted a rulemaking in response to these cases.

(b) *Reporting independent expenditures and electioneering communications.* (1) Corporations and labor organizations that make independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year shall file reports as required by 11 CFR part 114, 104.4(a), and 109.10(b)–(e).

(2) Corporations and labor organizations that make electioneering communications aggregating in excess of $10,000 in a calendar year shall file the statements required by 11 CFR 104.20(b).

(c) *Non-authorization notice.* Corporations or labor organizations making independent expenditures or electioneering communications shall comply with the requirements of 11 CFR 110.11.

(d) *Segregated bank account.* A corporation or labor organization may, but is not required to, establish a segregated bank account into which it deposits only funds donated or otherwise provided by persons other than national banks, corporations organized by authority of any law of Congress, or foreign nationals (as defined in 11 CFR 110.20(a)(3)), as described in 11 CFR 104.20(c)(7), from which it makes disbursements for electioneering communications.

(e) *Activities prohibited by the Internal Revenue Code.* Nothing in this section shall be construed to authorize any organization exempt from taxation under 26 U.S.C. 501(a) to carry out any activity that it is prohibited from undertaking by the Internal Revenue Code, 26 U.S.C. 501, *et seq.*

■ 10. Sections 114.14 and 114.15 are removed and reserved.

On behalf of the Commission,

Dated: October 9, 2014.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–24666 Filed 10–20–14; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AG57

Small Business Investment Companies—Investments in Passive Businesses

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Small Business Administration (SBA) is revising the regulations for the Small Business Investment Company (SBIC) program concerning investments in

passive businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended, as well as under SBIC program regulations. This final rule modifies an exception that allows an SBIC to make an investment in a passive small business that passes through the investment proceeds to one or more subsidiaries, each of which must be a non-passive small business. This modification allows an SBIC to structure an investment utilizing two levels of passive small businesses as pass-through entities under specific circumstances. The purpose of the modification is to place SBICs on a more equal footing with their non-SBIC counterparts in the venture capital and private equity sectors, in which investments structured with two passive levels are not uncommon.

This final rule also includes several technical corrections. Specifically, the final rule updates the regulations by replacing obsolete Standard Industrial Classification (SIC) codes with their equivalents under the North American Industrial Classification System (NAICS); corrects erroneous paragraph cross-references; and modernizes the options for meeting the record preservation requirements by removing the reference to ''microfilm.''

DATES: This rule is effective November 20, 2014.

FOR FURTHER INFORMATION CONTACT: Theresa Jamerson, Office of Investment and Innovation, (202) 205–7563, or Carol Fendler, Office of Investment and Innovation, (202) 205–7559, or *sbic@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The Small Business Investment Act of 1958, as amended, prohibits an SBIC from making passive investments. Accordingly, SBA promulgated 13 CFR 107.720(b), which states as a general rule that an SBIC is not permitted to finance a passive business. The regulation defines a business as passive if: (1) It is not engaged in a regular and continuous business operation; (2) its employees do not carry on the majority of day-to-day operations, and the company does not exercise day-to-day control and supervision over contract workers; or (3) the business passes through substantially all financing proceeds to another entity.

Prior to this final rule, § 107.720(b) provided two exceptions to the general prohibition that allow SBICs to employ certain structures in which the direct recipient of financing is a passive business, but the end recipient is an active business. The first exception, identified in § 107.720(b)(2), provided that an SBIC may make an investment in a passive small business that passes through the investment proceeds to one or more subsidiary companies, each of which must be a non-passive small business. SBA defined a subsidiary company as one in which the financed passive business *directly* owns at least 50 percent of the outstanding voting securities. The 50 percent ownership requirement was promulgated in 1998 (63 FR 5859, February 5, 1998), replacing an earlier provision that allowed a passive small business to be financed only if it passed the financing proceeds through to a wholly-owned small business subsidiary. In addressing comments suggesting that SBA should drop the ownership requirement altogether, the 1998 final rule stated, ''SBA believes that when a Licensee makes an investment in a holding company which is unrelated to the Licensee and is, in fact, a portfolio company, the requirement that proceeds be passed through only to 50 percent-owned subsidiaries should remain. This provision ensures that there is a significant relationship between the financed passive business and the active businesses which ultimately receive the proceeds, and that the passive business is not functioning simply as a re-investor.'' The Small Business Investment Act prohibits an SBIC from financing ''relenders or re-investors.''

The same final rule also established a second exception, promulgated as § 107.720(b)(3), which allows an SBIC organized as a partnership to form, with SBA's prior approval, a passive wholly-owned corporation, the sole purpose of which is to serve as a conduit for financing provided to one or more eligible unincorporated small businesses. An SBIC may form such a corporation only if a direct financing of the small business would cause any of the SBIC's investors to incur unrelated business taxable income (UBTI) under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). A corporation formed for this purpose is one example of what is commonly referred to as a ''blocker corporation'' to denote an entity that is subject to Federal corporate income tax and is intended to shield an investor from certain types of tax liability (most typically UBTI for a tax-exempt investor or ''effectively connected income'' for a foreign investor).

In promulgating § 107.720(b)(3), SBA recognized that financing proceeds flowing from an SBIC to its wholly-owned subsidiary (an ''Associate'' under § 107.50) would technically represent a prohibited conflict of interest under § 107.730(a); the 1998 final rule addressed this issue by specifically providing that funds invested by an SBIC in a blocker corporation created under § 107.720(b)(3) would not constitute a violation of § 107.730(a). Similarly, the 1998 final rule provided that an SBIC's 100 percent ownership of a blocker corporation would not constitute a violation of § 107.865(a), which limits SBIC control over a Small Business, but the need for this provision was essentially eliminated by the relaxation of the regulatory restrictions on control in 2002.

On December 23, 2013, SBA published a proposed rule (78 FR 77377) to expand the holding company exception set out in § 107.720(b)(2), by modifying the definition of a subsidiary company to allow financing proceeds to pass through a second passive business before reaching a non-passive subsidiary. The proposed definition did not change the requirement that a passive direct recipient of SBIC financing own at least 50% of the active business that ultimately receives the proceeds (or that the proceeds are used to acquire); rather it allowed for indirect ownership through a second passive Small Business. The preamble to the proposed rule discussed how this change would allow SBICs to have greater flexibility in structuring transactions typically employed by other private equity and venture firms. The proposed rule also included several technical corrections.

SBA received one set of comments on the proposed rule. These are discussed in the following section-by-section analysis.

II. Section-by-Section Analysis

A. Passive Business Rules

The proposed rule expanded the definition of subsidiary company in § 107.720(b)(2) to allow financing proceeds to pass through a second passive business before reaching a non-passive subsidiary.

The commenter supported the expansion of the passive investment exceptions and described transaction structures that the commenter believed would be permitted under the proposed rule. SBA agrees with the commenter that the proposed rule would allow SBICs to ''finance a passive business to take advantage of the favorable tax treatment under Internal Revenue Code § 338(h)(10)'' and ''invest in an operating company through two passive business holding companies, subject to certain requirements.'' The preamble in

the proposed rule specifically discussed these two instances.

The commenter believed that the proposed rule would also allow an SBIC to create a blocker corporation as one of the two permitted levels of passive businesses under proposed § 107.720(b)(2), for the following purposes: (1) To shield tax exempt investors from receiving unrelated business taxable income (UBTI) from an investment in a flow-through entity; (2) to protect an SBIC's foreign investors from the taxation imposed on income that is considered to be ''effectively connected'' to a U.S. trade or business; and (3) in the case of an SBIC that either is a BDC licensed under the Investment Company Act of 1940 or is owned by a parent BDC, to avoid jeopardizing the BDC's qualification as a regulated investment company under the Internal Revenue Code.

The commenter's interpretation of the proposed revision of § 107.720(b)(2) is correct, provided the financing proceeds are passed through only to one or more non-passive ''subsidiary companies'' as defined in that section. Proposed § 107.720(b)(2) did not specify any purpose for which a passive entity may or may not be utilized. Thus, SBA's view is that an investment that is otherwise eligible under § 107.720(b)(2) could include a passive entity that serves one of the tax-avoidance purposes cited by the commenter. SBA reminds SBICs, however, that § 107.720(b)(2) does not permit any investment in which the first-level passive entity does not own, either directly or indirectly, at least 50 percent of the outstanding voting interests of the active small business that ultimately receives the financing proceeds.

Furthermore, it is important to note that the proposed rule did not include any expansion of § 107.720(b)(3), which governs the formation and use of blocker corporations and which does not include any percentage of ownership requirement comparable to the ''subsidiary company'' requirement in § 107.720(b)(2). SBA did not intend to permit the formation and use of blocker corporations under § 107.720(b)(3) for any purpose other than the avoidance of UBTI as permitted by the existing regulation.

The commenter also suggested the following changes to further liberalize permitted financings to passive businesses under § 107.720(b):

(1) Revise § 107.720(b)(2) to explicitly state that an SBIC may ''form and finance'' (rather than merely ''finance'') a passive business.

(2) Eliminate the requirement for SBA prior approval to form a blocker corporation under § 107.720(b)(3).

(3) Revise § 107.720(b)(3) to permit an SBIC to form a blocker corporation to enable its foreign investors to avoid ''effectively connected'' income.

(4) Further broaden § 107.720(b)(2) to allow SBICs to structure financings in which proceeds may pass through an unlimited number of passive entities before reaching an eligible, non-passive small business.

The final rule does not adopt these changes. For the reasons discussed below, SBA may consider the first three suggestions for future rulemaking, but is opposed to allowing investments to be structured with more than two passive levels.

Regarding the suggestion to allow an SBIC to ''form'' a passive holding company under § 107.720(b)(2), SBA acknowledges that some SBICs may already be providing financing to holding companies in which they own a controlling equity interest, in compliance with the provisions of existing §§ 107.865 and 107.720. Thus, the addition of ''form'' to § 107.720(b)(2) may not represent a significant change. However, SBA wishes to further evaluate this change before proposing it in any future rulemaking.

SBA may consider the two suggested changes to § 107.720(b)(3) in future rulemaking provided that additional safeguards are included to address SBA concerns regarding credit risk, specifically SBA's ability to collect from SBICs that default on their debt to SBA. Even under § 107.720(b) as it existed prior to this final rule, SBA has encountered three issues that affect its recoveries from defaulting SBICs with assets that are held indirectly through a passive company: (1) SBA's lack of access to the books and records of the passive company; (2) fees and expenses charged at each level, diverting money from the actual investment and returns; and (3) greater opportunity for disproportionate distributions to entities other than the SBIC, thereby reducing the funds available to repay SBA. SBA expects that any future rulemaking to expand the permitted financing of passive businesses (under either § 107.720(b)(2) or (b)(3)) would include provisions to address these concerns.

The commenter's suggestion to allow more than two levels of passive holding companies under § 107.720(b)(2) stated that ''the crucial concept should be that the operating company receives substantially all the proceeds that the SBIC is investing.'' While this concept is perhaps valid with respect to the SBIC program's public policy objectives, SBA believes that it would be problematic to implement in practice, precisely because of the credit and oversight concerns cited in the preceding paragraph. Even with potential new regulatory protections that would address these concerns, SBA believes that effective monitoring of transactions with multiple levels of passive companies would require resources well beyond those available to the Agency.

Despite its concerns about the potential risks associated with investments structured with passive entities, SBA is finalizing this rule at the request of SBICs so that they may participate in a broader range of financing transactions from which small businesses will benefit. SBA expects that SBICs will exercise due diligence and appropriate monitoring to ensure that passive companies do not charge excessive fees or expenses so that maximum funding is provided to the active small business investment and returns to the SBIC are not adversely affected. As previously noted in this preamble, SBA intends to take into account its experience with such structures in future rulemaking.

The commenter also noted a potential source of confusion in proposed § 107.720(b)(2)(ii). This section was intended to allow an SBIC to route financing proceeds to an active small business through two levels of passive holding companies, as long as the first holding company owns at least 50 percent of the outstanding voting securities of the active company. The commenter suggested that the stated requirements for a minimum of 50 percent ownership at each level (i.e., the first passive holding company must own at least 50 percent of the second, which must own at least 50 percent of the active company) could be misinterpreted as requiring only 50% ownership at each level. This incorrect reading could result in as little as 25 percent ownership of the active company by the first passive holding company. The commenter's suggestion was to delete the intermediate ownership percentage requirements and retain only the requirement for at least 50 percent ownership of the active company by the first passive company. SBA agrees with this clarification and has adopted it in the final rule.

The commenter also noted that § 107.720(b)(2)(i) and (ii) define the 50 percent ownership requirement in terms of ''outstanding voting securities''. The commenter suggested that SBA confirm that the regulation encompasses both the ''securities'' of a corporation and the ''interests'' of a limited liability

company or limited partnership. SBA confirms that the regulation is intended to refer to both ''securities'' and ''interests'' as described by the commenter. SBA has retained the ownership requirement based on ''outstanding voting securities'' in the final rule to remain consistent with other regulations (e.g., § 107.865(a)) that similarly refer to ''voting securities'' and are understood to include interests of limited liability companies and limited partnerships.

B. Technical Changes to Regulations

SBA received one comment on the technical changes in the proposed rule. The commenter noted that the proposed change to § 107.720(c) mistakenly reverses the descriptions of NAICS codes 531110 and 531120. SBA has corrected this in the final rule. Otherwise, all of the technical changes have been finalized as proposed, and additional cross-references have been corrected in the final rule. SBA's section-by-section explanation of the changes is repeated here as a convenience to the reader.

Section 107.600—General Requirement of Licensee To Maintain and Preserve Records

The record-keeping requirements applicable to SBICs are found primarily in § 107.600. This section enumerates various types of records and the periods for which they must be preserved. The final paragraph of the section, § 107.600(c)(4), allows an SBIC to substitute ''a microfilm or computer-scanned or generated copy'' for any original paper record. The final rule modernizes this provision by deleting the reference to ''microfilm'' as a preservation medium.

Section 107.720—Small Businesses That May Be Ineligible for Financing

Real Estate Businesses. Under the prior § 107.720(c), an SBIC was not permitted to finance ''any business classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual'' with exceptions provided for certain businesses that provide services within the real estate industry (such as title abstract companies). The ''SIC Manual'' refers to the Standard Industrial Classification system formerly used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. In 1997, the Federal government replaced the SIC codes with the North American Industrial Classification System (NAICS).

The final rule updates 13 CFR 107.720(c) by replacing SIC codes with their 2012 NAICS equivalents, which duplicate the previous general prohibitions and permitted exceptions as closely as possible. The following tables show each of the SIC codes referenced in the current regulation and the NAICS code that SBA has replaced it with.

CROSSWALK FROM SIC CODES TO NAICS CODES

Prohibited investments	
SIC Code	NAICS Code
6512 Operators of nonresidential buildings	531120 Lessors of nonresidential buildings (except miniwarehouses).
6513 Operators of apartment buildings	531110 Lessors of residential buildings and dwellings.
6514 Operators of dwellings other than apartment buildings.	
6515 Operators of residential mobile home sites	531190 Lessors of other real estate property.
6517 Lessors of railroad property.	
6519 Lessors of real property, not elsewhere classified.	
6552 Land subdividers and developers, except cemeteries	237210 Land subdivision.
1531 Operative builders	236117 New housing for-sale builders.
	236118 Residential remodelers.[1]
	236210 Industrial building construction.[1]
	236220 Commercial and institutional building construction.[1]

[1] An SBIC may not finance a Small Business classified under this code if such business is primarily engaged in construction or renovation of properties on its own account rather than as a hired contractor.

RESTRICTED INVESTMENTS

SIC Code	NAICS Code
6531 Real estate agents and managers (establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others).	531210 Offices of real estate agents and brokers.
	531311 Residential property managers.
	531312 Nonresidential property managers.
	531320 Offices of real estate appraisers.
	531390 Other activities related to real estate.
Permitted only if business derives at least 80% of its revenue from non-Affiliate sources.	Permitted only if business derives at least 80% of its revenue from non-Affiliate sources.

PERMITTED INVESTMENTS

SIC Code	NAICS Code
6541 Title abstract offices	541191 Title abstract and settlement offices.

The only SIC code in the previous regulation that did not correspond directly to one or more NAICS codes is 1531, ''Operative builders.'' The SIC Manual described this industry as consisting of establishments primarily

engaged in the construction (including renovation) of single-family houses and other buildings for sale on their own account rather than as contractors. The industry included speculative builders and condominium developers. The 2012 NAICS codes primarily use the term ''for-sale builder'' to describe businesses engaged in construction or renovation of buildings on their own account. However, except for those engaged in new housing construction (NAICS code 236117), for-sale builders are combined with contractors in three different NAICS codes, depending on whether they are engaged in residential remodeling (NAICS code 236118), manufacturing/industrial building construction (NAICS code 236210), or commercial/institutional building construction (NAICS code 236220). The final rule prohibits an SBIC from providing financing to a Small Business classified under any of these three NAICS codes only if the company is primarily engaged in construction or renovation of buildings as a for-sale builder. Guidance provided by the United States Census Bureau indicates that the key element of a for-sale builder is whether a firm is engaged in construction on its own account, as opposed to having been hired as a contractor. For example, the final rule permits an SBIC to provide financing to a firm that primarily renovates or builds additions to homes if the homeowners have contracted for the firm's services. However, a firm that primarily acquires homes to renovate and re-sell at its own risk is a ''for-sale remodeler'' that would not be eligible for financing by an SBIC.

Section 107.1120—General Eligibility Requirements for Leverage, and Section 107.1150—Maximum Amount of Leverage for a Section 301(c) Licensee

The final rule corrects erroneous paragraph references in §§ 107.1120 and 107.1150, which set forth leverage eligibility provisions for SBICs. Some of these erroneous references were not identified in the proposed rule, but are nevertheless finalized in this rule because they are merely corrections that do not substantively change the subject regulations.

Compliance With Executive Orders 12866, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this final rule is not a ''significant'' regulatory action under Executive Order 12866. This is also not a ''major'' rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

The rule does not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this final rule has no federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule does not impose any new reporting or recordkeeping requirements.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an Initial Regulatory Flexibility Act (IRFA) analysis which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This final rule would affect all SBICs, of which there are currently close to 300. SBA estimates that approximately 75% of these SBICs are small entities. Therefore, SBA has determined that this final rule does have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule is not significant. The passive business provision provides SBICs with additional flexibility to employ a transaction structure commonly used by private equity or venture capital funds that are not SBICs.

SBA asserts that the economic impact of the rule, if any, is minimal and entirely beneficial to small SBICs. Accordingly, the Administrator of the SBA certifies that this final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.,* 683, 687(c), 687b, 687d, 687g, 687m, and Pub. L. 106–554, 114 Stat. 2763; and Pub. L. 111–5, 123 Stat. 115.

§ 107.50 [Amended]

■ 2. Amend § 107.50 by removing the definition of ''SIC Manual''.

■ 3. Revise § 107.600(c)(4) to read as follows:

§ 107.600 General requirement for Licensee to maintain and preserve records.

* * * * *

(c) * * *

(4) You may substitute a computer-scanned or generated copy for the original of any record covered by this paragraph (c).

■ 4. Amend § 107.720 by revising paragraphs (b)(2) and (c)(1) and the introductory text of paragraph (c)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

* * * * *

(b) * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may finance a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which the Financed passive business either:

(i) Directly owns at least 50 percent of the outstanding voting securities; or

(ii) Indirectly owns at least 50 percent of the outstanding voting securities (by directly owning the outstanding voting securities of another passive Small Business that is the direct owner of the

outstanding voting securities of the subsidiary company).

* * * * *

(c) *Real Estate Businesses.* (1) You are not permitted to finance any business classified under North American Industry Classification System (NAICS) codes 531110 (lessors of residential buildings and dwellings), 531120 (lessors of nonresidential buildings except miniwarehouses), 531190 (lessors of other real estate property), 237210 (land subdivision), or 236117 (new housing for-sale builders). You are not permitted to finance any business classified under NAICS codes 236118 (residential remodelers), 236210 (industrial building construction), or 236220 (commercial and institutional building construction), if such business is primarily engaged in construction or renovation of properties on its own account rather than as a hired contractor. You are permitted to finance a business classified under NAICS codes 531210 (offices of real estate agents and brokers), 531311 (residential property managers), 531312 (nonresidential property managers), 531320 (offices of real estate appraisers), or 531390 (other activities related to real estate), only if such business derives at least 80 percent of its revenue from non-Affiliate sources.

(2) You are not permitted to finance a Small Business, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

* * * * *

■ 5. Amend § 107.1120 by revising paragraphs (e) and (f) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(e) For any Leverage request pursuant to § 107.1150(d)(2)(i), certify that at least 50 percent (in dollars) of your Financings made on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

(f) For any Leverage request pursuant to § 107.1150(d)(2)(ii), certify that at least 50 percent (in dollars) of the Financings made by each Licensee under Common Control on or after the date of such request will be invested in Small Businesses located in low-income geographic areas.

* * * * *

■ 6. Amend § 107.1150 by revising the first and second sentences of the introductory text and paragraphs (d) introductory text, (d)(1)(iii) and (iv), the first sentence of (d)(2), (e)(1), and (e)(2)(iii) and (iv) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

A Section 301(c) Licensee, other than an Early Stage SBIC, may have maximum outstanding Leverage as set forth in paragraphs (a), (b), (d), and (e) of this section. An Early Stage SBIC may have maximum outstanding Leverage as set forth in paragraph (c) of this section. * * *

* * * * *

(d) *Additional Leverage based on investment in low-income geographic areas.* Subject to SBA's credit policies, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (d). If you were licensed before October 1, 2009, you may seek additional Leverage under paragraph (d)(1) only. If you were licensed on or after October 1, 2009, you may seek additional Leverage under paragraph (d)(1) or (2), but not both. In this paragraph (d), ''low income geographic areas'' are as defined in § 108.50 of this chapter. Any investment that you use as a basis to seek additional leverage under this paragraph (d) cannot also be used to seek additional leverage under paragraph (e) of this section.

(1) * * *

(iii) Subtract from your outstanding Leverage the lesser of paragraph (d)(1)(i) or (ii).

(iv) If the amount calculated in paragraph (d)(1)(iii) is less than the maximum leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

(2) *Investment in Small Businesses located in low-income geographic areas.* This paragraph (d)(2) applies only to Licensees licensed on or after October 1, 2009. * * *

* * * * *

(e) *Additional Leverage based on Energy Saving Qualified Investments in Smaller Enterprises.* (1) Subject to SBA's credit policies, if you were licensed on or after October 1, 2008, you may have outstanding Leverage in excess of the amounts permitted by paragraphs (a) and (b) of this section in accordance with this paragraph (e). Any investment that you use as a basis to seek additional Leverage under this paragraph (e) cannot also be used to seek additional Leverage under paragraph (d) of this section.

* * * * *

(2) * * *

(iii) Subtract from your outstanding Leverage the lesser of paragraph (e)(2)(i) or (ii).

(iv) If the amount calculated in paragraph (e)(2)(iii) is less than the maximum Leverage determined under paragraph (a) of this section, the difference between the two amounts equals your additional Leverage availability.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–24803 Filed 10–20–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0908]

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, Nassau, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Long Beach Bridge, across Reynolds Channel, mile 4.7, at Nassau, New York. This deviation is necessary to allow the bridge to remain in the closed position for thirty days to facilitate scheduled bridge maintenance, the replacement of the concrete bridge deck.

DATES: This deviation is effective without actual notice from October 21, 2014 through 8 p.m. on November 19, 2014. For the purposes of enforcement, actual notice will be used from 9 a.m. on October 20, 2014, until October 21, 2014.

ADDRESSES: The docket for this deviation [USCG–2014–0908] is available at *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 deviation. 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 deviation, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil,* or (212) 668–7165. If you have questions on viewing the docket, call Cheryl

Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Long Beach Bridge has a vertical clearance of 20 feet at mean high water, and 24 feet at mean low water in the closed position. The existing drawbridge operating regulations are found at 33 CFR 117.799(g).

The bridge owner, Nassau County Department of Public Works, requested a bridge closure to facilitate the replacement of the concrete deck at the bridge. During the execution of these repairs the bridge will not be able to open.

Under this temporary deviation, the Long Beach Bridge may remain in the closed position between 9 a.m. on October 20, 2014 through 8 p.m. on November 19, 2014. Vessels that can pass under the bridge in the closed position may do so at all times.

Reynolds Channel has commercial and recreational vessel traffic. There are no alternate routes. The bridge cannot be opened in the event of an emergency. No objections were received from the waterway users.

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

Dated: October 9, 2014.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2014–25011 Filed 10–20–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0915]

Drawbridge Operation Regulations; Newtown Creek, Dutch Kills, English Kills and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Metropolitan Avenue Bridge across English Kills, mile 3.4, at Brooklyn, New York. The bridge owner, New York City Department of Transportation, will be performing electrical repairs at the bridge. This deviation is necessary to allow the bridge to remain in the closed position for three days to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 7 a.m. on November 17, 2014 through 4 p.m. on November 20, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0915] is available at *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 deviation. 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 Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, *judy.k.leumg-yee@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge, across English Kills, mile 3.4, at Brooklyn, New York, has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The bridge operating regulations are listed at 33 CFR 117.801(e).

The waterway is transited by recreational and commercial vessels of various sizes.

The bridge owner, New York City Department of Transportation, requested a temporary deviation from the normal operating schedule to facilitate electrical repairs at the bridge.

Under this temporary deviation the Metropolitan Avenue Bridge shall remain in the closed position from 7 a.m. on November 17, 2014 through 4 p.m. on November 20, 2014.

There are no alternate routes for vessel traffic; however, vessels that can pass under the closed draws during this closure may do so at any time. The bridge may be opened in the event of an emergency.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 9, 2014.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2014–25010 Filed 10–20–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0910]

Drawbridge Operation Regulation; Houma Navigation Canal, Houma, Terrebonne Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the SR 661 Swing Bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for up to four hours at a time during daylight hours for the purpose of conducting necessary maintenance and repairs to the drawbridge.

DATES: This deviation is effective from October 23, 2014 to January 7, 2015.

ADDRESSES: The docket for this deviation, [USCG–2014–0910] is available at *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 temporary deviation, call or email Jim Wetherington, Bridge Administration Branch, Coast Guard, telephone (504) 671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development (LDOTD) requested a temporary deviation from the operating schedule of the SR 661 Swing Bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana. The deviation was requested for the purpose of conducting necessary repairs, including reinstallation of structural and mechanical components of the bridge. Exact dates for the maintenance and repairs requiring this deviation are not yet known. Local Notices to Mariners (LNM) and Broadcast Notices to Mariners (BNM) will provide at least 48 hours notification before the deviation begins.

In accordance with 33 CFR 117.455, the bridge currently opens on signal; except that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m., from 11:45 a.m. to 12:15 p.m., from 12:45 p.m. to 1:15 p.m., and from 4:30 p.m. until 6 p.m. This deviation allows the draw of the SR 661 Swing Bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana, to remain closed to navigation for up to four hours each day between 6 a.m. and 8 p.m. for a 17 day period. This 17 day period will occur sometime between October 23, 2014 and January 7, 2015. During this deviation, the bridge will remain open to navigation from 8 p.m. through 6 a.m. daily. During these closures, the contractor will make every effort to minimize the delays to mariners as well as maintain the bridge in the open-to-navigation position all times when that repair work is not being conducted. These repairs require the bridge to be removed from power and operated by air tuggers in order for the work to be done. These repairs are necessary for the continued operation of the bridge.

The vertical clearance of the swing bridge in the closed-to-navigation position is 1.0 foot and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial tugs and recreational craft. Vessels able to pass through the bridge in the closed positions may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route. The Coast Guard will provide waterway users the dates and times affected through LNMs and BNMs throughout this temporary change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 2, 2014.

David M. Frank,

Bridge Administrator.

[FR Doc. 2014–25006 Filed 10–20–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0923]

Drawbridge Operation Regulations; Cheesequake Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the New Jersey Transit Rail Operations (NJTRO) railroad bridge across Cheesequake Creek, mile 0.2, at Morgan, New Jersey. The bridge owner will be performing structural repairs at the bridge. This deviation is necessary to allow the bridge to have only scheduled openings for two weekends to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 7 a.m. on November 8, 2014 through 7 p.m. on November 23, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0923] is available at *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 deviation. 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 deviation, call or email Mr. Joe M. Arca, Project Officer, First Coast Guard District, telephone (212) 668–7165, *joe.m.arca@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The NJTRO railroad bridge across Cheesequake Creek, mile 0.2, at Morgan, New Jersey, has a vertical clearance in the closed position of 3 feet at mean high water and 8 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.709(b).

The waterway is transited by recreational and commercial vessels of various sizes.

The bridge owner, New Jersey Transit Rail Operations, requested a temporary deviation from the normal operating schedule to facilitate structural repairs at the bridge.

Under this temporary deviation the NJTRO railroad bridge shall operate on Saturday, November 8, 2014, Sunday, November 9, 2014, Saturday, November 15, 2014, and Sunday, November 16, 2014 as follows: Between 7 a.m. and 7 p.m. the draw shall open at 7 a.m., 10 a.m., 1 p.m., and 4 p.m. The draw shall maintain its normal operating schedule at all other times.

In the event of inclement weather the rain dates are Saturday, November 22, 2014 and Sunday, November 23, 2014.

There are no alternate routes for vessel traffic; however, vessels that can pass under the closed draws during this closure may do so at all times. The bridge may be opened in the event of an emergency.

The Coast Guard will inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: October 9, 2014.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2014–25004 Filed 10–20–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0293]

RIN 1625–AA11

Regulated Navigation Area; Slip 4 Early Action Area Superfund Site, Lower Duwamish Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on a portion of the Lower Duwamish Waterway in Seattle, Washington. The RNA will protect the riverbed in the U.S. Environmental Protection Agency's (EPA) Slip 4 Early Action Area (EAA). This RNA would prohibit activities that could disrupt the integrity of the engineered sediment and slope caps that have been placed within the Slip 4 EAA. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the riverbed. It will not affect transit or navigation of this area.

DATES: This rule is effective November 20, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0293]. 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 LTJG Johnny Zeng, Coast Guard Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone (206) 217–6175, email *SectorPugetSoundWWM@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 received notice from the U.S. EPA on February 28, 2013, requesting the establishment of a RNA for Slip 4 EAA located in the Lower Duwamish Waterway Superfund Site, Seattle, Washington. This request was received as a result of the need to protect the riverbed in the Lower Duwamish Waterway (LDW) from activities that could disrupt the integrity of the engineered sediment and slope caps that have been placed within the Slip 4 EAA to isolate underlying contaminated sediments.

The LDW was added to the U.S. EPA's National Priorities List (Superfund) in September 2001 because of hazardous substance contamination in sediments. Slip 4 was subsequently identified by the EPA and the Washington Department of Ecology as EAA within the LDW, based primarily on elevated concentrations of polychlorinated biphenyls (PCBs). Slip 4 EAA cleanup activities were conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), under U.S. EPA's non-time-critical removal action (NTCRA) authority. In May 2006, U.S. EPA issued an Action Memorandum containing its removal action decision for the Slip 4 EAA. The Slip 4 EAA removal action was conducted by the City of Seattle (City) under an administrative settlement agreement and order on consent (ASAOC), CERCLA Docket No. 10–2006–0364.

The selected removal action required dredging, excavation, and offsite disposal of 17,202 tons of contaminated sediment, shoreline, soil, and creosote-treated timber piles and other debris, and placement of engineered sediment and slope caps throughout the EAA (approximately 3.43 acres) to isolate residual sediment contamination within the EAA. In addition, the removal action included demolition and removal/recycling of a portion of an aging concrete pier and supporting piling on the northwest bank of the slip, and creation of two intertidal beach areas and other shallow-water areas to improve habitat conditions in the slip. Construction activities were initiated in October 2011 and completed in February 2012. A Removal Action Completion Report documenting the cleanup activities was completed and approved by the U.S. EPA in July 2012.

On April 22, 2014, an NPRM, Navigation Areas: Slip 4 EAA Superfund Site, Seattle, WA, was published. The Coast Guard received no comments on the NPRM and no requests for public meeting. No changes were made to the rule published in the NPRM.

B. Basis and Purpose

Coast Guard District Commanders are granted authority under 33 CFR 165.11 to regulate vessel traffic in areas with hazardous conditions. This rule is necessary to prevent disturbance of the Slip 4 EAA sediment and slope caps. Disruption of the caps may result in a hazardous condition and harm to the marine environment. As such, this RNA is necessary to protect the caps and will do so by prohibiting maritime activities that could disturb or damage them. This RNA is similar to RNAs which protect other caps in the area. Enforcement of this RNA will be managed by Coast Guard Sector Puget Sound assets including Vessel Traffic Service Puget Sound through radar and closed circuit television sensors.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard is establishing a permanent RNA in the LDW to protect the sediment and slope caps in the Slip 4 EAA, Superfund Site (EPA ID No. WA0002329803). It will do so by restricting anchoring, dragging, trawling, spudding or other activities that could disrupt the integrity of the caps and the underlying contaminated sediments located in the RNA. No comments were received by the Coast Guard on this rule.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of 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 expectation is based on the fact that the RNA established by the rule would encompass a small area that should not impact commercial or recreational traffic, and the prohibited

activities are not routine for the designated areas.

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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, drag, dredge, trawl, spud, or disturb the riverbed in any fashion when this rule is in effect. The RNA will not have a significant economic impact on small entities due to its minimal restrictive area and the opportunity for a waiver to be granted for any legitimate use of the riverbed.

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 affects 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This rule was determined to have potential tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it regulates navigation on waters subject to treaty fishing rights held by Indian Tribal Governments. The Coast Guard and EPA consulted with the Muckleshoot and Suquamish Tribes. To accommodate treaty fishing activity in usual and accustomed places, which fall within the area covered by the sediment cap, the Coast Guard included an exception for treaty fishing activity by Indian Tribes holding such fishing rights.

12. Energy Effects

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

13. Technical Standards

This 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area which prevents activities which would disturb the riverbed within the areas outlined in this regulation. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1338 to read as follows:

§ 165.1338 Regulated Navigation Area; Slip 4 Early Action Area Superfund Site, Lower Duwamish Waterway, Seattle, WA.

(a) *Regulated Areas.* The following areas are regulated navigation areas: All waters within the northern portion of Slip 4 bounded by the shoreline and the southern boundary of the Early Action Area defined as the line beginning at a point on the shore at 47°32′08.47″ N, 122°19′12.00″ W; thence southeast to a point on the shoreline at 47°32′07.02″ N, 122°19′09.23″ W (Datum: NAD 1983/91).

(b) *Regulations.* (1) All vessels and persons are prohibited from grounding, anchoring, dragging, trawling, spudding, or otherwise contacting the riverbed within the designated regulated navigation area. Vessels may otherwise transit or navigate within this area in accordance with the Navigation Rules.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the superfund sites, provided that the Captain of the Port, Puget Sound (COTP), is given advance notice of those activities by the Environmental Protection Agency.

(3) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or person engaged in fishing activities pursuant to fishing rights held by treaty with the United States.

(c) *Waivers.* Upon written request stating the need and proposed conditions of the waiver, and any proposed precautionary measures, the COTP may authorize a waiver from this section if the COTP determines that the activity for which the waiver is sought can take place without undue risk to the remediation efforts described in paragraph (b)(1) of this section. The COTP will consult with EPA in making this determination when necessary and practicable.

Dated: October 2, 2014.

R.T. Gromlich,

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

[FR Doc. 2014–25003 Filed 10–20–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0492]

RIN 1625–AA00

Safety Zone; Portland Dragon Boat Races, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a safety zone in Portland, OR. This safety zone is necessary to help ensure the safety of the maritime public during the annual marine event and will do so by prohibiting unauthorized persons and vessels from entering the regulated area unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

DATES: This rule is effective without actual notice October 21, 2014. For the purposes of enforcement, actual notice will be used from the date the rule was signed, September 4, 2014 until October 21, 2014.

Comments and related material must be received by the Coast Guard on or before November 20, 2014.

Requests for public meetings must be received by the Coast Guard on or before October 28, 2014.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2014–0492. 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.

You may submit comments identified by docket number USCG–2014–0492 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Kenneth Lawrenson, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a

mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2014–0492] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

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

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one before October 28, 2014, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The first event for which this safety zone will be in effect is scheduled to be held on the 6th and 7th of September, 2014. Approximately 1,850 people are anticipating this event to commence as scheduled, and the event organizers are unable to reschedule the event in order to allow enough time for public comment. As such, it is impracticable for the Coast Guard to publish an NPRM with a notice and comment period, as well as a Final Rule (FR) prior to the date of the 2014 event. However, comments received under this temporary interim rule will be considered before a final rule is published.

Under 5 U.S.S. 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 first event for which this safety zone will be in effect is scheduled to be held on the 6th and 7th of September, 2014. Approximately 1,850 people are anticipating this event to commence as scheduled, and the event organizers are unable to reschedule the event in order to allow enough time for public comment. As such, it is impracticable to wait until 30 days after publication in the **Federal Register** to make this rule effective.

C. Basis and Purpose

Coast Guard Captains of the Port are granted authority to establish safety zones in 33 CFR 1.05–1(f) for safety and environmental purposes as described in 33 CFR Part 165.

The Portland dragon boat races generally take place each year on the first or second weekend of September. These events create the potential for complex navigation situations because of the large number of vessels that congregate near the event. In addition, the dragon boats involved in this regatta are not power driven vessels and consequently are limited in their ability to maneuver. A safety zone is necessary in order to ensure the safety of the maritime public in the proximity of marine event sites and reduce the risk of collision with the non-power driven vessels involved in the race.

D. Discussion of the Interim Rule

The rule establishes a safety zone in the Thirteenth Coast Guard District. The safety zone will be located along the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR. This safety zone will be enclosed by four lines along the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR: line one starting at 45–30′49″ N/122–40′24″ W then heading east to 45–30′49″ N/122–40′22″ W then heading south to 45–30′29″ N/122–40′08″ W then heading west to 45–30′26″ N/122–40′14″ W then heading north ending at 45–30′49″ N/122–40′24″ W. The center span of the Hawthorne and Marquam bridges will be left open to allow commercial traffic through during the event. This safety zone will be enforced from 8:00 a.m. to 6:00 p.m. on the first or second Saturday and Sunday of September. The Coast Guard will make notifications via maritime advisories when the safety zone will be enforced. Enforcement of the zone will be short in duration and will allow waterway users to enter or transit through the zone when deemed safe by the Captain of the Port or his designated representative.

E. 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 Coast Guard has made this determination based on the fact that the regulated area created by this rule will not significantly affect the maritime public because vessels may still

coordinate their transit with the Coast Guard in the vicinity of the safety zone.

2. Impact on Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 and operators of vessels intending to operate in the area covered by the safety zone.

The rule will not have a significant economic impact on a *substantial* number of small entities for the following reasons: (i) The regulated area is limited in size; (ii) the official on-scene patrol may authorize access to the regulated area; (iii) the regulated area will affect a limited geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly; and (v) vessel traffic will be able to pass the safety zone with permission from the COTP representative.

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 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 From Environmental Health Risks

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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of one safety zone around a marine event to protect the maritime public. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226; 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1341 to read as follows:

§ 165.1341 Safety Zone; Portland Dragon Boat Races, Portland, OR.

(a) *Safety Zones.* The following area is a designated safety zone:

(1) *Location.* This safety zone is enclosed by four lines along the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR: line one starting at 45–30′49″ N/122–40′24″ W then heading east to 45–30′49″ N/122–40′22″ W then heading south to 45–30′29″ N/122–40′08″ W then heading west to 45–30′26″ N/122–40′14″ W then heading north ending at 45–30′49″ N/122–40′24″ W.

(2) *Enforcement Period.* This safety zone will be enforced from 8:00 a.m. to 6:00 p.m. on the first or second Saturday and Sunday of September.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other Federal, State, or local agencies with the enforcement of the safety zone.

Dated: September 4, 2014.

D.J. Travers,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2014–24908 Filed 10–20–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0685; FRL–9918–13–Region 7]

Approval and Promulgation of Implementation Plans; State of Nebraska; Infrastructure SIP Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve two State Implementation Plan (SIP) submissions from the State of Nebraska. EPA is approving elements of a SIP submission from the State of Nebraska that addresses the applicable requirements of the Clean Air Act (CAA) section 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Lead (Pb). Section 110(a) of the CAA requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

EPA is also approving an additional SIP submission from the State of Nebraska that addresses section 128 of the CAA and supports requirements associated with infrastructure SIPs.

DATES: This direct final rule will be effective December 22, 2014, without further notice, unless EPA receives adverse comment by November 20, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0685, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: crable.gregory@epa.gov.*
3. *Mail:* Mr. Gregory Crable, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.
4. *Hand Delivery or Courier:* Deliver your comments to Mr. Gregory Crable, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0685. 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 through *http://www.regulations.gov* or email information that you consider to be CBI or otherwise protected. 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 should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 at *http://www.regulations.gov* or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Crable, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7391; *fax number:* (913) 551–7065; *email address: crable.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA. This section provides additional information by addressing the following questions:

I. What is being addressed in this document?
II. What are the applicable elements under sections 110(a)(1) and (2) related to the 2008 Pb NAAQS?
III. What is EPA's approach to the review of infrastructure SIP submissions?
IV. What is EPA's evaluation of how the state addressed the relevant elements of sections 110(a)(1) and (2)?
V. What action is EPA taking?
VI. Statutory and Executive Order Review

I. What is being addressed in this document?

EPA is taking direct final action to approve two Nebraska State Implementation Plan (SIP) submissions. First, EPA is approving an October 18, 2011, SIP submission from Nebraska that addresses the infrastructure requirements of CAA sections 110(a)(1) and (a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and (a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

EPA also is approving a March 11, 2014 request to include conflict of interest provisions into the Nebraska SIP. This submission addresses the conflict of interest provisions in section 128 of the CAA as it relates to element E of the infrastructure SIP.[1]

II. What are the applicable elements under sections 110(a)(1) and (2) related to the 2008 Pb NAAQS?

On October 15, 2008, EPA revised the primary and secondary Pb NAAQS (hereafter the 2008 Pb NAAQS). The level of the primary (health-based) standard was revised to 0.15 micrograms per cubic meter ($\mu g/m^3$), measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling 3-month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard (73 FR 66964).[2]

For the 2008 Pb NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. Nevertheless, pursuant to section 110(a)(1), states have to review and revise, as appropriate, their existing SIPs to ensure that they are adequate to address the 2008 Pb NAAQS. To assist states in meeting this statutory requirement, EPA issued guidance on October 14, 2011, addressing the infrastructure SIP elements required under sections 110(a)(1) and (2) for the 2008 Pb NAAQS.[3] EPA will address these elements below under the following headings: (A) Emission limits and other control measures; (B) Ambient air quality monitoring/data system; (C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources); (D) Interstate and international transport; (E) Adequate authority, resources, implementation, and oversight; (F) Stationary source monitoring system; (G) Emergency authority; (H) Future SIP revisions; (I) Nonattainment areas; (J) Consultation with government officials, public notification, prevention of significant deterioration (PSD), and visibility protection; (K) Air quality and modeling/data; (L) Permitting fees; and (M) Consultation/participation by affected local entities.

III. What is EPA's approach to the review of infrastructure SIP submissions?

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[4] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for

[1] On August 22, 2013, Nebraska submitted provisions that address conflict of interest requirements in section 128 of the CAA as part of its infrastructure SIP submission for the 2010 Sulfur Dioxide (SO_2) NAAQS. On March 11, 2014, Nebraska clarified its intent to include provisions that address section 128 of the CAA for approval into Nebraska's SIP. EPA believes these conflict of interest provisions are applicable to all NAAQS. Therefore, as part of today's rulemaking for the 2008 Pb NAAQS, we are approving these provisions into the Nebraska SIP. See Section IV for further discussion.

[2] Although the effective date of the **Federal Register** notice for the final rule was January 12, 2009, the rule was signed by the Administrator and publicly disseminated on October 15, 2008. Therefore, the deadline for submittal of infrastructure SIPs for the 2008 Pb NAAQS was October 15, 2011.

[3] Stephen D. Page, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS),'' Memorandum to EPA Regional Air Division Directors, Regions I–X, October 14, 2011 (2011 Lead Infrastructure SIP Guidance).

[4] For example: section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[5] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[6] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[7] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[8]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[9]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS. Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[10] EPA most recently issued guidance for

[5] See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[6] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[7] See, e.g., ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[8] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[10] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

infrastructure SIPs on September 13, 2013 (2013 Guidance).[11] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. While today's proposed action relies on the specific guidance issued for the 2008 Pb NAAQS, we have also considered this more recent 2013 guidance where applicable (although not specifically issued for the 2008 Pb NAAQS) and have found no conflicts between the issued guidance and review of Nebraska's SIP submission. Within the 2013 guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[12] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and New Source Review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[13] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation,

[11] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[12] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[13] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

With respect to Element[s] C and (J) [as appropriate], EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Nebraska has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs) [as appropriate: '' with the exception of the deficiencies described elsewhere in this notice'']. On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined the Nebraska SIP is sufficient to satisfy Element[s] C, D(i)(II), and J [as appropriate] with respect to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Nebraska PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Element[s] C, D(i)(II), and J [as appropriate]. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of Nebraska's infrastructure SIP as to the requirements of Element[s] C, D(i)(II), and J.

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[14] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[15] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[16]

IV. What is EPA's evaluation of how the state addressed the relevant elements of sections 110(a)(1) and (2)?

On October 18, 2011, EPA Region 7 received Nebraska's infrastructure SIP submission for the 2008 Pb standard. This SIP submission became complete

[14] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[15] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[16] See, e.g., EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

as a matter of law on April 18, 2012. EPA has reviewed Nebraska's infrastructure SIP submission and the relevant statutory and regulatory authorities and provisions referenced in that submission or referenced in Nebraska's SIP. During this review, Nebraska submitted a March 11, 2014, request (available in the docket for today's action) that clarified its intent to formally include conflict of interest provisions in section 128 of the CAA as it relates to element E of the infrastructure SIP. Below is EPA's evaluation of how the state addressed the relevant elements of section 110(a)(2) for the 2008 Pb NAAQS.

(A) Emission limits and other control measures: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters as needed to implement, maintain and enforce each NAAQS.[17]

The state of Nebraska's statutes and Air Quality Regulations authorize the Nebraska Department of Environmental Quality (NDEQ) to regulate air quality and implement air quality control regulations. Section 81–1504 of the Nebraska Revised Statutes authorizes NDEQ to act, among other things, as the state air pollution control agency for all purposes of the CAA and to develop comprehensive programs for the prevention, control and abatement of new or existing pollution to the air of the state. Air pollution is defined in section 81–1502 of the Nebraska Revised Statutes as the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life, property, or the conduct of business.

Section 81–1505(1) of the Nebraska Revised Statutes authorizes the Nebraska Environmental Quality Council (EQC) to adopt and promulgate rules which set air standards that will protect public health and welfare. The EQC is also authorized to classify air contaminant sources according to levels and types of discharges, emissions or other characteristics.

The 2008 Pb NAAQS specified in 40 CFR Part 50.16(a) was proposed and adopted into Nebraska title 129 chapter 4, section *006* of the Nebraska Administrative Code, by the EQC on June 20, 2013, with an effective date of December 9, 2013. Therefore, Pb is an air contaminant which may be regulated under Nebraska law.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that the Nebraska SIP adequately addresses the requirements of section 110(a)(2)(A) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011, SIP submission.

(B) Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collection and analysis of ambient air quality data, and making these data available to EPA upon request.

To address this element, section 81–1505(12)(o) of the Nebraska Revised Statutes provides the enabling authority necessary for Nebraska to fulfill the requirements of Section 110(a)(2)(B). This provision gives the EQC the authority to promulgate rules and regulations concerning the monitoring of emissions. The Air Quality Division within NDEQ implements these requirements. Along with their other duties, the monitoring program within NDEQ's Air Compliance and Enforcement Program collects air monitoring data, quality assures the results, and reports the data.

In accordance with the requirements of 40 CFR part 58 appendix D, section 4.5(b), Nebraska operates a lead monitor at its NCore monitoring site in Omaha. Based on the requirements of the 2008 Pb NAAQS (73 FR 66964, November 12, 2008) and the ''Revisions to Lead Ambient Monitoring Requirements,'' (75 FR 81126, December 27, 2010), Nebraska operates two source-oriented Pb monitors at sources that reported Pb emissions of more than 0.5 tons per year (tpy); one in Fremont and a second in Auburn, Nebraska.

NDEQ submits annual monitoring network plans to EPA for approval, including plans for its Pb monitoring network, as required by 40 CFR 58.10. Prior to submission to EPA, Nebraska makes the plans available for public review on NDEQ's Web site. See, *http://deq.ne.gov/Publica.nsf/Pubs_Air_Amb.xsp,* for NDEQ's 2013 Ambient Air Monitoring Network Plan. This Plan includes, among other things, the locations for the Pb monitoring network. On December 23, 2013, EPA approved Nebraska's 2013 ambient air network monitoring plan. NDEQ also conducts five-year monitoring network assessments, including the Pb monitoring network, as required by 40 CFR 58.10(d). Title 129, chapter 4, section *006* of the NAC requires that attainment with the Pb standard be determined in accordance with the applicable Federal regulations in 40 CFR part 50, appendix R. Nebraska submits air quality data to EPA's Air Quality System (AQS) quarterly, pursuant to the provisions of work plans developed in conjunction with EPA grants to the state.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that the Nebraska SIP meets the requirements of section 110(a)(2)(B) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011 submission.

(C) Program for enforcement of control measures (PSD, New Source Review for nonattainment areas, and construction and modification of all stationary sources): Section 110(a)(2)(C) requires states to include the following three elements in the SIP: (1) A program providing for enforcement of all SIP measures described in section 110(a)(2)(A); (2) a program for the regulation of the modification and construction of stationary sources as necessary to protect the applicable NAAQS (i.e., state-wide permitting of minor sources); and (3) a permit program to meet the major source permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question).[18]

(1) *Enforcement of SIP Measures.* With respect to enforcement of requirements of the SIP, the Nebraska statutes provide authority to enforce the requirements of Section 81–1504(1) of the Nebraska Revised Statutes provide authority for NDEQ to enforce the requirements of the Nebraska Environmental Protection Act, and any regulations, permits, or final compliance orders issued under the provisions of that law. In addition, section 81–1504(7) authorizes NDEQ to issue orders

[17] The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2008 Pb NAAQS. Those SIP provisions are due as part of each state's attainment plan, and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

[18] As discussed previously, this infrastructure SIP rulemaking will not address the Nebraska program for nonattainment area related provisions, since EPA considers evaluation of these provisions to be outside the scope of infrastructure SIP actions.

prohibiting or abating discharges of waste into the air and requiring the modification, extension or adoption of remedial measures to prevent, control, or abate air pollution. Section 81–1507 authorizes NDEQ to commence an enforcement action for any violations of the Environmental Protection Act, any rules or regulations promulgated thereunder, or any orders issued by NDEQ. This enforcement action can not only seek civil penalties, but also require that the recipient take corrective action to address the violation. *See* Section 81–1507(1) and 81–1508.02. Section 81–1508.01 provides for criminal penalties for knowing or willful violations of the statute, regulations or permit conditions, in addition to other acts described in that section.

(2) *Minor New Source Review.* Section 110(a)(2)(C) also requires that the SIP include measures to regulate construction and modification of stationary sources to protect the NAAQS. With respect to smaller state-wide minor sources (Nebraska's major source permitting program is discussed in (3) below), Nebraska has a program under Title 129, Chapter 17 of the NAC that requires such sources to first obtain a construction permit from NDEQ. The permitting process is designed to ensure that new and modified sources will not interfere with NAAQS attainment. NDEQ has the authority to require the source applying for the permit to undergo an air quality impact analysis. If NDEQ determines that emissions from a constructed or modified source interfere with attainment of the NAAQS, it may deny the permit until the source makes the necessary changes to obviate the objections to the permit issuance. *See* Chapter 17, sections *008* and *009* of the NAC.

EPA has determined that Nebraska's minor new source review (NSR) program adopted pursuant to section 110(a)(2)(C) of the Act regulates emissions of NAAQS pollutants. EPA has also determined that certain provisions of the state's minor NSR program adopted pursuant to section 110(a)(2)(C) of the Act likely do not meet all the requirements found in EPA's regulations implementing that provision. *See* 40 CFR 51.160–51.164. EPA previously approved Nebraska's minor NSR program into the SIP, and at the time there was no objection to the provisions of this program. *See* 37 FR 10842 (May 31, 1972) and 60 FR 372 (January 4, 1995). Since then, the state and EPA have relied on the existing state minor NSR program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is approving Nebraska's infrastructure SIP for the 2008 Pb standard with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. In this action, EPA is not proposing to approve or disapprove the state's existing minor NSR program to the extent that it is inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs in order for EPA to approve the infrastructure SIP for element (C) (*e.g.,* 76 FR 41076–41079).

(3) *Prevention of Significant Deterioration (PSD) permit program.* Nebraska also has a program approved by EPA as meeting the requirements of part C, relating to prevention of significant deterioration of air quality. In order to demonstrate that Nebraska has met this sub-element, this PSD program must cover requirements not just for the 2008 Pb NAAQS, but for all other regulated NSR pollutants as well. As stated in the October 14, 2011, Pb Infrastructure SIP guidance, EPA has not proposed to amend the PSD regulations with regard to the Pb NAAQS because it believes that, generally, there is sufficient guidance and regulations already in place to fully implement the revised Pb NAAQS.

Nebraska's implementing rule, title 129, chapter 19, incorporates the relevant portions of the Federal rule, 40 CFR 52.21 by reference. In this action, EPA is not proposing to approve or disapprove any state rules with regard to NSR reform requirements. EPA will act on NSR reform submittals through a separate rulemaking process. For Nebraska, we have previously approved Nebraska's NSR reform rules for attainment areas, *see* 76 FR 15852, March 22, 2011.

The Nebraska SIP also contains a permitting program for major sources and modifications in nonattainment areas (see title 129, chapter 17, section *013*). This section is currently not applicable to Nebraska because all areas of Nebraska are currently in attainment with the NAAQS. Even if it were applicable, the SIP's discussion of nonattainment areas is not addressed in this rulemaking (see discussion of the section 110(a)(2)(I) requirements for nonattainment areas, below).

With respect to the PSD program, title 129, chapter 19, of the NAC provides for the permitting of construction of a new major stationary source or a major modification of an existing major stationary source. Further, chapter 19, section *010* of the NAC establishes threshold emissions for establishing whether the construction project is a major source of regulated NSR pollutants, including but not limited to Pb.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, with respect to the requirements of section 110(a)(2)(C) for the 2008 Pb NAAQS, EPA is approving this element of the October 18, 2011, submission.

(D) Interstate and international transport: Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); Prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II). Section 110(a)(2)(D)(i)(I) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of any NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include adequate provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality or to protect visibility.

With respect to prongs 1 and 2, the physical properties of Pb prevent Pb emissions from experiencing a significant degree of travel in the ambient air. No complex chemistry is needed to form Pb or Pb compounds in the ambient air; therefore, concentrations of Pb are typically highest near Pb sources. More specifically, there is a sharp decrease in Pb concentrations as the distance from the source increases. According to EPA's report entitled *Our Nation's Air: Status and Trends Through 2010,* Pb concentrations that are not near a source of Pb are approximately 8 times less than the typical concentrations near the source (*http://www.epa.gov/airtrends/2011/report/fullreport.pdf*). EPA believes that the requirements of prongs 1 and 2 can be satisfied through a state's assessment as to whether a lead source located within its state in close proximity to a state border has emissions that contribute significantly to the nonattainment in or interfere with

maintenance of the NAAQS in the neighboring state. Nebraska has no designated nonattainment areas for the 2008 Pb NAAQS, nor does it have any sources of Pb emissions over 0.5 tons per year that might have a potential impact on any other state. Monitoring indicates that there are no NAAQS violations. Further, since the facilities in Nebraska are not close in proximity to the state border transport is not a significant concern.

With respect to the PSD requirements of section 110(a)(2)(D)(i)(II)—prong 3, EPA notes that Nebraska's satisfaction of the applicable infrastructure SIP PSD requirements for attainment/unclassifiable areas of the 2008 Pb NAAQS have been detailed in the section addressing section 110(a)(2)(C). As discussed above for element (C)(3), EPA has previously approved Nebraska's NSR reform rules for attainment areas, and, as previously stated, Nebraska currently has no nonattainment areas (*See* 76 FR 15852, March 22, 2011). EPA also notes that the proposed action in that section related to PSD is consistent with the proposed approval related to PSD for section 110(a)(2)(D)(i)(II).

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II)—prong 4, significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source and most, if not all, Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, Pb generally comprises a small fraction of coarse and fine particles. Furthermore, when evaluating the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less than 0.10%).[19]

Section 110 (a)(2)(D)(ii) also requires that the SIP ensure compliance with the applicable requirements of sections 126 and 115 of the CAA, relating to interstate and international pollution abatement, respectively.

Section 126(a) of the CAA requires new or modified sources to notify neighboring states of potential impacts from sources within the state. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from sources within the state. Although Nebraska sources have not been identified by EPA as having any interstate or international impacts under section 126 or section 115 in any pending actions relating to the 2008 Pb NAAQS, the Nebraska regulations address abatement of the effects of interstate pollution. Title 129, chapter 14, section *010.03* of the NAC requires NDEQ, after receiving a complete PSD permit application, to notify EPA, as well as officials and agencies having cognizance where the proposed construction is to occur. This includes state or local air pollution control agencies and the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification. Finally, we believe that Nebraska could use the same statutory authorities previously discussed, primarily section 81–1505 of the Nebraska Revised Statutes, to respond to any future findings with respect to the 2008 Pb NAAQS.

Section 115 of the CAA authorizes EPA to require a state to revise its SIP under certain conditions to alleviate international transport into another country. There are no final findings under section 115 of the CAA against Nebraska with respect to any air pollutant. Thus, the state's SIP does not need to include any provisions to meet the requirements of section 115.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that Nebraska has the adequate infrastructure needed to address sections 110(a)(2)(D)(i)—Prongs 1 through 4 and 110(a)(2)(D)(ii) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011, submission.

(E) Adequate authority, resources, implementation, and oversight: Section 110(a)(2)(E) requires that SIPs provide for the following: (1) necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements that the state comply with the requirements relating to state boards, pursuant to section 128 of the CAA; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan.

(1) Section 110(a)(2)(E)(i) requires states to establish that they have adequate personnel, funding and authority. With respect to adequate authority, we have previously discussed Nebraska's statutory and regulatory authority to implement the 2008 Pb NAAQS, primarily in the discussion of section 110(a)(2)(A) above. Neither Nebraska nor EPA has identified any legal impediments in the state's SIP to implementation of the NAAQS.

With respect to adequate resources, NDEQ asserts that it has adequate personnel to implement the SIP. State statutes provide NDEQ the authority to establish bureaus, divisions and/or sections to carry out the duties and powers granted by the Nebraska state law to address the control of air pollution, to be administered by full-time salaried, bureau, division or section chiefs. See Nebraska Revised Statutes section 81–1504(14). NDEQ's Air Quality Division is currently divided into the Permitting Section, the Compliance Section, and the Program Planning and Development Unit.

With respect to funding, the Nebraska statutes require the EQC to establish various fees for sources, in order to fund the reasonable costs of implementing various air pollution control programs. For example, section 81–1505(12)(e) of the Nebraska Revised Statutes requires the EQC to establish a requirement for sources to pay fees sufficient to pay the reasonable direct and indirect costs of developing and administering the air quality operating permit program. These costs include overhead charges for personnel, equipment, buildings and vehicles; enforcement costs; costs of emissions and ambient monitoring; and modeling analyses and demonstrations. See Nebraska Revised Statutes section 81–1505.04(2)(b). Similarly, section 81–1505(12)(a) requires the EQC to establish application fees for air contaminant sources seeking to obtain a permit prior to construction.

Section 81–1505.05 of the Nebraska Revised Statutes provides that all fees collected pursuant to section 81–1505.04 be credited to the ''Clean Air Title V Cash Fund'' to be used solely to pay for the direct and indirect costs required to develop and administer the air quality permit program. Similarly, section 81–1505.06 provides that all fees collected pursuant to section 81–1505(12) be deposited in the ''Air Quality Permit Cash Fund.''

Nebraska uses funds in the non-Title V subaccounts, along with General Revenue funds and EPA grants under, for example, sections 103 and 105 of the

[19] Analysis by Mark Schmidt, OAQPS, ''Ambient Pb's Contribution to Class I Area Visibility Impairment,'' June 17, 2011.

Act, to fund the programs. EPA conducts periodic program reviews to ensure that the state has adequate resources and funding to, among others, implement the SIP.

(2) Conflict of interest provisions—Section 128.

Section 110(a)(2)(E)(ii) requires that each state SIP meet the requirements of section 128 relating to potential conflicts of interest of certain boards, bodies, and personnel involved in approving permits or enforcement orders. Section 128(a)(1) requires that any board or body which approves permits or enforcement orders under the CAA must have at least a majority of members who represent the public interest and do not derive any ''significant portion'' of their income from persons subject to permits and enforcement orders under the CAA. Section 128(a)(2) requires that members of such a board or body, or the head of an agency with similar powers, adequately disclose any potential conflicts of interest.

In 1978, EPA issued a guidance memorandum recommending ways that states could meet the requirements of section 128, including suggested interpretations of certain terms in section 128.[20] EPA has not issued further guidance or regulations of general applicability on the subject since that time. However, EPA has recently proposed certain interpretations of section 128 as part of its actions on other infrastructure SIPs consistent with the statutory requirements (*see, e.g.,* (77 FR 44555, July 30, 2012) and (77 FR 66398, November 5, 2012)). We are now proposing these same interpretations in relation to the Nebraska SIP.

On August 22, 2013, Nebraska included statute and rule that addresses section 128 as part of its 2010 SO_2 NAAQS infrastructure SIP. On March 11, 2014, Nebraska clarified its intent that these provisions be approved by EPA as part of Nebraska's SIP for purposes of section 128.[21] These provisions include section 49–1493(13) of the Nebraska Revised Statutes and title 4, chapter 2 of the Nebraska Administrative Code. In today's action, we are approving Nebraska's August 22, 2013, submission related to sections 110(a)(2)(E)(ii) and 128 of the CAA.

EPA's analysis consisted of a review of Nebraska's August 22, 2013, SO_2 NAAQS infrastructure SIP submission, and EPA's additional review of Nebraska's statutes and authorities. Nebraska concluded that section 128 (a)(1) is not an applicable requirement in Nebraska because the EQC is not a board of body that approves permits or enforcement orders. EPA confirms that section 81–1503(7) of the ''Nebraska Environmental Protection Act'' does not grant the EQC the authority to approve permits or enforcement orders. Therefore, EPA believes that the requirements of section 128 (a)(1) do not apply to Nebraska.

To satisfy section 128(a)(2) of the CAA, Nebraska submitted to EPA section 49–1493(13) of the Nebraska Revised Statutes and title 4, chapter 2 of the Nebraska Administrative Code. Section 49–1493(13) of the Nebraska Revised Statutes requires certain officials or employees of Nebraska who are responsible for taking or recommending official actions of a non-ministeraial nature to file a statement of financial interest on an annual basis. Nebraska Administrative Code title 4, chapter 2 designates public officials and employees who are required to file Statements of Financial Interests with the Nebraska Accountability and Disclosure Commission, and includes the Director of NDEQ, the Deputy Directors of NDEQ, and the Air Quality Division Administrator of the NDEQ. Consistent with the requirements of section 128(a)(2), EPA infers from Nebraska's August 22, 2013, SO_2 NAAQS infrastructure submission that NDEQ's Director, Deputy Directors, and Air Quality Division Administrator approve permits or enforcement orders and must therefore adequately disclose any potential conflicts of interest by filing an annual statement of financial interest pursuant to section 49–1493(13) and title 4, chapter 2 of the Nebraska Administrative Code.

Both section 49–1493 of the Nebraska Revised Statutes and title 4, chapter 2 of the Nebraska Administrative Code reference section 49–1496 of the Nebraska Revised Statutes, which requires disclosure of any association with any business, entitles for which the person served as a trustee, and any income over one thousand dollars from a person or government body, with certain exceptions. In addition, section 49–1496 also requires disclosure of any ownership interest that exceeds one thousand dollars of certain real property, accounts, investments and other property owned or held for the production of income. Section 49–1496 also requires disclosure of loans in excess of one thousand dollars and gifts in excess of one hundred dollars. Thus, Nebraska law requires the disclosure of any potential conflicts of interest by the head of an executive agency responsible for approving permits or enforcement orders (*i.e.,* NEDQ's Director, Deputy Directors, and Air Quality Division Administrator).

EPA believes that section 49–1493(13) of the Nebraska Revised Statutes and title 4 chapter 2 of the Nebraska Administrative Code address the requirements of section 128(a)(2) of the CAA, and we are therefore approving those provisions into the Nebraska SIP with respect to the conflict of interest requirements of section 128 of the CAA.

(3) With respect to assurances that the state has responsibility to implement the SIP adequately when it authorizes local or other agencies to carry out portions of the plan, section 81–1504(18) of the Nebraska Revised Statutes grants NDEQ the authority to encourage local units of government to handle air pollution problems within their own jurisdictions. NDEQ may delegate, by contract with governmental subdivisions which have adopted air pollution control programs, the enforcement of state-adopted air pollution control regulations within a specified region surrounding the jurisdictional area of the governmental subdivision. *See* section 81–1504(23). However, the Nebraska statutes also retain authority in NDEQ to carry out the provisions of state air pollution control law. Section 81–1504(1) gives NDEQ ''exclusive general supervision'' of the administration and enforcement of the Nebraska Environmental Protection Act. In addition, section 81–1504(4) designates NDEQ as the air pollution control agency for the purposes of the CAA.

The State of Nebraska relies on two local agencies for assistance in implementing portions of the air pollution control program: Lincoln/Lancaster County Health Department and Omaha Air Quality Control. NDEQ oversees the activities of these local agencies to ensure adequate implementation of the plan. NDEQ utilizes subgrants to the local agencies to provide adequate funding, and as an oversight mechanism. EPA conducts reviews of the local program activities in conjunction with its oversight of the state program.

Based upon review of the state's infrastructure SIP submission for the

[20] *See* Memorandum from David O. Bickart to Regional Air Directors, ''Guidance to States for Meeting Conflict of Interest Requirements of Section 128,'' Suggested Definitions, March 2, 1978.

[21] Included in Nebraska's March 11, 2014 email to EPA was a request that Title 116 of the Nebraska Administrative Code be approved into the SIP as a clarification to the 2010 SO_2 NAAQS infrastructure SIP, to the extent it is deemed approvable by EPA. EPA has determined that the provisions that Nebraska submitted on August 22, 2013, as part of its 2010 SO_2 NAAQS infrastructure SIP are sufficient for purposes of the disclosure requirements of Section 128(a)(2), and is therefore not addressing Title 116 of the Nebraska Administrative Code in today's action.

2008 Pb NAAQS and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that Nebraska has the adequate infrastructure needed to address section 110(a)(2)(E) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011 submission.

(F) Stationary source monitoring system: Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. Each SIP shall require 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. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and requires that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

To address this element, section 81–1505(12)(o) of the Nebraska Revised Statutes gives the EQC the authority to promulgate rules and regulations for air pollution control, including requirements for owner or operator testing and monitoring of emissions. It also gives the EQC the authority to promulgate similar rules and regulations for the periodic reporting of these emissions. *See* section 81–1505(12)(l). Title 129 chapter 34, section *002* of the NAC incorporates various EPA reference methods for testing source emissions, including methods for Pb. Title 129, chapter 34 section *002.02.* The Federal test methods are in 40 CFR part 60, appendix A.

The Nebraska regulations also require that all Class I and Class II operating permits include requirements for monitoring of emissions. *See* title 129, chapter 8, sections *004.01* and *015* of the NAC. Furthermore, title 129, chapter 34, section *001* of the NAC allows NDEQ to order an emissions source to make or have tests made to determine the rate of contaminant emissions from the source whenever NDEQ has reason to believe that the existing emissions from the source exceed the applicable emissions limits.

The Nebraska regulations also impose reporting requirements on sources subject to permitting requirements. *See* title 129, chapter 6, section *001;* chapter 8, sections *004.03* and *015* of the NAC. Nebraska makes all monitoring reports submitted as part of Class I or Class II permit a publicly available document. Although sources can submit a claim of confidentiality for some of the information submitted, Nebraska regulations specifically exclude emissions data from being entitled to confidential protection. See title 129, chapter 7, section *004* of the NAC. Nebraska uses this information to track progress towards maintaining the NAAQS, developing control and maintenance strategies, identifying sources and general emission levels, and determining compliance with emission regulations and additional EPA requirements.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that Nebraska has the adequate infrastructure needed to address section 110(a)(2)(F) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011, submission.

(G) Emergency authority: Section 110(a)(2)(G) requires SIPs to provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment (comparable to the authorities provided in section 303 of the CAA), and to include contingency plans to implement such authorities as necessary.

Section 81–1507(4) of the Nebraska Revised Statutes states that whenever the Director of NDEQ finds that an emergency exists requiring immediate action to protect the public health and welfare, he or she may issue an order requiring that such action be taken as the Director deems necessary to meet the emergency. Title 129, chapter 38, section *003* of the NAC states that the conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency exist whenever the Director determines that the accumulation of air pollutants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to the health of persons. This regulation also establishes action levels for various air pollutants. The action levels (which include ''Air Pollution Alert,'' ''Air Pollution Warning,'' and ''Air Pollution Emergency'') and associated contingency measures vary depending on the severity of the concentrations. Appendix I to title 129 of the NAC provides an Emergency Response Plan with actions to be taken under each of the severity levels. These steps are designed to prevent the excessive build-up of air pollutants to concentrations which can result in imminent and substantial danger to public health. Both the regulation at chapter 38 and the Emergency Response Plan are contained in the Federally approved SIP.

Based on EPA's experience to date with the Pb NAAQS and designated Pb nonattainment areas, EPA expects that an emergency event involving Pb would be unlikely, and if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, EPA believes that the central components of a contingency plan would be to reduce emissions from the source at issue (if necessary, by curtailing operations) and public communication as needed. EPA believes that Nebraska's statutes referenced above provide the requisite authority to NDEQ to address such situations.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in that submission or referenced in Nebraska's SIP, EPA believes that the Nebraska SIP adequately addresses section 110(a)(2)(G) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011, submission.

(H) Future SIP revisions: Section 110(a)(2)(H) requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

As discussed previously, section 81–1504 of the Nebraska Revised Statutes authorizes NDEQ to regulate air quality and implement air quality control regulations. It also authorizes NDEQ to act as the state air pollution control agency for all purposes of the CAA. Section 81–1505(1) gives the EQC the authority to adopt and promulgate rules which set air standards that will protect public health and welfare. This authority includes the authority to revise rules as necessary to respond to a revised NAAQS.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that Nebraska has adequate authority to address section 110(a)(2)(H) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011, submission.

(I) Nonattainment areas: Section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas

designated as nonattainment areas, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas.

As noted earlier, EPA does not expect infrastructure SIP submissions to address subsection (I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will take action on part D attainment plan SIP submissions through a separate rulemaking governed by the requirements for nonattainment areas, as described in part D.

(J) Consultation with government officials, public notification, PSD and visibility protection: Section 110(a)(2)(J) requires SIPs to meet the applicable requirements of the following CAA provisions: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; and (3) part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection.

(1) With respect to interagency consultation, the SIP should provide a process for consultation with general-purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager having authority over Federal land to which the SIP applies. Section 81–1504(3) authorizes NDEQ to advise and consult and cooperate with other Nebraska state agencies, the Federal government, other states, interstate agencies, and with affected political subdivisions, for the purpose of implementing its air pollution control responsibilities. Nebraska also has appropriate interagency consultation provisions in its preconstruction permit program. *See, e.g.,* title 129, chapter 14 section *010* of the NAC (requiring NDEQ to send a copy of a notice of public comment on construction permit applications to any state or local air pollution control agency; the chief executives of the city and county in which the source would be located; any comprehensive regional land use planning agency; and any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification).

(2) With respect to the requirements for public notification in CAA section 127, title 129 chapter 38 of the NAC, discussed previously in connection with the state's authority to address emergency episodes, contains provisions for public notification of elevated ozone and other air pollutant levels. Appendix I to title 129 of the NAC includes measures which can be taken by the public to reduce concentrations. In addition, information regarding air pollution and related issues, is provided on an NDEQ Web site, *http://www.deq.state.ne.us/NDEQSite.nsf/AirDivSecProg?OpenView&Start=1&ExpandView&Count=500.* NDEQ also prepares an annual report on air quality in the state which is available to the public on its Web site, at *http://www.deq.state.ne.us/Publica.nsf/c4afc76e4e077e11862568770059b73f/a12a5ada6cce1c1686257a47004e0633!OpenDocument.*

(3) With respect to the applicable requirements of part C, relating to prevention of significant deterioration of air quality and visibility protection, we previously noted in the discussion of section 110(a)(2)(C) (relating to enforcement of control measures) how the Nebraska SIP meets the PSD requirements, incorporating the Federal rule by reference. With respect to the visibility component of section 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to element J after the promulgation of a new or revised NAAQS.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that Nebraska has met the applicable requirements of section 110(a)(2)(J) for the 2008 Pb NAAQS in the state and is therefore approving this element of the October 18, 2011, submission.

(K) Air quality and modeling/data: Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

Nebraska has authority to conduct air quality modeling and report the results of such modeling to EPA. Section 81–1504(5) provides NDEQ with the authority to encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air pollution and its causes and effects. As an example of regulatory authority to perform modeling for purposes of determining NAAQS compliance, the regulations at title 129, chapter 19, section *019* provide for the use of EPA-approved air quality models (e.g., those found in 40 CFR part 51, appendix W) for PSD construction permitting. If the use of these models is inappropriate, the model may be modified or an alternate model may be used with the approval of NDEQ and EPA.

The Nebraska regulations also give NDEQ the authority to require that modeling data be submitted for analysis. Title 129, chapter 19, section *021.02* states that upon request by NDEQ, the owner or operator of a proposed source or modification must provide information on the air quality impact of the source or modification, including all meteorological and topographical data necessary to estimate such impact.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that Nebraska has the adequate infrastructure needed to address section 110(a)(2)(K) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011, submission.

(L) Permitting Fees: Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to title V of the CAA, relating to operating permits, is approved by EPA.

Section 81–1505 of the Nebraska Revised States provides authority for NDEQ to collect permit fees, including title V fees. For example, section 81–1505(12)(e) requires that the EQC establish fees sufficient to pay the reasonable direct and indirect of developing and administering the air quality permit program. Nebraska's title V program, including the fee program addressing the requirements of the Act and 40 CFR 70.9 relating to title V fees, was approved by EPA on October 18, 1995 (60 FR 53872).

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that requirements of section 110(a)(2)(L) are met and is approving this element of the October 18, 2011, submission.

(M) Consultation/participation by affected local entities: Section 110(a)(2)(M) requires SIPs to provide for consultation and participation by local political subdivisions affected by the SIP.

Section 81–1504(5) of the Nebraska Revised Statutes gives NDEQ the authority to encourage local governments to handle air pollution problems within their respective jurisdictions and at the same time provide them with technical and consultative assistance. NDEQ is also authorized to delegate the enforcement of air pollution control regulations down to governmental subdivisions which have adopted air pollution control programs. As discussed previously, NDEQ currently relies on two local agencies for assistance in implementing portions of the air pollution control program: Lincoln/Lancaster County Health Department and Omaha Air Quality Control.

In addition, as previously noted in the discussion about section 110(a)(2)(J), Nebraska's statutes and regulations require that NDEQ consult with local political subdivisions for the purposes of carrying out its air pollution control responsibilities.

Based upon review of the state's infrastructure SIP submission for the 2008 Pb NAAQS, and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in Nebraska's SIP, EPA believes that Nebraska has the adequate infrastructure needed to address section 110(a)(2)(M) for the 2008 Pb NAAQS and is approving this element of the October 18, 2011, submission.

V. What action is EPA taking?

EPA is approving the October 18, 2011, infrastructure SIP submission from Nebraska which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb NAAQS. Specifically, EPA is approving the following infrastructure elements, or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). As discussed in each applicable section of this rulemaking, EPA is not taking action on section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions under part D and on the visibility protection portion of section 110(a)(2)(J).

Based upon review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in those submissions or referenced in Nebraska's SIP, EPA believes that Nebraska has the infrastructure to address all applicable required elements of sections 110(a)(1) and (2) (except otherwise noted to ensure that the 2008 Pb NAAQS are implemented in the state.

At the same time EPA is approving Nebraska's March 11, 2014 request to include conflict of interest provisions into the Nebraska SIP.

This direct final rule will be effective December 22, 2014 without further notice, unless EPA receives adverse comment by November 20, 2014.

In the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on the rule, see the **ADDRESSES** section of this document.

VI. Statutory and Executive Order Review

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) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- 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.

Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2014.

Rebecca Weber,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below:

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 CC—Nebraska

■ 2. In § 52.1420, the table in paragraph (e) is amended by adding new entries

(26) and (27) in numerical order at the end of the table to read as follows:

§ 52.1420 Identification of Plan.

(e) * * *

* * * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*		* *	* *
(26) Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.	Statewide	10/18/11	10/21/14 *[Insert **Federal Register** citation].*	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
(27) Section 128 Declaration: Nebraska Department of Environmental Quality Representation and Conflicts of Interest Provisions, Section 49–1493(13) of the NE Political Accountability and Disclosure Act and Chapter 2 of Title 4, NE Accountability and Disclosure Commission.	Statewide	8/22/13	10/21/14 *[Insert **Federal Register** citation].*	This declaration is contained within Nebraska's 2010 Sulfur Dioxide NAAQS Infrastructure SIP submission concerning Section 110(a)(2)(E) of the CAA.

[FR Doc. 2014–24899 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0687; FRL–9918–17–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Restriction of Emissions of Particulate Matter From Industrial Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Missouri on May 8, 2012, and October 17, 2013, related to a Missouri rule titled ''Restriction of Emission of Particulate Matter from Industrial Processes.'' This action amends the SIP in four ways. The first is it updates an outdated reference in the current SIP approved rule. Second, it provides a hierarchy of compliance measurement approaches for Particulate Matter (PM) emissions from industrial processes. Third, it provides a clarification on applicability of the provisions. And fourth, it deletes redundant definitions.

DATES: This direct final rule will be effective December 22, 2014, without further notice, unless EPA receives adverse comment by November 20, 2014. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0687, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: gonzalez.larry@epa.gov.*
3. *Mail or Hand Delivery:* Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0687. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at

913–551–7041 or by email at *gonzalez.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

EPA is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Missouri on May 8, 2012, and October 17, 2013, related to a Missouri rule titled ''Restriction of Emission of Particulate Matter from Industrial Processes'' 10 CSR 10–6.400. This action amends the SIP to update an outdated reference in the rule, provides a hierarchy of measurement approaches used for compliance, clarifies the applicability of the rule, and deletes redundant definitions found in the rule.

Today's action completes four administrative actions. First, it approves into the SIP the update to rule 10 CSR 10–6.400 so that it references the new consolidated rule 10 CSR 10–6.405 ''Restriction of Particulate Matter Emissions From Fuel Burning Equipment Used For Indirect Heating.'' This action follows an earlier action EPA took on September 13, 2012, to amend the Missouri SIP which rescinded area-specific indirect heating rules, 10 CSR 10–2.040, 10–3.060, 10–4.040, and 10–5.030 and added a new rule, 10 CSR 10–6.405 which consolidated the area rules into a single rule (see 76 FR 56555). Second, it amends the test methods section to add a hierarchy of emission measurement approaches used for compliance testing—a revision requested by EPA that has been used in other Missouri rules. Third, it explicitly clarifies that the rule provisions are only applicable to the ''filterable'' particulate matter. And, fourth, it eliminates definitions in the rule 10 CSR 10.6.400 that are also found at 10 CSR 10–6.020 ''Definitions and Common Reference Tables.''

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is taking direct final action to approve this SIP revision. We are publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve this SIP revision, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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).
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule

and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 24, 2014.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below:

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 AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry under ''Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri'' for ''10–6.400'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.400	Restrictions of Emission of Particulate Matter from Industrial Processes.	06/27/13	10/21/14 [Insert **Federal Register** citation].	
*	*	*	*	*

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[FR Doc. 2014–24760 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0711; FRL–9917–81–Region 9]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the applicable state implementation plan for the State of Nevada submitted by the Nevada Division of Environmental Protection. The revisions include amended State rules related to applications for, and issuance of, permits for stationary sources, but not including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. EPA is taking action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect of the approval is to fix deficiencies in the previously-approved version of the permitting rules and to ensure that new or modified stationary sources do not interfere with attainment or maintenance of the national ambient air quality standards.

DATES: This rule is effective on December 22, 2014 without further notice, unless EPA receives adverse comments by November 20, 2014. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0711, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: R9airpermits@epa.gov.*

3. *Mail or deliver:* Laura Yannayon (AIR–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy

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

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, 75 Hawthorne Street (AIR–3), San Francisco, CA 94105, phone number (415) 972–3534 or by email at *yannayon.laura@epa.gov.*

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

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I. The State's Submittals

A. Which rules did the State submit?

On January 3, 2014, the Nevada Division of Environmental Protection (NDEP) submitted a revision to the Nevada State Implementation Plan (SIP) to EPA for approval under section 110(k) of the Clean Air Act (CAA or ''Act''). NDEP's submittal includes certain amended State rules [i.e., certain sections of Nevada Administrative Code (NAC)] that relate to applications for, and issuance of, permits for stationary sources [a process referred to herein as ''New Source Review'' (NSR)].[1] The specific amended rules submitted on January 3, 2014 are NAC sections 445B.22097 (''Standards of quality for ambient air'') and 445B.308 (''Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan'').[2] In addition to the amended rules, NDEP's January 3, 2014 submittal contains evidence of public notice and adoption of the amendments to the rules by the Nevada State Environmental Commission (SEC) on December 4, 2013, and a copy of the filing by the Legislative Counsel Bureau of the amended rules with the Nevada Secretary of State on December 23, 2013 making the amendments effective on that date.

On June 5, 2014, NDEP submitted a second SIP revision including further amendments to NAC section 445B.22097 (''Standards of quality for ambient air'') and amendments to NAC section 445B.311 (''Environmental evaluation: Contents; consideration of good engineering practice stack height''). We consider the June 5, 2014 submittal of NAC section 445B.22097 as superseding the submittal of that rule on January 3, 2014. NDEP's June 5, 2014 submittal includes a technical support document in which NDEP provides its explanation for how the amended rules meet CAA requirements. NDEP's June 5, 2014 submittal also contains evidence of public notice and adoption of the amendments to the rules by the Nevada SEC on May 2, 2014. On July 15, 2014, NDEP provided documentation that the most recent amendments to NAC sections 445B.22097 and 445B.311 were filed by the Legislative Counsel Bureau with the Nevada Secretary of State on June 23, 2014 and are thus in effect as of that date.

Table 1 below lists the rules that were submitted by NDEP on January 3, 2014 and June 5, 2014 and on which EPA is taking action today. The three submitted rules represent updated versions of rules already approved into the Nevada SIP. We last approved NAC section 445B.22097 at 71 FR 15040 (March 27, 2006), and last approved NAC sections 445B.308 and 445B.311 at 77 FR 59321 (September 27, 2012). Upon the effective date of today's final action, the versions of the rules that we previously approved will be superseded in the applicable SIP by the versions of the rules approved today.

TABLE 1—NSR RULES SUBMITTED BY NDEP

Submitted rule	Title	Amended date	Submittal date
NAC 445B.22097	Standards of quality for ambient air	05/02/14	06/05/14
NAC 445B.308	Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.	12/04/13	01/03/14
NAC 445B.311	Environmental evaluation: Contents; consideration of good engineering practice stack height.	05/02/14	06/05/14

B. What is the regulatory context?

Under sections 107 and 109 of the CAA, the EPA establishes national ambient air quality standards (NAAQS or standards) and designates all areas of the country as attainment, nonattainment, or unclassifiable for the various NAAQS. To date, EPA has established NAAQS for such pervasive pollutants as ozone, carbon monoxide, nitrogen dioxide (NO_2), sulfur dioxide (SO_2), particulate matter, and lead (Pb). With respect to particulate matter, EPA has established NAAQS for particulate matter with an aerodynamic diameter generally less than or equal to 10 microns (PM_{10}) and for particulate matter with an aerodynamic diameter generally less than or equal to 2.5 microns ($PM_{2.5}$). Under section 110 of the CAA, each state is required to develop a state implementation plan (SIP) to implement, maintain, and enforce the NAAQS.

Among the content requirements for SIPs is the requirement to develop and submit (for EPA approval) a program to provide for the regulation of the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, including a permit program as required in parts C and D of title I of the CAA. See CAA section 110(a)(2)(C). The permit programs required under parts C and D of title I of the CAA are referred to as

[1] We note that the stationary source permitting rules that are the subject of this rule are not related to the requirements for pre-construction review and permitting of major sources or major modifications under part C (''Prevention of Significant Deterioration of air quality'') or part D (''Plan requirements for nonattainment areas'') of title I of the Clean Air Act.

[2] By letter dated January 28, 2014, NDEP withdrew amended versions of NAC sections 445B.308 and 445B.311 that had been submitted on January 3, 2014 from EPA consideration as revisions to the Nevada SIP, but, by letter dated September 17, 2014, NDEP reinstated the January 3, 2014 submittal of NAC 445B.308.

the Prevention of Significant Deterioration (PSD) permit program and the Nonattainment New Source Review (NNSR) permit program, respectively. Collectively, the PSD and NNSR programs constitute a state's ''major source'' permit program, under which applications for construction and operation of new major stationary sources and major modifications of such sources are reviewed for compliance with the PSD and NNSR requirements. New or modified stationary sources that are not major sources or major modifications are referred to as minor sources (or minor modifications), and the program for review of the applications for construction and operation of such sources is referred to as the minor source permit program or ''minor NSR.'' Today's action relates to three rules promulgated by the Nevada SEC as part of the State of Nevada's minor NSR program, which is administered by NDEP. NDEP's stationary source jurisdiction extends statewide with respect to power plants which generate electricity by using steam produced by the burning of fossil fuel, but does not include Clark or Washoe counties with respect to all other stationary sources.

Over the years, the State of Nevada has adopted and implemented, and EPA has approved, rules governing minor NSR. Our most recent action on Nevada's minor source NSR rules was published on September 27, 2012 (77 FR 59321). In the September 27, 2012 final rule, we issued a limited approval and limited disapproval of a comprehensive update to the State's minor source NSR rules. We did so because, although we found that the new or amended rules met most of the applicable requirements for such NSR programs and that the rules improved the existing SIP, we also found certain deficiencies that prevented full approval. Specifically, we indicated that the minor NSR rules did not address the new or revised NAAQS for $PM_{2.5}$ and Pb and must be revised accordingly.[3] In addition, we recognized that EPA had recently established new or revised NAAQS for NO_2 and SO_2,[4] and while the State still had additional time to amend its NSR rules to address the revised NAAQS for these pollutants, we encouraged the Nevada SEC to make any necessary revisions to the State's NSR rules to address the revised NAAQS for those two pollutants as well, and the NDEP to submit the NSR rules, as revised, to us as a SIP revision.

C. What is the purpose of this direct final rule?

The Nevada SEC amended NAC section 445B.308 to eliminate an outdated provision and to renumber the paragraphs in the rule accordingly. The Nevada SEC amended NAC sections 445B.22097 and 445B.311 to ensure that the new or revised NAAQS for $PM_{2.5}$, Pb, NO_2 and SO_2 are taken into account in minor NSR permitting decisions. The Nevada SEC also updated NAC section 445B.22097 to reflect the most recent ozone NAAQS.[5] The purpose of this direct final rule is to present our evaluation under the CAA and EPA's regulations of the amended NSR rules submitted by NDEP on January 3, 2014 and June 5, 2014.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed the rules submitted on January 3, 2014 and June 5, 2014 for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a)(2), for compliance with applicable EPA regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.164, and also for compliance with CAA requirements for SIP revisions in CAA section 110(l).[6] As described below, EPA has found that the amended rules meet all applicable requirements and is thus taking direct final action to approve them as revisions to the Nevada SIP.

B. Do the rules meet the evaluation criteria?

As to procedural requirements for SIPs and SIP revisions, we find that, based on our review of the public participation documentation included in the January 3, 2014 and June 5, 2014 submittals, NDEP has provided sufficient evidence of public notice and opportunity for comment and hearing prior the adoption and submittal to EPA of the rules that are the subject of today's action.

As to the substantive requirements, we start with the amendments to NAC section 445B.308, which include deletion of a paragraph that had not been submitted as part of the Nevada SIP but had established NSR requirements for applicants for permits for certain new sources or modifications proposed to be located in ''basic'' ozone nonattainment areas. The deletion of NSR requirements for sources or modifications in ''basic'' ozone nonattainment areas is acceptable because there are no such areas in the State of Nevada, and given court precedent,[7] there will not likely be any such areas in Nevada in the future, and thus the provisions that have been deleted from NAC 445B.308 are not necessary to meet CAA requirements.

Second, we have considered the amendments to NAC sections 445B.22097 and 445B.311 in relation to 40 CFR 51.160(a), which requires, in connection with NSR, each SIP to set forth legally enforceable procedures that enable the State to determine whether the construction or modification of a stationary source will result in, among other impacts, interference with attainment or maintenance of the NAAQS. EPA regulations also require SIPs to include enforceable procedures under which the State agency responsible for final decision-making on NSR permits will prevent such construction or modification if it will interfere with attainment or maintenance of the NAAQS. See 40 CFR 51.160(b).

To address these requirements for minor stationary sources in the Nevada SIP, NAC sections 445B.310 and 445B.311 require permit applicants to prepare environmental evaluations that contain dispersion analyses showing the effect of the source on the quality of the

[3] In 1997 (62 FR 38652, July 18, 1997), EPA first established annual and 24-hour $PM_{2.5}$ NAAQS of 15 micrograms per cubic meter ($\mu g/m^3$) and 65 $\mu g/m^3$, respectively. In 2006 (71 FR 61144, October 17, 2006), EPA lowered the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$. For simplicity, we refer herein to the 1997 annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS collectively as the ''2006 $PM_{2.5}$ NAAQS.'' In 2008 (73 FR 66964, November 12, 2008), EPA lowered the Pb NAAQS to 0.15 $\mu g/m^3$, rolling 3-month average (referred to herein as the ''2008 Pb NAAQS'').

[4] In 2010 (75 FR 6474, February 9, 2010), EPA established a one-hour NO_2 NAAQS of 100 parts per billion (ppb), which is equivalent to 188 $\mu g/m^3$ (referred to herein as the ''2010 NO_2 NAAQS''). Also in 2010 (75 FR 35520, June 22, 2010), EPA established a one-hour SO_2 NAAQS of 75 ppb, which is equivalent to 196 $\mu g/m^3$ (referred to herein as the ''2010 SO_2 NAAQS'').

[5] In 2008 (73 FR 16436, March 27, 2008), EPA lowered the 8-hour ozone NAAQS to 0.075 parts per million (ppm) (referred to herein as the ''2008 ozone NAAQS'').

[6] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

[7] In *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) re'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review), the D.C. Circuit Court of Appeals vacated EPA's classification of certain nonattainment areas for the 1997 8-hour ozone NAAQS solely under subpart 1 of part D of title I of the CAA. In this context, subpart 1 areas refer to ''basic'' ozone nonattainment areas. Since the South Coast decision, EPA has replaced the subpart 1 (i.e., ''basic'') ozone classifications for the 1997 ozone NAAQS with subpart 2 classifications (e.g., ''marginal,'' moderate,'' or ''serious''). See 77 FR 28424 (May 14, 2012).

ambient air, and NAC section 445B.308 prohibits the issuance of a permit or revision for any stationary source if the Environmental Evaluation shows, or NDEP determines, that the stationary source will prevent the attainment and maintenance of the state or national ambient air quality standards, as established in NAC 445B.22097. Permit applicants are required to prepare and submit Environmental Evaluations for any new stationary source which emits, or has the potential to emit, greater than 25 tons per year (tpy) of a regulated air pollutant; and, with respect to modifications, the existing stationary source has the potential to emit greater than 25 tpy of a regulated air pollutant, and the proposed modification has the potential to emit greater than 10 tpy of a regulated air pollutant. See NAC section 445B.310.

NAC section 445B.22097 in turn lists the NAAQS and the Nevada ambient air quality standards (''Nevada standards''). With respect to the NAAQS, in our proposed rulemaking on the previous version of the minor NSR rules, 77 FR 38557, at 38563 (June 28, 2012), we noted that NAC section 445B.22097 had not been updated since 1991 and thus did not include the new, revised, or revoked NAAQS since that time. Moreover, we noted that NAC section 445B.22097 includes a note that states: ''The Director shall use the Nevada standards in considering whether to issue a permit for a stationary source and shall ensure that the stationary source will not cause the Nevada standards to be exceeded in areas where the general public has access.'' The Nevada standards were equal to the NAAQS (i.e., as of 1991) for those pollutants for which both Nevada and EPA have established ambient standards, but, because the Nevada standards did not reflect the changes in the NAAQS since 1991, reliance on them for permitting purposes did not ensure protection of the new or revised NAAQS established since then, such as the 2006 $PM_{2.5}$ NAAQS and the 2008 Pb NAAQS, as NDEP reviews permit applications for new or modified minor stationary sources.

Thus, in our September 27, 2012 final rule, we concluded that the NSR rules must be revised to ensure protection of the 2006 $PM_{2.5}$ and the 2008 Pb NAAQS. See 77 FR 59321, at 59325 (September 27, 2012). We also encouraged the Nevada SEC to update NAC section 445B.22097 to take into account the replacement of the 1-hour ozone NAAQS (0.12 ppm) with the 2008 ozone NAAQS, although we did not consider the failure to update the rule for ozone as a significant deficiency because, given the regional nature of ambient ozone concentrations, applicants for permits for new or modified minor stationary sources are typically not required to show, through dispersion modeling techniques, that the ozone precursor emissions from the source or modification would not violate the standard. See 77 FR 38557, at 38563 (June 28, 2012).

In response, the Nevada SEC updated the NAAQS and Nevada standards in NAC section 445B.22097 through amendments adopted on December 4, 2013 and May 2, 2014, to reflect the 2006 $PM_{2.5}$ NAAQS, the 2008 ozone NAAQS, and the 2008 Pb NAAQS.[8] As such, applicants of new stationary sources with potentials to emit more than 25 tpy of $PM_{2.5}$, or modifications of such sources with potential to emit more than 10 tpy of $PM_{2.5}$, must perform dispersion modeling to show the impact of the source or modification on ambient $PM_{2.5}$ concentrations.

In its June 5, 2014 SIP revision submittal, NDEP included a technical support document that provides an explanation of how the 25 tpy modeling threshold (10 tpy for modifications), as opposed to a lower threshold, ensure that new or modified sources do not interfere with attainment or maintenance of the $PM_{2.5}$ NAAQS. First, after noting that the entire State of Nevada is ''attainment/unclassifiable'' for the $PM_{2.5}$ NAAQS, NDEP describes the 25 tpy modeling threshold as protective of the NAAQS in that it has been set at one-quarter of the 100 tpy PSD major source threshold that applies to certain categories of sources (250 tpy is the major source threshold for other sources). In this regard, NDEP also notes that the modeling threshold for modifications (i.e., for sources with potentials to emit greater than 25 tpy) is 10 tpy, the same as EPA's PSD significant emission rate for $PM_{2.5}$ (see 40 CFR 51.166(b)(23)), which is presumed to be protective of the NAAQS. Second, NDEP provides a technical evaluation showing how three types of high-emitting stationary combustion sources (deemed ''worst-case'') would either trigger PSD permitting due to emissions of other criteria pollutants before reaching the 25 tpy $PM_{2.5}$ modeling threshold or would result (when emitting at 25 tpy) in concentrations that, together with background levels, would be well below the $PM_{2.5}$ NAAQS.[9] Third, NDEP documents the minor overall contribution of minor stationary sources (about 3% based on the 2011 NEI data) to the $PM_{2.5}$ emissions inventory for the State of Nevada.

We have reviewed the technical support document submitted with the June 5, 2014 SIP revision and agree with NDEP that the 25 tpy modeling threshold for $PM_{2.5}$ (and 10 tpy for modifications) is protective of the $PM_{2.5}$ NAAQS. In particular, we find the 25 tpy modeling threshold (10 tpy for modifications) sufficiently protective of the $PM_{2.5}$ NAAQS given the modeling results presented by NDEP, the low $PM_{2.5}$ background concentrations, and the ''unclassifiable/attainment'' designation for the entire State of Nevada for the $PM_{2.5}$ NAAQS (see 40 CFR 81.329). We conclude that implementation of the 25 tpy modeling threshold (10 tpy for modifications) will provide NDEP with sufficient information to determine whether new minor sources or minor modifications will interfere with attainment or maintenance of the $PM_{2.5}$ NAAQS and will thus allow NDEP to prevent the construction of such sources or modifications if the modeling analysis indicates that such interference would occur.[10]

The same holds true with respect to the new or modified sources of Pb and the 2008 Pb NAAQS, but for other reasons. With respect to Pb, the 25 tpy modeling threshold is significantly above the PSD significant emission rate of 0.6 tpy, but, unlike $PM_{2.5}$, oxides of nitrogen (NO_X), and SO_2, Pb is not a typical product of combustion given the removal or minimization of Pb in nearly all fuels, with the exception of aviation gasoline used in piston-powered aircraft. Thus, there are few remaining stationary sources of Pb, and of those that remain, such as lead smelters and battery recycling, Pb emissions are likely to exceed 25 tpy and thus would

[8] On December 14, 2012, the EPA Administrator signed a final rule that lowered the annual $PM_{2.5}$ NAAQS to 12.0 $\mu g/m^3$ (referred to herein as the ''2012 $PM_{2.5}$ NAAQS''). See 78 FR 3086 (January 15, 2013). Submittals by states of SIP revisions to address the 2012 $PM_{2.5}$ NAAQS, including revisions related to minor NSR, are not due until 2016.

[9] See the industrial boiler combusting residual oil and the reciprocating internal combustion engine (ICE) combusting natural gas scenarios for the first type of result, and the wood-fired boiler scenario for the second type of result, in NDEP's ''Technical Support Document for Nevada State Implementation Plan Revisions Addressing Minor Source Permitting Program.''

[10] We also note that Nevada law not only establishes the modeling threshold above which permit applicants of new sources or modifications must perform dispersion modeling but also provides NDEP with the authority to require applicants to submit ''any other information the Director determines is necessary to make an independent air quality impact assessment.'' NAC 445B.308(1). Such ''other information'' may include dispersion modeling beyond that otherwise required if necessary to determine whether a new source or modification would interfere with attainment or maintenance of the NAAQS.

be subject to dispersion modeling to determine whether the source would interfere with attainment or maintenance of the 2008 Pb NAAQS.

Lastly, in our September 27, 2014 final rule, we noted that the deadline for submittal of NSR SIP revisions addressing the 2010 NO_2 NAAQS and 2010 SO_2 NAAQS had not yet passed, but we encouraged the Nevada SEC to adopt and submit revised NSR rules to address these new NAAQS in a timely manner. To address these new NAAQS, the Nevada SEC adopted revisions to NAC 445B.22097 to update the NAAQS and Nevada standards listed in that rule to reflect the 2010 NO_2 and 2010 SO_2 NAAQS. Doing so has the effect of requiring applicants for sources or modifications with potentials to emit above certain levels to perform dispersion modeling to inform NDEP's determination of whether such sources or modifications would interfere with these new NAAQS. For the purposes of dispersion analyses for the 2010 NO_2 and 2010 SO_2 NAAQS, the Nevada SEC revised NAC 445B.311 to specify modeling thresholds of 40 tpy for both new sources and modifications. The 40 tpy is equivalent to the PSD significant emission rates for NO_X and SO_2, see 40 CFR 51.166(b)(23). Moreover, NDEP's technical support document shows that minor stationary sources contribute less than 3% and 6% to the State's total emissions inventory of NO_X and SO_2, respectively, and correctly identifies the entire State as ''attainment/unclassifiable'' for the 2010 NO_2 NAAQS.[11] In light of the designations and emissions inventory data, we agree with NDEP that use of the PSD significant emission rate is a reasonable threshold to distinguish sources and modifications that could potentially interfere with attainment or maintenance of the 2010 NO_2 or SO_2 NAAQS from those with de minimis effects, and will provide NDEP with sufficient information to determine whether new minor sources or minor modifications would interfere with the 2010 NO_2 and 2010 SO_2 NAAQS.

In summary, and for the reasons set forth above, we find that the State of Nevada has adequately addressed the previously-identified deficiencies in the minor source NSR rules and that the amended NSR rules meet the applicable requirements for NSR SIPs for all of the new or revised NAAQS for $PM_{2.5}$, Pb, SO_2 and NO_2, other than the 2012 $PM_{2.5}$ NAAQS for which NSR SIP revisions are not yet due.

III. Public Comment and Final Action

Pursuant to CAA section 110(k), and for the reasons provided above, EPA is taking direct final action to approve revisions to certain rules that relate to applications for, and issuance of, permits for stationary sources under the jurisdiction of the NDEP, excluding review and permitting of major sources and major modifications under parts C and D of title I of the CAA. Specifically, EPA is approving NAC section 445B.308, as amended on December 4, 2013, and NAC sections 445B.22097 and 445B.311, as amended on May 2, 2014, because we find that the revisions fix the deficiencies in the previously-approved versions of the rules and adequately provide for new source review for the new or revised NAAQS for NO_2 and SO_2.[12]

We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted revisions. If we receive adverse comments by November 20, 2014, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 22, 2014. This will incorporate the amended rules into the federally enforceable SIP.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and

[11] See 40 CFR 81.329. With respect to the 2010 SO_2 NAAQS, the EPA designated as nonattainment most areas in locations where existing monitoring data from 2009–2011 indicated violations of the NAAQS. See 78 FR 47191 (August 5, 2013). No such areas were designated within the State of Nevada. EPA has not completed the designation process for the 2010 SO_2 NAAQS for areas other than those designated on August 5, 2013.

[12] Upon the effective date of today's final action, the versions of the rules that we are approving today will supersede NAC section 445B.22097, as approved at 71 FR 15040 (March 27, 2006), and NAC sections 445B.308 and 445B.311, as approved at 77 FR 59321 (September 27, 2012) in the applicable SIP.

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: September 29, 2014.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 in paragraph (c), Table 1 is amended by revising the entries for ''445B.22097,'' ''445B.308, excluding paragraph (2)(d) and subsections (4), (5), and (10),'' and ''445B.311.''

The revisions read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NEVADA REGULATIONS AND STATUTES

State citation	Title/ subject	State effective date	EPA approval date	Additional explanation
* *	*	*	*	* *
Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution; Nevada Administrative Code, Chapter 445, Air Controls, Air Pollution; Nevada Air Quality Regulations—General Provisions				
* *	*	*	*	* *
445B.22097	Standards of quality for ambient air.	6/23/14	[Insert **Federal Register** citation], 10/21/2014.	Adopted Regulation of the State Environmental Commission, LCB File No. R145–13. The Nevada SEC amended NAC 445B.22097 on May 2, 2014, and NDEP submitted it to EPA on June 5, 2014.
* *	*	*	*	* *
Nevada Administrative Code, Chapter 445B, Air Controls, Air Pollution—Operating Permits Generally				
* *	*	*	*	* *
445B.308, excluding paragraph (2)(d) and subsections (4) and (9).	Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.	12/23/13	[Insert **Federal Register** citation], 10/21/2014.	Adopted Regulation of the State Environmental Commission, LCB File No. R042–13. The Nevada SEC amended NAC 445B.308 on December 4, 2013, and NDEP submitted it to EPA on January 3, 2014.
* *	*	*	*	* *
445B.311	Environmental evaluation: Contents; consideration of good engineering practice stack height.	6/23/14	[Insert **Federal Register** citation], 10/21/2014.	Adopted Regulation of the State Environmental Commission, LCB File No. R145–13. The Nevada SEC amended NAC 445B.311 on May 2, 2014, and NDEP submitted it to EPA on June 5, 2014.

TABLE 1—EPA-APPROVED NEVADA REGULATIONS AND STATUTES—Continued

State citation	Title/ subject	State effective date	EPA approval date	Additional explanation
* * *	*	*	*	*

* * * * *

[FR Doc. 2014–24762 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0300; FRL–9918–15–Region 7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) revisions submitted by the State of Iowa for the purpose of approving the 2008, 2009, 2011, 2012, and 2013 updates to the Linn County Air Quality Ordinance. EPA is approving Iowa's request to include revisions to the Linn County Air Quality Ordinance, Chapter 10, because the revisions improve the stringency of the Iowa SIP.

DATES: This direct final rule will be effective on December 22, 2014, without further notice, unless EPA receives adverse comment by November 20, 2014. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0300, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: Algoe-eakin.amy@epa.gov.*
3. *Mail or Hand Delivery:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0300. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219, at 913–551–7942, or by email at *Algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

What is being addressed in this document?

The Iowa Department of Natural Resources (IDNR) requests EPA's approval of the 2008, 2009, 2010, 2012, and 2013 revisions to the Linn County Air Quality Ordinance, Chapter 10, as a revision to the Iowa SIP. All changes were adopted by the Linn County Board of Supervisors for each of the years addressed with this action. Pursuant to a request from IDNR [1], EPA is taking action on the 2008, 2009, 2010, 2013 and 2013 revisions to the Linn County Air Quality Ordinance to the extent they are contained in the 2013 version of the Linn County Air Quality Ordinance. See the Technical Support Document in the docket for today's action for further information.

The following is a description of the 2008 revisions to the Linn County Air Quality Ordinance, Chapter 10, which are subject to this approval action and consistent with the Federally-approved state rules:

The following definitions are being added to the Linn County Air Quality Ordinance, Chapter 10.2 ''Definitions'': ASME, ASTM, Attainment area, Biodiesel fuel, Btu, Carbonaceous fuel, Criteria, Department, Diesel fuel, DNR, Electric furnace, Emission Unit, EPA conditional method, EPA reference method, Equipment, Excess air, Excess emission, Foundry cupola, Gas cleaning device, Goal, Heating value, IAC, Initiation of construction, installation or alteration, Level, New Source Performance Standards, Nonattainment area, Number 1 fuel oil/Number 2 fuel oil, Objective, Plan documents, PM_{10},

[1] See letter from Catharine Fitzsimmons, Chief of the Air Quality Bureau of IDNR to Karl Brooks, Regional Administrator of EPA Region 7, dated August 15, 2014, available in the Docket for today's action.

$PM_{2.5}$, Privileged Communication, Process, Salvage operations, Smoke Monitor, Source operation, Standard metropolitan statistical area, Theoretical air, 12-month rolling period, Untreated, and Urban area.

The following definitions are being changed in the Linn County Air Quality Ordinance, Chapter 10.2, ''Definitions'' to improve the stringency of the Iowa SIP: Air Pollution Control Officer, Air quality standard, Air pollution forecast, Country grain elevator, Major Stationary Source, Potential to Emit, Prevention of Significant Deterioration, Process weight rate, Responsible official, Significant, State Implementation Plan, Total Suspended Particles, Volatile Organic Compounds.

''Air Quality Division'' or ''Air Pollution Control Agency'' was deleted from the 2008 submittal.

Chapter 10.5 addresses ''Locally Required Permits.'' Changes in 2008 include a revision to 10.5(2) to strengthen the rules for Authorization to Install; two paragraphs are being added to 10.5(2)(a) for additional permit requirements; an administrative change is being made to 10.5(2)(b), and 10.5(2)(d) is being added to outline requirements for issuance of a permit. Note that EPA has not approved the local permit program with regard to permits for major sources. Major source permits (Prevention of Significant Deterioration) are issued by IDNR.

''Duration of Permit'' is addressed in 10.5(3). This 2008 revision to 10.5(3)(c–d) states permits can be renewed yearly but are subject to 10.6—Permitting Fees—of the ordinance. The rules to post the permit are being revised for additional detail and clarity.

''Exemptions from the Authorization to Install Permit and Permit to Operate Requirements,'' (10.5(9)) was revised in 2008, 2009, 2010 and 2011, and lists 37 exemptions too numerous to mention here. For the entire list, refer to the technical support document located in the docket for this rulemaking. These revisions are consistent with the Federally-approved state rules.

Administrative changes were made to 10.5(10–11), ''Emissions Offsets for Non-Attainment Designated Areas,'' and ''Dispersion Credit Allowance,'' in 2008.

Chapter 10.6 addresses permit fees and is being revised at 10.6(3) to include late filing fees for each permit and permit renewal. A revision being made to 10.6(4) states the fees are established by resolution by the County.

The titles for 10.9 and 10.9(1) were revised in 2008 to read ''Emission Standards,'' and 10.9(1) ''Emissions of Particulate Matter.''

''Grain Handling and Processing Plants,'' 10.9(1)(g), is being revised to add three sub-sections to address the limit of particulate matter discharged to the atmosphere, and addresses grain bin vents constructed, modified or reconstructed before and after March 31, 2008. These revisions are consistent with the Federally-approved state rules.

Grammatical changes are being made to 10.9(1)(l) ''Incinerator'', and the opacity for visible emissions from an incinerator is being revised to reduce opacity from sixty percent to forty percent which strengthens the rule to protect air quality. The state requested this Chapter be added in to the 111(d) plan which is being accomplished with this rulemaking.

Chapter 10.10 of the Linn County Air Quality Ordinance sets forth rules for ''Open Burning.'' In addition to grammatical corrections, this 2008 revision addresses the issuance, validity, and revisions to open burning permits, as well as clarifying the circumstances for burning landscape wastes, and adds fire extinguisher training to open burning exemptions. This revision adds that open burning of residential waste, landscape wastes and leaves, within one-half mile of Cedar Rapids, Hiawatha or Marion, Iowa, is not allowed as of January 1, 2009. Revisions to open burning rules are consistent with Federally-approved state rules.

Chapter 10.13, ''Fugitive Dust'', was revised in 2008 at 10.13(1)(6) to add an additional precaution to prevent fugitive dust by reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts. These revisions are consistent with Federally-approved state rules.

Chapter 10.16 ''Circumvention'' is being revised to add evidence used in establishing that a violation has or is occurring. Information from the use of a monitoring method pursuant to 10.5, compliance test methods pursuant to 10.17, or testing and monitoring methods pursuant to 10.5 is being added. Presumptive credible testing (monitoring or testing methods, other testing, monitoring or other information-gathering methods comparable to 10.16(1) ''a'') are being added to this rule. These revisions are consistent with Federally-approved state rules.

Chapter 10.17, ''Testing and Sampling of New and Existing Equipment,'' is revised to renumber/reorder sections within the rule. Additional revisions to this section include 10.17(1) ''Continuous Monitoring of Opacity from Coal-Fire Steam Generating Units''; 10.17 sections 2 and 3 are reserved; 10.17(4) ''Continuous Monitoring of Sulfur Dioxide from Sulfuric Acid Plants''; 10.17(8) ''Tests by Department.''

Chapter 10.20 is renamed ''Public Records and Fair Information Practices'' and describes that information received will be publicly available or be granted confidential treatment in accordance with the IAC, and reproduction services will be rendered at the rate established by the Linn County Board of Health.

The following is a description of the 2009 revisions to the Linn County Air Quality Ordinance, Chapter 10, which are subject to this approval action:

The definition of ''significant'' is revised in the Linn County Air Quality Ordinance, Chapter 10.2, ''Definitions.'' [2]

Table 1 of Chapter 10.9 is revised to remove the phrase ''or more'' after the process weight rate lb/hr 6,000,000, and tons/hr 3,000.00.

Chapter 10.17, ''Testing and Sampling of New and Existing Equipment,'' is revised to add (7) ''Tests by Owner'' for new, modified or existing equipment.

The following is a description of the 2011 revisions to the Linn County Air Quality Ordinance, Chapter 10, which are subject to this approval action:

The definition of ''Volatile organic compound'' is added to the Linn County Air Quality Ordinance, Chapter 10.2.

Chapter 10.6(2), ''Annual Fee for Permit to Operate,'' was revised in 2012 to state renewal fees will be paid by the invoice due date or the permit will expire and not be valid.

The following is a description of the 2012 revisions to the Linn County Air Quality Ordinance, Chapter 10, which are subject to this approval action:

Chapter 10.6(1), ''Permit Fees,'' was revised in 2013 to correct a grammatical error.

Chapter 10.10 of the Linn County Air Quality Ordinance sets forth rules for ''Open Burning.'' Revisions are made to 10.10(A)(1)(h–i), ''Trees and Tree Trimmings,'' and ''Other,'' respectively. ''Other'' includes native prairie management on a case-by-case basis as allowed by permit and issued by the Air Pollution Control Officer.

The following is a description of the 2013 revisions to the Linn County Air Quality Ordinance, Chapter 10, which are subject to this approval action:

Chapter 10.1, ''Purpose and Ambient Air Quality Standards,'' was revised in

[2] Pursuant to an email dated September 18, 2014, from Catharine Fitzsimmons, Air Quality Bureau Chief of IDNR, to Joshua Tapp, Chief of the Air Planning and Development Branch of EPA Region 7, IDNR requests that EPA take no action on the definition of ''Significant'' as it relates to $PM_{2.5}$ and it is therefore not included in today's action. See Docket for further information.

2013 to amend the Federal references to be consistent with state rules that are Federally-approved.

The following definitions are revised in the Linn County Air Quality Ordinance, Chapter 10.2, ''Definitions'' and are consistent with state rules that are Federally-approved: EPA reference method, PM_{10}, $PM_{2.5}$, and Total suspended particulate.

Chapter 10.5 addresses ''Locally Required Permits.'' The 2013 Revision to 10.5(6), ''Transfer of Permits,'' adds written notification delivery methods to be consistent with Federally-approved state rules, and reduces the number of days for notification from 30 to 14 when transferring portable equipment.

Chapter 10.17, ''Testing and Sampling of New and Existing Equipment,'' is being revised at 10.17(5) ''Maintenance of Records of Continuous Monitors,'' for administrative changes, and at 10.17(6) ''Reporting of Continuous Monitoring Information.'' 10.17(6) strengthened the reporting requirements and is consistent with Federally-approved state rules.

Changes to 10.17(9) ''Methods and Procedures'' include revisions for performance test (stack tests), continuous monitoring systems, and permit and compliance demonstration requirements to include the most recent analytical reference methods to be consistent with Federally-approved state rules.

Changes to 10.17(10) and (11) remove references to specific processes in this chapter making the rules more stringent, as all processes are included in the revision. Changes to 10.17(12) include the most recent revision to the EPA reference method to be Federally-approved state rules.

The following is a list of definitions and rules which are not being approved as part of the EPA-approved SIP:

10.2 ''Definitions''; definition of Anaerobic Lagoon, definition of Biomass, definition of Federally-Enforceable, definition of Greenhouse Gas, definition of Major Modification, definition of Maximum Achievable Control Technology (MACT), and the definition of MACT Floor. (The definition of ''Significant'' is approved. However, the state of Iowa has withdrawn their request to included $PM_{2.5}$ in the definition of ''significant.'') 10.4–1, Title V Permits; 10.5(9) ''b'' Locally Required Permits; Exemptions from the Authorization to Install Permit to Operate Requirements;

10.8(2) ''b'' Emissions From Fuel-Burning Equipment; Emission Limitation; 10.8(3) Emissions From Fuel-Burning Equipment; Exemptions for Residential Heaters Burning Solid Fuels; 10.8(4) Emissions from Fuel-Burning Equipment; Nuisance Conditions for Fuel Burning Equipment; 10.9(2), New Source Performance Standards (NSPS); 10.9(3), Emission Standards for Hazardous Air Pollutants (HAPs); 10.9(4), Emission Standards for HAPs for Source Categories; 10.10(4), Variance from Rules; 10.11, Emission of Objectionable Odors; 10.15, Variances; 10.17(13), Continuous Emissions from Acid Rain, and 10.24, Penalty.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

EPA is taking action on the 2008, 2009, 2010, 2013 and 2013 revisions to the Linn County Air Quality Ordinance and is approving those revisions to the extent they are contained in the 2013 version of the Linn County Air Quality Ordinance. These revisions will improve the stringency of the SIP.

We are taking direct final action to approve revisions because they are routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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).
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 30, 2014.

Rebecca Weber,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for ''Chapter 10'' under the heading ''Linn County'' to read as follows:

§ 52.820 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
*	*	*	*	* * *
Linn County				
Chapter 10	Linn County Air Quality Ordinance, Chapter 10.	7/24/13	10/21/14 *[Insert **Federal Register** citation].*	The following definitions are not SIP-approved in Chapter 10.2; Anaerobic lagoon, Biomass, Chemical processing plants (ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140 are not included in this definition); Federally Enforceable; Greenhouse gases; Maximum Achievable Control Technology (MACT); MACT floor; Major modification; Significant is approved, however, $PM_{2.5}$ is not included in the definition of ''significant.'' The following sections are not SIP approved: 10.4(1), Title V Permits; 10.5(9) ''b'' Locally Required Permits; Exemptions from the Authorization to Install Permit to Operate Requirements; 10.8(2) ''b'' Emissions From Fuel-Burning Equipment; Emission Limitation; 10.8(3) Emissions From Fuel-Burning Equipment; Exemptions for Residential Heaters Burning Solid Fuels; 10.8(4) Emissions from Fuel-Burning Equipment; Nuisance Conditions for Fuel Burning Equipment; 10.9(2), NSPS; 10.9(3), Emission Standards for HAPs; 10.9(4), Emission Standards for HAPs for Source Categories; 10.10(4) Variance from rules; 10.11, Emission of Objectionable Odors; 10.15, Variances, 10.17(13) Continuous Emissions Monitoring from Acid Rain Program, and 10.24, Penalty.
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[FR Doc. 2014–24860 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0688; FRL–9918–10–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Control of Emissions From Hand-Fired Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Missouri on May 8, 2012, related to a Missouri rule titled ''Control of Emissions from Hand-Fired Equipment.'' Today's action approves a revision to the Missouri SIP that allows the burning of discarded clean wood in non-residential (commercial owned and operated) heating devices, with restrictions to ensure environmentally-sound operation, in the St. Louis metropolitan area.

DATES: This direct final rule will be effective December 22, 2014, without further notice, unless EPA receives adverse comment by November 20, 2014. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0688, by one of the following methods:

1. *www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: gonzalez.larry@epa.gov.*
3. *Mail or Hand Delivery:* Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0688. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30 excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7041 or by email at *gonzalez.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is a SIP?
II. What is the Federal approval process for a SIP?
III. What does Federal approval of a State regulation mean to me?
IV. What is being addressed in this document?
V. Have the requirements for approval of a SIP revision been met?
VI. What action is EPA taking?
VII. Statutory and Executive Order Reviews

I. What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. These standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

II. What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA and requests that it be included into the state's SIP. EPA must provide public notice and seek additional public comment before it takes final action on the state's request to modify, or revise its implementation plan.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright, but are ''incorporated by reference,'' which means that we have

approved a given state regulation with a specific effective date by referencing it directly in the CFR.

III. What does Federal approval of a State regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. After the regulation is Federally-approved, EPA is authorized to take enforcement action against violators of the state requirement. As a result of Federal enforceability, citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

IV. What is being addressed in this document?

EPA is taking direct final action to approve a revision to the SIP submitted by the State of Missouri on May 8, 2012, related to Missouri rule 10 CSR 10–5.040, ''Control of Emissions from Hand-Fired Equipment.'' This revision allows commercial facilities to burn clean scrap wood in hand-fired equipment operating in the St. Louis metropolitan area, as long as the device is operated at the same location that the clean scrap wood is generated.

To ensure that emissions of pollutants that result from this provision will not affect the ability of the St. Louis metropolitan area to comply with the National Ambient Air Quality Standards (NAAQS), MDNR estimated the emission increases the area may experience as commercial facilities utilize the provision. The MDNR analysis first estimated the number of facilities that would take advantage of the provision, then estimated the amount of pollutants emitted from hand-fired heating equipment using clean scrap wood as a fuel. The MDNR analysis of emissions relied on EPA's compilation of air pollution emission factors (AP–42) guidance to estimate the emissions from commercial facilities taking advantage of the new provision. The analysis submitted by MDNR determined that on a seasonal basis the greatest pollutant increase would be a less than 0.5 percent increase in carbon monoxide (CO), with other NAAQS pollutants showing increasing that are orders of magnitude lower. A description of the analysis and estimated emissions that result from the provision, prepared by MDNR, is included in the docket for this final rule.

In EPA's review of MDNR's technical analysis, we agree that due to the limited number of commercial facilities utilizing the provision the resulting increase in emissions caused by burning clean wood in heating devices would be negligible. MDNR's analysis assumed individual heating units using a mix of oak and pine with a moisture content indicative of ''dry wood'' over a normal heating season. The estimated emissions from this analysis show that the devices produce a negligible increase in NAAQS pollutants when compared to the current St. Louis metropolitan area emissions inventory.

In the analysis, MDNR specifically estimated the emissions from the operation of up to 50 devices in the metropolitan area burning clean dry wood at commercial facilities. While it is difficult to establish realistic assumptions for this type of analysis, EPA believes this component of the analysis is reasonable. At the time MDNR submitted the SIP revision request to EPA for approval, there were three commercial facilities in the St. Louis metropolitan area known to be using clean scrap wood for heating purposes in five different combustion/heating devices. These devices were operating at one pallet repair facility, one lumber yard, and one arborist. These facilities generate unadulterated, clean scrap wood waste as a normal course of doing business.

To calculate the potential emissions from the devices, MDNR used EPA's AP–42 guidance and assumed the device[s] would only operate during the heating season (22 weeks) for comfort heating at the facilities as opposed to operating year round for the purpose of destroying secondary materials generated by the commercial activity. EPA believes estimating emissions based on the use of heating devices only during the heating season is a reasonable assumption to make to increase the accuracy of the estimate. MDNR's analysis estimated the emissions from six pollutants: Particulate Matter (PM) of 10 microns and less than 2.5 microns in size, CO, oxides of nitrogen (NO_X), oxides of sulfur (SO_X), and volatile organic compounds (VOCs). The analysis results are shown in table 1 below.[1]

TABLE 1

Pollutant	Emissions per device (tons)	2008 Baseline emissions (tons)	Increase per device (%)	Number of Devices			
				5		50	
				Tons	Percent	Tons	Percent
$PM_{2.5}$	0.0815	16,670	0.000489	0.4077	0.00245	4.0771	0.02446
PM_{10}	0.0947	109,306	0.000087	0.4735	0.00043	4.7347	0.00433
CO	0.1578	33,867	0.000466	0.7891	0.00233	7.8912	0.02330
NO_X	0.1289	44,285	0.000291	0.6444	0.00146	6.4445	0.01455
SO_X	0.0066	213,756	0.000003	0.0329	0.00002	0.3288	0.00015
VOC	0.0045	43,430	0.000010	0.0224	0.00005	0.2236	0.00051

The analysis shows that increases in emissions in the St. Louis metropolitan area produced through the use of this provision are insignificant, and will not meaningfully impact the attainment status of the area with respect to the NAAQS.

The St. Louis metropolitan area is currently classified as moderate nonattainment for $PM_{2.5}$ and marginal nonattainment for ozone. $PM_{2.5}$, or fine particulate matter is produced by a variety of commercial and noncommercial sources in the St. Louis metropolitan area, and based on the analysis even if 50 commercial facilities were to begin heating with scrap wood generated onsite, the resulting emissions would only increase the current $PM_{2.5}$ emission's inventory by a factor of 0.0002 (or 4.1 tons out of 16,670 tons). EPA agrees that this relatively slight increase in $PM_{2.5}$ emissions will not

[1] The 2008 baseline emissions, used in the comparison shown in table 1, was collected from EPA's 2008 emissions inventory for the St. Louis metropolitan area and includes emissions from point and nonpoint sources in the following counties and municipalities in MO: Franklin County; Jefferson County; St. Charles County; St. Louis County; and St. Louis City.

have a measurable impact on ambient $PM_{2.5}$ concentrations in the area. Furthermore emissions trends for $PM_{2.5}$ currently depict a decrease in ambient concentrations and this trending decrease in $PM_{2.5}$ far exceeds the emissions increase in $PM_{2.5}$ projected by MDNR's analysis.

Ozone, the other pollutant that the St. Louis metropolitan area is currently not attaining, is not directly emitted into the atmosphere like PM or NO_X. MDNR's analysis did not specifically address ozone concentrations; however, due to a number of factors assessed by EPA, we agree that the impact on attaining the ozone NAAQS will be minimal. In support of this position, EPA notes that the restrictions for the exceptions will greatly limit the number of commercial facilities using the provision and therefore limit additional pollutants released into the St. Louis metropolitan airshed. Also, EPA considered that additional building heating is needed during periods of the year in which colder temperatures and shorter periods of daylight exist (months preceding and following the winter solstice) thus, minimizing impacts on ambient ozone concentrations. In summary, EPA agrees with MDNR's analysis that any additional ozone precursor emissions that the revised provision adds to the area will not contribute to the formation of ground level ozone in a meaningful way, because the emissions occur during a period of the year in which the conditions that favor ozone formation do not exist.

MDNR solicited comments on the proposed provision during the process to finalize this revision. In response to these solicitations, MDNR received fifteen comments (two from EPA Region 7, one from the commercial operator originally requesting the rule change, and the rest from the St. Louis Health Department). In general, the comments highlighted technical aspects of the provision that required modification to increase clarity and aid compliance. MDNR modified the proposed provision to address comments from EPA and the St. Louis Health Department.

V. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. and meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. What action is EPA taking?

EPA is taking direct final action to approve this SIP revision. We are publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve this SIP revision, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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).
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial

review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 24, 2014.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as set forth below:

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 AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the table heading entitled ''Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area'' and the entry under ''Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area'' for ''10–5.040'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Regulations and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.040	Control of Emissions from Hand-Fired Equipment	05/30/12	10/21/14 [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2014–24866 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2014–0183; FRL–9918–20–Region 8]

Approval and Promulgation of Implementation Plans; Wyoming; Revisions to the Air Quality Standards and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving changes to Wyoming's State Implementation Plan (SIP). On February 10, 2014, the Wyoming Department of Environmental Quality (WDEQ) submitted to EPA revisions to the Wyoming SIP. These revisions included the removal of an exemption from Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 3, section 2(d). In this action, EPA is approving the revision of this provision into the SIP because the revision is consistent with Clean Air Act (CAA) requirements. The revision will correct certain deficiencies related to the treatment of excess emissions from sources. EPA will address the remaining revisions from Wyoming's February 10, 2014 submission in a separate action.

DATES: This final rule is effective November 20, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R08–OAR–2014–0183. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., 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: Adam Clark, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@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 words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *IBR* mean or refer to incorporation by reference.

(iv) The initials *SIP* mean or refer to state implementation plan.

(v) The initials *SSM* mean or refer to startup, shutdown, and malfunction.

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

(vii) The initials *WAQSR* mean or refer to the *Wyoming Air Quality Standards and Regulations.*

(viii) The initials *WDEQ* mean or refer to the *Wyoming Department of Environmental Quality.*

I. Background

On February 10, 2014, WDEQ submitted to EPA a SIP revision to WAQSR Chapter 3, section 2(d), as well as updates to the State's incorporation by reference (IBR) of federal regulations. In a document published on July 16, 2014, we proposed approval of the State's revision to WAQSR Chapter 3, section 2(d); we did not propose to take any action on the remaining updates in the State's February 10, 2014 submittal (79 FR 41509).

In our proposed rule, we explained that, in accordance with the requirements of CAA section 110(a)(2)(A), SIPs must contain enforceable emission limitations and, in accordance with the definition of ''emission limitations'' in CAA section 302(k), such emission limitations must be continuous. In addition, under CAA section 304(a), any person may bring a civil action against any person alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of an ''emission standard or limitation'' under the CAA. For the purposes of section 304, ''emission standard or limitation'' is defined in section 304(f) and includes SIP emission limitations. Thus, SIP emission limitations can be enforced in a section 304 action and so must be capable of enforcement. SIP provisions that create exemptions such that excess emissions during startup, shutdown, malfunctions (SSM) and other conditions are not violations of the applicable emission limitations are inconsistent with these fundamental requirements of the CAA with respect to emission limitations in SIPs.

For these reasons, we proposed approval of Wyoming's revision of WAQSR Chapter 3, section 2(d). Previously, certain language in WAQSR Chapter 3, section 2(d) created an exemption for particulate matter emissions in excess of a 30 percent opacity standard from diesel engines during startup, malfunction, and maintenance. Because this provision allowed exemptions from the otherwise applicable SIP emission limitation, it was inconsistent with CAA requirements. The State's revision to section 2(d) addresses this deficiency by removing the problematic language.

This revision is sufficient to correct the inadequacies contained within section 2(d) and is consistent with the requirements of the CAA. As a result of the revision, the improper exemptions from emissions limitations contained within section 2(d) will no longer be available to sources. Therefore, the emissions limitation in section 2(d) will become continuous and more enforceable.

II. Response to Comments

The comment period for our July 16, 2014 document was open for 30 days. EPA received supportive comments on this proposed action from both WDEQ and the Sierra Club. WDEQ also requested that EPA act on the remainder of the February 10, 2014 submittal as expeditiously as possible. EPA acknowledges these comments.

III. EPA's Final Action

We are approving the State's revision to WAQSR Chapter 3, section 2(d) of the Wyoming SIP, as reflected in the State's February 10, 2014 submission. This approval effectively corrects the deficiency with this provision of the Wyoming SIP, as discussed above, in our proposed rule, and in EPA's February 22, 2013 proposed national SSM SIP Call (78 FR 12533). Based on this final approval, EPA notes that the deficiency in the Wyoming SIP identified in the proposed SSM SIP call has now been correctly resolved. Thus, EPA's final action on the SSM SIP call should not need to address this deficiency. We are not taking action today on the remainder of the February 10, 2014 submission.

IV. Statutory and Executive Orders Review

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: October 2, 2014.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart ZZ—Wyoming

■ 2. In § 52.2620, the table titled ''State of Wyoming Regulations'' in paragraph (c)(1) is amended under Chapter 3 by revising the entry for Section 2 to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation [1]	Explanations
*	*	*	*	*
Chapter 3				
Section 2	Emission standards for particulate matter	9/12/13, 11/22/13	10/21/14, [insert **Federal Register** citation].	
*	*	*	*	*

[1] In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

* * * * *

[FR Doc. 2014–24930 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0401; FRL–9918–19–Region 7]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) sections 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Ozone (O_3), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: This final rule is effective November 20, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2014–0401. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 at *http://www.regulations.gov* or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7214; *fax number:* (913) 551–7065; *email address: kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA. This section provides additional information by addressing the following questions:

I. Background
II. Summary of SIP Revision
III. EPA's Response to Comments
IV. Final Action
V. Statutory and Executive Order Review

I. Background

On July 16, 2014 (79 FR 41476), EPA published a notice of proposed rulemaking (NPR) for the State of Kansas. The NPR proposed approval of Kansas' submissions that provide the basic elements specified in section 110(a)(2) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 Pb NAAQS.

II. Summary of SIP Revision

On March 19, 2013, and May 9, 2013, EPA received SIP submissions from the state of Kansas that address the infrastructure elements specified in

section 110(a)(2) for the 2008 O_3 NAAQS. The submissions addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Specific requirements of section 110(a)(2) of the CAA and the rationale for EPA's proposed action to approve the SIP submission are explained in the NPR and will not be restated here.

The public comment period on EPA's proposed rule opened on July 16, 2014, the date of its publication in the **Federal Register**, and closed on August 15, 2014. During this period, EPA received two comment letters: One from a citizen received July 17, 2014, and one from the Kansas Department of Health and Environment (KDHE) received August 13, 2014. The letters are available in the docket to today's final rule. The citizen comment was made in support of EPA's efforts to protect the environment in the state of Kansas, and did not result in changes to this final action. Today's final action includes EPA's response to KDHE's comment.

III. EPA's Response to Comments

Comment: KDHE commented that EPA retract certain language in the proposed rulemaking for today's final action. Regarding section 110(a)(2)(E)(3), the proposed rulemaking states at 79 FR 41493: ''Currently, KDHE oversees the following local agencies that implement the Kansas Air Quality Act: The City of Wichita Office of Environmental Health, Johnson County Department of Health and Environment, Shawnee County Health Agency, and Unified Government of Wyandotte County-Kansas City, Kansas Public Health Department''. Regarding section 110(a)(2)(M), the proposed rulemaking states at 79 FR 41496: ''Currently, KDHE's Bureau of Air and Radiation has signed state and/or local agreements with the Department of Air Quality from the Unified Government of Wyandotte County-Kansas City, Kansas; the Wichita Office of Environmental Health; the Shawnee County Health Department, the Johnson County Department of Health and Environment; and the Mid-America Regional Council''. KDHE states that as of September 30, 2012, they no longer contract with the Shawnee County Health Department.

Response: EPA acknowledges that KDHE no longer oversees or contracts with the Shawnee County Health Department for purposes of sections 110(a)(2)(E)(3) and 110(a)(2)(M).

IV. Final Action

EPA is approving Kansas' submissions which provide the basic program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II) (prongs 3 and 4), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 O_3 NAAQS, as a revision to the Kansas SIP. This action is being taken under section 110 of the CAA. As discussed in each applicable section of NPR, EPA is not acting on section 110(a)(2)(D)(i)(I), section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D, and on the visibility protection portion of section 110(a)(2)(J).

V. Statutory and Executive Order Review

Under the CAA the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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).
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 24, 2014.

Karl Brooks,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the Environmental Protection

Agency amends 40 CFR part 52 as set forth below:

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 R—Kansas

■ 2. In § 52.870(e) the table is amended by adding new entry (38) in numerical order at the end of the table to read as follows:

§ 52.870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	* *
(38) Section 110(a)(2) Infrastructure Requirements for the 2008 O_3 NAAQS.	Statewide	3/19/2013	10/21/2014 *[Insert **Federal Register** citation].*	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II) (prongs 3 and 4), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) except as noted.

[FR Doc. 2014–24781 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2003–0118; FRL–9918–30–OAR]

RIN 2060–AG12

Protection of Stratospheric Ozone: Determination 29 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Determination of acceptability.

SUMMARY: This Determination of Acceptability expands the list of acceptable substitutes for ozone-depleting substances under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. This action lists as acceptable additional substitutes for use in the refrigeration and air conditioning, foam blowing, and fire suppression and explosion protection sectors.

DATES: This determination is effective on October 21, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0118 (continuation of Air Docket A–91–42). All electronic documents in the docket are listed in the index at *www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the EPA Air Docket (Nos. A–91–42 and EPA–HQ–OAR–2003–0118), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 343–9163, by facsimile at (202) 343–2338, by email at *sheppard.margaret@epa.gov,* or by mail at U.S. Environmental Protection Agency, Mail Code 6205T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1201 Constitution Avenue NW., Washington, DC 20004.

For more information on the agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available at EPA's Ozone Depletion Web site at *www.epa.gov/ozone/strathome.html* including the SNAP portion at *www.epa.gov/ozone/snap/.*

SUPPLEMENTARY INFORMATION:

I. Listing of New Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Foam Blowing
C. Fire Suppression and Explosion Protection
II. Section 612 Program
A. Statutory Requirements and Authority for the SNAP Program
B. EPA's Regulations Implementing Section 612
C. How the Regulations for the SNAP Program Work
D. Additional Information About the SNAP Program
Appendix A—Summary of Decisions for New Acceptable Substitutes

I. Listing of New Acceptable Substitutes

This action presents EPA's most recent decision to list as acceptable several substitutes in the refrigeration and air conditioning, foam blowing, and fire suppression and explosion protection sectors. New substitutes include *trans*-1-chloro-3,3,3-trifluoroprop-1-ene in non-mechanical heat transfer, and in flexible polyurethane foams; CO_2 in refrigerated transport; R–450A in a variety of refrigeration and air conditioning end-uses; methylal and hydrofluoroolefin (HFO)-1336mzz(Z) in a variety of foam blowing end-uses; and Powdered Aerosol D in the total flooding end-use. For copies of the full list of acceptable substitutes for ozone depleting substances (ODS) in all industrial sectors, visit EPA's Ozone Layer Protection Web site at *www.epa.gov/ozone/snap/lists/index.html.*

The sections below discuss each substitute listing in detail. Appendix A contains tables summarizing today's listing decisions for these new acceptable substitutes. The statements in the ''Further Information'' column in the tables provide additional information, but are not legally binding

under section 612 of the Clean Air Act (CAA). In addition, the ''Further Information'' may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''Further Information'' column of the table to use a substitute consistent with section 612 of the CAA, some of these statements may refer to obligations that are enforceable or binding under federal or state programs other than the SNAP program. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. EPA strongly encourages you to apply the information in this column using these substitutes. Many of these recommendations, if adopted, would not require significant changes to existing operating practices.

You can find submissions to EPA for the substitutes listed in this document, as well as other materials supporting the decisions in this action in docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov.*

A. Refrigeration and Air Conditioning

1. *Trans*-1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E))

EPA's decision: EPA finds trans-1-chloro-3,3,3-trifluoroprop-1-ene acceptable as a substitute for use in new equipment in non-mechanical heat transfer.[1]

Trans-1-chloro-3,3,3-trifluoroprop-1-ene ((E)-1-chloro-3,3,3-trifluoroprop-1-ene, CAS Reg. No. 102687–65–0) is a chlorofluoroalkene marketed under the trade names Solstice™ 1233zd(E) and Solstice™ N12 Refrigerant for this end-use.

You may find the redacted submission in Docket item EPA–HQ–OAR–2003–0118–0285 and under the name, ''9/17/13 Letter to Rebecca von dem Hagen, EPA re: 1233zd(E)—Refrigeration Sector'' in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov.* EPA has performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name, ''Risk Screen on Substitutes in Heat Transfer Substitute: *Trans*-1-Chloro-3,3,3,-trifluoroprop-1-ene.''

We have previously listed *trans*-1-chloro-3,3,3-trifluoroprop-1-ene as a refrigerant for use in new equipment in centrifugal chillers (August 10, 2012, 77 FR 47768).

Environmental information: Solstice™ 1233zd(E) has an ozone depletion potential (ODP) of 0.00024 to 0.00034.[2] [3] Estimates of this compound's potential to deplete the ozone layer indicate that even with worst-case estimates of emissions, which assume that this compound would substitute for all compounds it could replace, the impact on global atmospheric ozone abundance would be statistically insignificant.[4] Solstice™ 1233zd(E) has a 100-year integrated global warming potential (100-yr GWP) reported as 1 to 7 and an atmospheric lifetime of approximately 26 to 31 days or less.[5] [6] [7] Solstice™ 1233zd(E) is excluded from the definition of volatile organic compounds (VOC) under CAA regulations (see 40 CFR 51.100(s)) addressing the development of state implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS). The emissions of this refrigerant will be limited, given that it is subject to the venting prohibition under section 608(c)(2) of the CAA and EPA's venting regulations codified at 40 CFR 82.154(a)(1).

Flammability information: Solstice™ 1233zd(E) is not flammable.

Toxicity and exposure data: Potential health effects of this substitute include serious eye irritation, skin irritation, and frostbite. It may cause central nervous system effects such as drowsiness and dizziness. The substitute could cause asphyxiation if air is displaced by vapors in a confined space.

The American Industrial Hygiene Association (AIHA) has established a Workplace Environmental Exposure Level (WEEL) of 800 ppm for *trans*-1-chloro-3,3,3,-trifluoroprop-1-ene. EPA anticipates that Solstice™ 1233zd(E) will be used in a manner consistent with the recommendations specified in the manufacturer's material safety data sheet (MSDS). EPA anticipates that users will be able to meet the WEEL and address potential health risks by following requirements and recommendations in the MSDS and in any other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other substitutes in these end-uses: Solstice™ 1233zd(E) has an ODP of 0.00024 to 0.00034 and estimates of its maximum potential impact on the ozone layer indicate a statistically insignificant impact, comparable to that of other substitutes in the same end-uses that are considered to be non-ozone-depleting.[8] Solstice™ 1233zd(E)'s ODP is well below those of ODS in these end-uses, such as chlorofluorocarbon (CFC)-113, HCFC–141b, HCFC–22, and HCFC–123 (with ODPs ranging from 0.01 to 0.8 [9]). Solstice™ 1233zd(E)'s GWP of 1 to 7 is lower than or comparable to those of other acceptable substitutes in the same end-uses, such as HFC–245fa, HFC–134a and HFC–125 (with GWPs ranging from 1,030 to 3,500 [10]). Its GWP is also well below those of CFC–113, HCFC–141b, HCFC–22, and HCFC–123 (with GWPs ranging from 77 to 4,750). Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the AIHA WEEL standard, the American Society for Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 15 and other industry standards, recommendations in the MSDS, and other safety precautions common in the refrigeration and air conditioning industry. The potential health effects of Solstice™ 1233zd(E) are common to many refrigerants, including many of those already listed as acceptable under SNAP. EPA thus

[1] Acceptable substitutes for organic Rankine cycle have typically been included through listings in the non-mechanical heat transfer end-use. EPA may review organic Rankine cycle applications separately in the future.

[2] Wang D., Olsen S., Wuebbles D. 2011. ''Preliminary Report: Analyses of tCFP's Potential Impact on Atmospheric Ozone.'' Department of Atmospheric Sciences. University of Illinois, Urbana, IL. September 26, 2011.

[3] Patten and Wuebbles, 2010. ''Atmospheric Lifetimes and Ozone Depletion Potentials of *trans*-1-chloro-3,3,3-trichloropropylene and *trans*-1,2-dichloroethylene in a three-dimensional model.'' *Atmos. Chem. Phys.,* 10, 10867–10874, 2010.

[4] Wang et al., 2011. *Op. cit.*

[5] Sulbaek Andersen, Nilsson, Neilsen, Johnson, Hurley and Wallington, ''Atmospheric chemistry of trans-CF3CH=CHCl: Kinetics of the gas-phase reactions with Cl atoms, OH radicals, and O_3'', *Jrnl of Photochemistry and Photobiology A: Chemistry* 199 (2008) 92–97; and Wang D., Olsen S., Wuebbles D. Undated. ''Three-Dimensional Model Evaluation of the Global Warming Potentials for tCFP.'' Department of Atmospheric Sciences. University of Illinois, Urbana, IL. Draft report, undated.

[6] Wang et al. 2011 and Sulbaek Andersen et al., 2008. *Op cit.*

[7] Hodnebrog, Ø., Etminan, M., Fuglestvedt, J.S., Marston, G., Myhre, G., Nielsen, C.J., Shine, K.P., Wallington, T.J.: Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review, *Reviews of Geophysics, 51,* 300–378, doi:10.1002/rog.20013, 2013.

[8] Wang et al., 2011 and Patten and Wuebbles, 2010. *Op cit.*

[9] Unless otherwise stated, all ODPs in this document are from EPA's regulations at appendix A to subpart A of 40 CFR part 82.

[10] Unless otherwise stated, all GWPs in this document are from: IPCC, 2007: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M.Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. This document is accessible at *www.ipcc.ch/publications_and_data/ar4/wg1/en/contents.html.*

finds *trans*-1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)) acceptable in the end-uses listed above, because the overall environmental and human health risk posed by *trans*-1-chloro-3,3,3-trifluoroprop-1-ene is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-uses.

2. Carbon Dioxide (R–744)

EPA's decision: EPA finds carbon dioxide (R–744) acceptable as a substitute for use in new equipment in refrigerated transport.

Carbon dioxide is also known as CO_2, CAS Reg. No. 124–38–9, or R–744 when used as a refrigerant.

You may find the redacted submission in docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''SNAP Information Notice for CO_2 in Refrigerated Transport received 7/19/13.'' EPA has performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name, ''Risk Screen on Substitutes in Refrigerated Transport Substitute: Carbon Dioxide (CO_2).''

We have previously listed CO_2 as a refrigerant in a number of other refrigeration and air conditioning end-uses (e.g., January 13, 1995, 60 FR 3318; September 30, 2009, 74 FR 50129; June 6, 2012, 77 FR 33315; August 10, 2012, 77 FR 47768).

Environmental information: CO_2 has an ODP of zero. The 100-yr GWP of CO_2 is 1.

EPA's regulations codified at 40 CFR part 82, subpart F exempt CO_2 refrigerant from the venting prohibition under section 608(c)(2) of the CAA (see 69 FR 11946; March 12, 2004). This section and EPA's venting regulations prohibit the intentional venting or release of substitutes for class I or class II ODS during the repair, maintenance, service or disposal of refrigeration and air conditioning appliances, unless EPA expressly exempts a particular substitute refrigerant from the venting prohibition, as for CO_2.

CO_2 is excluded from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS.

Flammability information: CO_2 is not flammable.

Toxicity and exposure data: Potential health effects of this substitute at lower concentrations include loss of concentration, headache and shortness of breath. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, it may cause central nervous system depression. The substitute could cause asphyxiation, if air is displaced by vapors in a confined space. For additional information concerning potential health risks of CO_2, see EPA's final rule under the SNAP program for use of CO_2 as a refrigerant in motor vehicle air conditioning systems (77 FR 33315; June 6, 2012) and EPA's risk screen in docket EPA–HQ–OAR–2003–0118.

To protect against these potential health risks, CO_2 has an 8 hour/day, 40 hour/week permissible exposure limit (PEL) of 5,000 ppm in the workplace required by the Occupational Safety and Health Administration (OSHA). It also has a 15-minute recommended short-term exposure limit (STEL) of 30,000 ppm established by the National Institute for Occupational Safety and Health (NIOSH). EPA recommends that users follow all requirements and recommendations specified in the MSDS, in ASHRAE standard 15, and other safety precautions common in the refrigeration and air conditioning industry. We also recommend that users of CO_2 adhere to NIOSH's STEL and to ASHRAE 15, and we expect that users will meet OSHA's PEL. EPA anticipates that users will be able to address potential health risks by complying with the PEL and by following requirements and recommendations in the MSDS, in ASHRAE 15, and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other substitutes in the same end-use: CO_2 is not ozone-depleting, comparable to a number of other acceptable non-ozone-depleting substitutes for these end-uses, including R–404A, R–407C, R–410A, and HFC–134a, and in contrast to the ODS CFC–12, HCFC–22 and R–502 (with ODPs ranging from 0.04 to 1.0). CO_2's GWP of 1 is lower than or comparable to that of other non-ozone-depleting substitutes in the same refrigeration and air conditioning end-use for which we are finding it acceptable, such as R–404A, R–407C, R–410A and HFC–134a (with GWP's ranging from 1,430 to 3,930). Furthermore, the GWP of CO_2 is well below those of ODS used in this end-use, including CFC–12, HCFC–22 and R–502 (with GWPs ranging from 1,810 to 10,900). Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the OSHA PEL, ASHRAE 15, and other industry standards, recommendations in the MSDS, and other safety precautions common in the refrigeration and air conditioning industry. The potential health effects of CO_2 are common to many refrigerants, including many of those already listed as acceptable under SNAP. EPA thus finds CO_2 acceptable in the end-use listed above, because the overall environment and human health risk posed by CO_2 is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-use.

3. R–450A

EPA's decision: EPA finds R–450A acceptable as a substitute for use in:

- Retail food refrigeration (new and retrofit equipment)
- Refrigerated transport (new and retrofit equipment)
- Vending machines (retrofit equipment only)
- Commercial ice machines (new and retrofit equipment)
- Water coolers (new and retrofit equipment)
- Cold storage warehouses (new and retrofit equipment)
- Industrial process refrigeration (new and retrofit equipment)
- Reciprocating, screw and scroll chillers (new and retrofit equipment)
- Centrifugal chillers (new and retrofit equipment)
- Household refrigerators and freezers (new and retrofit equipment)
- Industrial process air-conditioning (new and retrofit equipment)

R–450A, marketed under the trade name Solstice® N–13, is a weighted blend of 42 percent HFC–134a, which is also known as 1,1,1,2 tetrafluoroethane (CAS Reg. No. 811–97–2) and 58 percent HFO–1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9).

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''Solstice N–13 (R–450A) SNAP Information Notice.'' EPA has performed assessments to examine the health and environmental risks of this substitute. These assessments are available in docket EPA–HQ–OAR–2003–0118 under the following names:

- ''Risk Screen on Substitutes for Use in Retail Food Refrigeration, Vending Machines, and Commercial Ice Machines Substitute: R–450A''
- Risk Screen on Substitutes for Use in Household Refrigerators and Freezers and Water Coolers Substitute: R–450A''
- Risk Screen on Substitutes for Use in Chillers and Industrial Process Air Conditioning Substitute: R–450A''
- Risk Screen on Substitutes for Use in Cold Storage Warehouses and Industrial Process Refrigeration Substitute: R–450A''

- Risk Screen on Substitutes for Use in Refrigerated Transport Substitute: R–450A''

Environmental information: R–450A has an ODP of zero. Its components, HFC–134a and HFO–1234ze(E), have GWPs of 1,430 and 1 to 6 [11], respectively. If these values are weighted by mass percentage, then R–450A has a GWP of about 601. The components of R–450A are both excluded from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. The emissions of this refrigerant blend will be limited given it is subject to the venting prohibition under section 608(c)(2) of the CAA and EPA's venting regulations codified at 40 CFR 82.154(a)(1),[12] which limit emissions of refrigerant substitutes.

Flammability information: R–450A as formulated and in the worst-case fractionation formulation is not flammable.

Toxicity and exposure data: Potential health effects of this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The AIHA has established WEELs of 1,000 ppm and 800 ppm as an 8-hour time-weighted averages (TWAs) for HFC–134a and HFO–1234ze(E), the components of R–450A. EPA anticipates that users will be able to meet either of the AIHA WEELs and address potential health risks by following requirements and recommendations in the MSDS, in ASHRAE 15, and other safety precautions common to the refrigeration and air conditioning industry.

Comparison to other substitutes in these end-uses: R–450A has an ODP of zero, in contrast to the ODS HCFC–22, HCFC–142b, and HCFC–123 (with ODPs ranging from 0.01 to 0.6), and comparable to a number of other acceptable non-ozone-depleting substitutes in these end-uses, such as HFC–134a and R–404A. R–450A's GWP of about 601 within the range of HCFC–22, HCFC–142b, and HCFC–123 (with GWPs ranging from 77 to 2,310), and lower than that of other non-ozone-depleting substitutes in the same refrigeration and air conditioning end-uses, such as HFC–134a and R–404A (with GWPs of 1,430 and 3,930). Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the AIHA WEELs, ASHRAE 15 and other industry standards, recommendations in the MSDS, and other safety precautions common in the refrigeration and air conditioning industry. The potential health effects of R–450A are common to many refrigerants, including many of those already listed as acceptable under SNAP. EPA thus finds R–450A acceptable in the end-uses listed above, because the overall environmental and human health risk posed by R–450A is lower than the risks posed by other substitutes found acceptable in the same end-uses.

B. Foam Blowing

1. *Trans*-1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E))

EPA's decision: EPA finds trans-1-chloro-3,3,3-trifluoroprop-1-ene acceptable as a substitute for use as a blowing agent in flexible polyurethane foams.

Trans-1-chloro-3,3,3-trifluoroprop-1-ene ((E)-1-chloro-3,3,3-trifluoroprop-1-ene, CAS Reg. No. 102687–65–0) is a chlorofluoroalkene marketed under the trade name Solstice™ 1233zd(E) for various foam blowing end-uses.

You may find the redacted submission in docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name ''TSCA/SNAP Addendum for *trans*-1-chloro-3,3,3-trifluoroprop-1-ene in flexible foams.'' EPA has performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name ''Risk Screen on Substitutes for Use in Flexible Polyurethane Foams Substitute: *Trans*-1-chloro-3,3,3-trifluoroprop-1-ene''.

We have previously listed *trans*-1-chloro-3,3,3-trifluoroprop-1-ene as a foam blowing agent in a number of end-uses (August 10, 2012, 77 FR 47768).

Environmental information: The environmental information for this substitute is set forth in the 'Environmental information' section in listing A.1.

Flammability information: Solstice™ 1233zd(E) is not flammable.

Toxicity and exposure data: The toxicity information for this substitute is set forth in the ''Toxicity and exposure data'' section in listing A.1.

The AIHA has established a WEEL of 800 ppm for *trans*-1-chloro-3,3,3,-trifluoroprop-1-ene. EPA anticipates that Solstice™ 1233zd(E) will be used in a manner consistent with the recommendations specified in the manufacturer's MSDS. EPA anticipates that users will be able to meet the WEEL and address potential health risks by following requirements and recommendations in the MSDS and in any other safety precautions common to the foam blowing industry.

Comparison to other substitutes in this end-use: Solstice™ 1233zd(E) has an ODP of 0.00024 to 0.00034 and estimates of its maximum potential impact on the ozone layer indicate a statistically insignificant impact, comparable to that of other substitutes in the same end-uses that are considered to be non-ozone-depleting.[13] Solstice™ 1233zd(E)'s ODP is well below that of the ODS CFC–11 and HCFC–141b (with ODPs ranging from 0.11 to 1.0). Solstice™ 1233zd(E)'s GWP of 1 to 7 is lower than or comparable to that of other acceptable substitutes in the same end use, such as HFC–134a, HFC–245fa and HFC–152a (with GWPs ranging from 124 to 1,430) and C3–C6 saturated light hydrocarbons [14] (with GWPs less than 10). Its GWP is also well below those of CFC–11 and HCFC–141b (with GWPs ranging from 725 to 4,750). Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the AIHA WEEL, recommendations in the MSDS, and other safety precautions common in the foam blowing industry. The potential health effects of Solstice™ 1233zd(E) are common to many foam blowing agents, including many of those already listed as acceptable under SNAP. EPA thus finds *trans*-1-chloro-3,3,3-trifluorop-1-ene (Solstice™ 1233zd(E)) acceptable in the end-use listed above, because the overall environmental and human health risk posed by *trans*-1-chloro-3,3,3-trifluoroprop-1-ene is lower than or comparable to the risks posed by other substitutes found acceptable in the same end-use.

2. Methylal (Dimethoxymethane)

EPA's decision: EPA finds methylal acceptable as a substitute for use as a blowing agent in:

[11] Hodnebrog, Ø., et al., 2013, *op cit.;* Atmospheric chemistry of trans-CF3CH=CHF: products and mechanisms of hydroxyl radical and chlorine atom initiated oxidation'', M.S. Javadi, R. Søndergaard, O.J. Nielsen, M.D., Hurley, and T.J. Wellington, *Atmospheric Chemistry and Physics Discussions* 8, 1069–1088, 2008

[12] For more information, including definitions, see 40 CFR part 82, subpart F.

[13] Wang et al., 2011 and Patten and Wuebbles, 2010. *Op cit.*

[14] That is, unsaturated hydrocarbons with 3 to 6 carbons, such as propane, butane, pentane, isopentane, and cyclopentane.

- Rigid polyurethane and polyisocyanurate laminated boardstock
- Rigid polyurethane appliance
- Rigid polyurethane commercial refrigeration and sandwich panels
- Rigid polyurethane slabstock and other
- Flexible polyurethane
- Integral skin polyurethane

Methylal is also called dimethoxymethane, CAS 109–87–5. It belongs to a class of chemicals referred to as acetals.

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name ''SNAP Information Notice for methylal received 4/18/14.'' EPA has performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name ''Risk Screen on Substitutes for Use in Rigid Polyurethane Appliance Foam; Commercial and Sandwich Panels; Rigid Polyurethane & Polyisocyanurate Laminate Boardstock; Rigid Polyurethane Slabstock; Flexible Polyurethane; Integral Skin Polyurethane Substitute: Methylal (Dimethoxymethane).'' EPA's review of this substitute is pending for spray foam.

Environmental information: Methylal has an ODP of zero. The 100-yr GWP of methylal is less than three. Methylal is a VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS.

Flammability information: Methylal is flammable. Under the Globally Harmonized System of Classification and Labelling of Chemicals, it is classified as a Class II flammable liquid and under OSHA's regulations at 29 CFR 1910.106, it is classified as a Class IB flammable liquid. Some specific blends of methylal with other blowing agents are flammable as formulated and should be handled with proper precautions, as specified by the manufacturer.[15] EPA recommends that users follow all requirements and recommendations specified in the MSDS and other safety precautions for use of flammable blowing agents used in the foam blowing industry. Use of methylal will require safe handling and shipping as prescribed by OSHA and the Department of Transportation (for example, using personal protective equipment and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173).

Toxicity and exposure data: Potential health effects of this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space.

EPA anticipates that methylal will be used consistent with the recommendations specified in the manufacturer's MSDS. The American Conference of Governmental Industrial Hygienists (ACGIH) has established a threshold limit value (TLV) of 1,000 ppm (8-hr TWA) for methylal. NIOSH has a recommended exposure limit (REL) of 1,000 ppm for methylal on a 10-hour time-weighted average. EPA anticipates that users will be able to meet workplace exposure limits (TLV and REL) and address potential health risks by following requirements and recommendations in the MSDS and in other safety precautions common to the foam blowing industry.

Comparison to other substitutes in the same end uses: Methylal has an ODP of zero, comparable to a number of other acceptable non-ozone-depleting substitutes for these end uses, such as HFC–134a, HFC–245fa, HFC–152a, and C3–C6 saturated light hydrocarbons, and in contrast to the ODS CFC–11, HCFC–141b, HCFC–142b and HCFC–22 (with ODPs ranging from 0.04 to 1.0). Methylal's GWP of less than three is lower than or comparable to that of other non-ozone-depleting substitutes in the same foam blowing end uses for which we are finding it acceptable, such as HFC–134a, HFC–245fa and HFC–152a (with GWPs ranging from 124 to 1,430) and C3–C6 saturated light hydrocarbons (with GWPs less than 10). Furthermore, the GWP of methylal is lower than those of CFC–11, HCFC–141b, HCFC–142b and HCFC–22 (with GWPs ranging from 725 to 4,750). Like other flammable substitutes in these end uses, such as HFC–365mfc or C3–C6 saturated light hydrocarbons, flammability risks can be addressed by following the MSDS and other procedures common in the foam blowing industry in the end uses listed. Toxicity risks can be minimized by use consistent with the ACGIH TLV and NIOSH REL, recommendations in the MSDS, and other safety precautions common in the foam blowing industry. The potential health effects of methylal are common to many foam blowing agents, including many of those already listed as acceptable under SNAP. The EPA thus finds methylal acceptable in the end uses listed above, because the overall environmental and human health risk posed by methylal is lower than or comparable to the risks posed by other substitutes found acceptable in the same end uses.

3. HFO–1336mzz(Z) (Formacel® 1100)

EPA's decision: EPA finds HFO–1336mzz(Z) acceptable as a substitute for use as a blowing agent in:

- Rigid polyurethane appliance foam
- Rigid polyurethane commercial refrigeration and sandwich panels
- Flexible polyurethane
- Integral skin polyurethane
- Rigid polyurethane slabstock and other
- Rigid polyurethane and polyisocyanurate laminated boardstock
- Phenolic insulation board and bunstock

HFO–1336mzz(Z) is a hydrofluoroolefin or unsaturated hydrofluorocarbon. It is also called (Z)-1,1,1,4,4,4-hexafluorobut-2-ene or *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (CAS Reg. No. 692–49–9) and also goes by the trade names of FEA–1100 or Formacel® 1100.

You may find the redacted submission in Docket EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''SNAP Information Notice for FEA–1100 as a Foam Blowing Agent Received 8/3/11.'' EPA has performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name ''Risk Screen on Substitutes for Use in Rigid Polyurethane Appliance Foam; Rigid Polyurethane and Polyisocyanurate Laminated Boardstock; Rigid Polyurethane Commercial Refrigeration and Sandwich Panels; Rigid Polyurethane Slabstock and Other; Flexible Polyurethane; Integral Skin Polyurethane; and Phenolic Insulation Board and Bunstock: HFO–1336mzz(Z) (Formacel® 1100).'' EPA's review of this substitute is pending for spray foam.

Environmental information: HFO–1336mzz(Z) has an ODP of zero. It has a 100-yr GWP of about 9.[16] HFO–

[15] 59 FR at 13084. ''The Agency has determined that because of the potential for formation and emission of decomposition products in rigid closed cell foams, notification and review under SNAP is required for blends of chemical alternatives in foam end-uses that encompass residential products where chronic consumer exposure could occur. These end-uses are: polyurethane rigid laminated boardstock, polystyrene extruded boardstock and billet foams, phenolic foams, and polyolefin foams.''

[16] Atmospheric Chemistry of (*Z*)-$CF_3CH{=}CHCF_3$: OH Radical Reaction Rate Coefficient and Global Warming Potential; Munkhbayar Baasandorj, A.R. Ravishankara, and James B. Burkholder. *J. Phys. Chem. A*, 2011, 115 (38), pp. 10539–10549.

1336mzz(Z) is a VOC. The manufacturer has petitioned the EPA to exempt HFO–1336mzz(Z) from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS based on its claim that the chemical exhibits low photochemical reactivity.

Flammability information: HFO–1336mzz(Z) is not flammable.

Toxicity and exposure data: Potential health effects of this substitute include skin or eye irritation or frostbite. At sufficiently high concentrations, the substitute may cause irregular heartbeat. The substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many foam blowing agents. The EPA anticipates that HFO–1336mzz(Z) will be used consistent with the recommendations specified in the MSDS. The manufacturer recommends an acceptable exposure limit (AEL) for the workplace of 500 ppm on an 8-hour TWA[17]. The EPA anticipates that users will be able to meet the manufacturer's AEL and address potential health risks by following requirements and recommendations in the MSDS and other safety precautions common to the foam blowing industry.

Comparison to other foam blowing agents: HFO–1336mzz(Z) has an ODP of zero, comparable to a number of other acceptable non-ozone-depleting substitutes for these end uses such as HFC–134a, HFC–245fa, HFC–152a, and C3–C6 saturated light hydrocarbons and in contrast to CFC–11, CFC–113, HCFC–141b, and HCFC–22 (with ODPs ranging from 0.04 to 1.0). HFO–1336mzz(Z)'s GWP of about 9 is lower than or comparable to those of other acceptable substitutes in the same end uses for which we are finding it acceptable, such as HFC–134a, HFC–245fa, and HFC–152a (with GWPs ranging from 124 to 1,430), C3–C6 saturated light hydrocarbons (with GWPs less than 10), and Solstice–1233zd(E) with a GWP of 1 to 7 (see listing B.1 above and 77 FR 47772). Further, the GWP of HFO–1336mzz(Z) is less than those of CFC–11, CFC–113, HCFC–141b, and HCFC–22, with GWPs ranging from 725 to 4,750. Flammability risks are low, as discussed above. Toxicity risks can be minimized by use consistent with the manufacturer's recommended AEL, recommendations in the MSDS, and other safety precautions common in the foam blowing industry. The potential health effects of HFO–1336mzz(Z) are common to many foam blowing agents, including many of those already listed as acceptable under SNAP. EPA thus finds HFO–1336mzz(Z) acceptable in the end uses listed above, because the overall environmental and human health risk posed by HFO–1336mzz(Z) is lower than or comparable to the risks posed by other substitutes found acceptable in the same end uses.

C. Fire Suppression and Explosion Protection

1. Powdered Aerosol D (Aero-K®, Stat-X®)

EPA's decision: EPA finds Powdered Aerosol D acceptable as a substitute for total flooding uses.

Powdered Aerosol D is a pyrotechnic particulate aerosol and explosion suppressant that also is marketed under the trade names of Aero-K® and Stat-X®. This fire suppressant is supplied to users as a solid housed in a double-walled hermetically-sealed steel container. When the unit is triggered by heat (300 °C), the product is pyrotechnically activated to produce gases and aerosol particles from a mixture of chemicals. EPA previously listed Powdered Aerosol D as acceptable subject to use conditions (71 FR 56359; September 7, 2006). The use conditions require that Powdered Aerosol D be used only in areas that are not normally occupied, on the basis of information supporting its safe use in areas that are not normally occupied. Based on a review of additional information from the submitter to support the safe use of Powdered Aerosol D in normally occupied spaces, EPA now determines that Powdered Aerosol D is also acceptable for use in total flooding systems for normally occupied spaces. The listing will provide that Powdered Aerosol D is acceptable for total flooding uses, which would include both unoccupied and occupied spaces. In a subsequent rulemaking EPA will remove the previous listing as acceptable subject to use conditions. In the ''Further Information'' column of the tables summarizing today's listing decisions and found at the end of this document, we also state that use of this agent should continue to be in accordance with the safety guidelines in the latest edition of the National Fire Protection Association (NFPA) 2010 Standard for Aerosol Extinguishing Systems.

You may find the redacted submission in Docket item EPA–HQ–OAR–2003–0118 at *www.regulations.gov* under the name, ''8/8/13 letter from Marc Gross, Fireaway to Rebecca von dem Hagen, EPA and SNAP Information Notice for Stat-X.'' EPA has performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in docket EPA–HQ–OAR–2003–0118 under the name, ''Risk Screen on Substitutes for Total Flooding Systems in Normally Occupied Spaces—Substitute: Powdered Aerosol D (Stat-X®).''

Environmental information: The active ingredients of Powdered Aerosol D are solids both before and after use; thus, their ODP and GWP are both zero. The gaseous post-activation products for Powdered Aerosol D also have zero ODP and GWPs of 25 or less. The solid active ingredients and particulate post-activation products do not participate in atmospheric photochemical reactions and are not VOCs. The gaseous post-activation products are excluded from the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS.

None of the pre- or post-activation constituents of Powdered Aerosol D will exist in quantities approaching the respective reporting quantities under the Clean Water Act for priority or toxic pollutants. During post-activation clean-up procedures, clean-up residues should be disposed of in accordance with requirements appropriate for those materials, as outlined in the agent's MSDS and local, state, and federal regulations.

Flammability information: Powdered Aerosol D's post-activation products are nonflammable.

Toxicity and exposure data: Exposure to Powdered Aerosol D after activation may cause temporary, mild irritation of the mucous membrane. If eye or skin contact occurs, end users should flush eyes with water or wash skin with soap and water. Exposure to the post-discharge products is expected to be below the relevant workplace exposure limits for those compounds. Because it is housed in a hermetically sealed container, exposure should not occur unless the system is activated.

Information on additional safety recommendations: The discharge of the aerosol results in a reduction of visibility in the protected space due to the uniform distribution of the particulate generated. Use according to the NFPA 2010 Standard will further reduce any safety risks due to reduced visibility. In addition, EPA recommends that cross-zone detection systems and

[17] As of the time of signature of this document, the WEEL Committee of the Occupational Alliance for Risk Science had proposed, but not yet finalized, a WEEL of 500 ppm for HFO–1336mzz(Z). The proposed documentation may be viewed at *www.tera.org/OARS/HFO-1336mzz-Z%20public%20comments%209-18-14.pdf*.

abort switches located near an exit from the protected space be employed.

In the ''Further Information'' column of the tables summarizing today's listing decisions, EPA recommends the following for establishments manufacturing Powdered Aerosol D and filling containers to be used in total flooding applications:

—Workers should use appropriate safety and protective equipment (e.g., protective gloves, tightly sealed goggles, protective work clothing, and particulate-removing respirators using NIOSH type N95 or better filters) consistent with OSHA guidelines.
—A local exhaust system should be installed and operated to provide adequate ventilation to reduce airborne exposure to Powdered Aerosol D constituents.
—An eye wash fountain and quick drench facility should be close to the production area.
—Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent.
—Workers responsible for cleanup should allow particulates to settle before reentering area and wear appropriate personal protective equipment.
—All spills should be cleaned up immediately in accordance with good industrial hygiene practices.

EPA expects that procedures identified in the MSDS for Powdered Aerosol D and good manufacturing practices will be adhered to, and that the appropriate safety and personal protective equipment (PPE) consistent with OSHA guidelines will be used during installation, servicing, post-discharge clean-up and disposal of total flooding systems using Powdered Aerosol D. The manufacturer should provide guidance upon installation of the system regarding the appropriate time after which workers may re-enter the area for disposal to allow the maximum settling of all particulates.

Comparison to other substitutes in this end use: Powdered Aerosol D has zero ODP, both prior to and after activation. In comparison, Halon 1301 has an ODP of 12 and other acceptable substitutes used in this end use, such as HCFC Blend A, HFC–227ea, and HFC–125 have ODPs of 0.048, zero and zero. The active ingredients of Powdered Aerosol D have a GWP of zero prior to activation and the gaseous post-activation products have a GWP of 25 or less. In comparison, Halon 1301 has a GWP of 7,140 and other acceptable substitutes used in this end use, such as HCFC Blend A, HFC–227ea, and HFC–125 have GWPs of about 1,550, 3,220, and 3,500, respectively. Toxicity risks can be minimized by use consistent with the NFPA 2010 standard, recommendations in the MSDS, and other safety precautions common in the fire suppression industry. The potential health effects of Powdered Aerosol D are common to many fire suppressants, including many of those already listed as acceptable under SNAP. EPA thus finds Powdered Aerosol D acceptable in the total flooding end-use because it does not pose a greater overall risk to human health and the environment than other acceptable substitutes in this end-use.

II. Section 612 Program

A. Statutory Requirements and Authority for the SNAP Program

Section 612 of the CAA requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I substance (e.g., chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II substance (e.g., hydrochlorofluorocarbon) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of ''acceptable'' substitutes is found at *www.epa.gov/ozone/snap/lists* and the lists of ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' substitutes are found in the appendices to 40 CFR part 82, subpart G.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). The agency has 90 days to grant or deny a petition. Where the agency grants the petition, the EPA must publish the revised lists within an additional six months.

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. EPA's Regulations Implementing Section 612

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (subpart G of 40 CFR part 82). These sectors are the following: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to list as acceptable those substitutes that do not present a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available.

C. How the Regulations for the SNAP Program Work

Under the SNAP regulations, anyone who plans to market or produce a substitute to replace a class I substance or class II substance in one of the eight major industrial use sectors must provide the Agency with notice and the required health and safety information on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. 40 CFR 82.176(a). While this requirement typically applies to chemical manufacturers as the person likely to be planning to introduce the substitute into interstate commerce,[18] it may also apply to importers, formulators, equipment manufacturers, and end-users [19] when they are responsible for introducing a substitute into commerce. The 90-day SNAP review process begins once EPA receives the submission and determines that the submission includes complete and adequate data. 40 CFR 82.180(a). The CAA and the SNAP regulations, 40 CFR 82.174(a), prohibit use of a substitute earlier than 90 days after notice has been provided to the Agency.

The agency has identified four possible decision categories for substitute submissions: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable.[20] 40 CFR 82.180(b). Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable without use conditions may be used for all applications within the relevant end-uses within the sector and without limits under SNAP on how they may be used. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. Substitutes that are found to be unacceptable may not be used after the date specified in the rulemaking adding such substitute to the list of unacceptable substitutes.[21]

After reviewing a substitute, the agency may make a determination that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of EPA's SNAP regulations. 40 CFR 82.174(c).

For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. The Agency requires a user of a narrowed use substitute to demonstrate that no other acceptable substitutes are available for their specific application. The EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using the substitute in violation of section 612 of the CAA and EPA's SNAP regulations. 40 CFR 82.174(c).

The section 612 mandate for EPA to prohibit the use of a substitute that may present risk to human health or the environment where a lower risk alternative is available or potentially available [22] provides EPA with the authority to change the listing status of a particular substitute if such a change is justified by new information or changed circumstance.

As described in this document and elsewhere, including the original SNAP rulemaking published in the **Federal Register** at 59 FR 13044 on March 18, 1994, the SNAP program evaluates substitutes within a comparative risk framework. The SNAP program compares new substitutes both to the ozone-depleting substances being phased out under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the CAA and to other available or potentially available alternatives for the same end uses. The environmental and health risk factors that the SNAP program considers include ozone depletion potential, flammability, toxicity, occupational and consumer health and safety, as well as contributions to global warming and other environmental factors. Environmental and human health exposures can vary significantly depending on the particular application of a substitute—and over time, information applicable to a substitute can change. This approach does not imply fundamental tradeoffs with respect to different types of risk, either to the environment or to human health. EPA recognizes that during the two-decade long history of the SNAP program, new alternatives and new information about alternatives have emerged. To the extent possible, EPA considers new information and improved understanding of the risk factors for the environment and human health in the context of the available or potentially available alternatives for a given use.

The agency publishes its SNAP program decisions in the **Federal Register**. EPA uses notice-and-comment rulemaking to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only subject to use conditions or narrowed use limits, or to remove a substitute from either the list of prohibited or acceptable substitutes.

In contrast, EPA publishes ''notices of acceptability'' or ''determinations of acceptability,'' to notify the public of substitutes that are deemed acceptable with no restrictions. As described in the preamble to the rule initially implementing the SNAP program (59 FR 13044; March 18, 1994), EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''comments'' or ''further information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under

[18] As defined at 40 CFR 82.104, ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[19] As defined at 40 CFR 82.172, ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ODS.

[20] The SNAP regulations also include ''pending,'' referring to submissions for which the EPA has not reached a determination, under this provision.

[21] As defined at 40 CFR 82.172, ''use'' means any use of a substitute for a Class I or Class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses. This definition of use encompasses manufacturing process of products both for domestic use and for export. Substitutes manufactured within the United States exclusively for export are subject to SNAP requirements since the definition of use in the rule includes use in the manufacturing process, which occurs within the United States.

[22] In addition to acceptable commercially available substitutes, the SNAP program may consider potentially available substitutes. The SNAP program's definition of ''potentially available '' is ''any alternative for which adequate health, safety, and environmental data, as required for the SNAP notification process, exist to make a determination of acceptability, and which the agency reasonably believes to be technically feasible, even if not all testing has yet been completed and the alternative is not yet produced or sold.'' (40 CFR 82.172)

the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (e.g., worker protection regulations promulgated by OSHA). The ''further information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''further information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

D. Additional Information about the SNAP Program

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to the EPA's Ozone Depletion Web site at: *www.epa.gov/ozone/snap.* For more information on the agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations are found at: *www.epa.gov/ozone/snap/chron.htm*l.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: October 15, 2014.

Sarah Dunham,

Director, Office of Atmospheric Programs.

Appendix A: Summary of Acceptable Decisions

REFRIGERATION AND AIR CONDITIONING

End-use	Substitute	Decision	Further information [1]
Centrifugal chillers *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year global warming potential (GWP) of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2), and HFO–1234ze(E), which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The American Industrial Hygiene Association (AIHA) has established workplace environmental exposure limits (WEELs) of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Reciprocating, screw and scroll chillers *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Industrial process refrigeration *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Industrial process air conditioning *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Cold storage warehouses *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable.

REFRIGERATION AND AIR CONDITIONING—Continued

End-use	Substitute	Decision	Further information [1]
			The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Refrigerated transport *(new only)*.	Carbon dioxide (CO_2 or R–744).	Acceptable	The Occupational Safety and Health Administration (OSHA) has established a required 8 hour/day, 40 hour/week permissible exposure limit (PEL) for CO_2 of 5,000 ppm. The National Institute for Occupational Safety and Health (NIOSH) has established a 15-minute recommended short-term exposure limit (STEL) of 30,000 ppm. CO_2 is nonflammable. EPA recommends that users follow all requirements and recommendations specified in American Society for Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standard 15.
Refrigerated transport *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Retail food refrigeration *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E). This decision applies to all types of equipment in this sector, including remote systems, condensing units, and stand-alone equipment.
Vending machines *(retrofit only)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Commercial ice machines *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Water coolers *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).

REFRIGERATION AND AIR CONDITIONING—Continued

End-use	Substitute	Decision	Further information [1]
Household refrigerators and freezers *(retrofit and new)*.	R–450A (Solstice ® N–13)	Acceptable	R–450A has a 100-year GWP of approximately 604. This substitute is a blend of HFC–134a, which is also known as 1,1,1,2-tetrafluoroethane (CAS Reg. No. 811–97–2) and HFO–1234ze(E) which is also known as *trans*-1,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). This blend is nonflammable. The AIHA has established a WEELs of 1,000 ppm and 800 ppm (8-hr TWA) for HFC–134a and HFO–1234ze(E).
Non-mechanical heat transfer *(new only)*.	*Trans*-1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)).	Acceptable	*Trans*-1-chloro-3,3,3-trifluoroprop-1-ene (CAS Reg. No. 102687–65–0) has an ODP of approximately 0.00024 to 0.00034. It has a 100-year GWP of 1 to 7. This compound is nonflammable. The AIHA has established a WEEL of 800 ppm (8-hr TWA) for *trans*-1-chloro-3,3,3-trifluoroprop-1-ene.

[1] Observe recommendations in the manufacturer's MSDS and guidance for all listed refrigerants.

FOAM BLOWING AGENTS

End-use	Substitute	Decision	Further information[1]
Rigid polyurethane and polyisocyanurate laminated boardstock.	Methylal (dimethoxymethane)	Acceptable	Methylal (CAS Reg. No. 109–87–5) has a 100-yr global warming potential (GWP) of less than three. This substitute is flammable and meets the definition of a flammable Class IB fluid under the Occupational Safety and Health Administration's (OSHA's) regulations at 29 CFR 1910.106. The American Conference of Governmental Industrial Hygienists (ACGIH) has established a Threshold Limit Value (TLV) of 1,000 ppm (8-hr time-weighted average (TWA)) for methylal (dimethoxymethane).
	HFO–1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene, Formacel® 1100).	Acceptable	HFO–1336mzz(Z) (CAS Reg. No. 692–49–9) has no ozone depletion potential (ODP) and a 100-year GWP of roughly 9. This compound is nonflammable. The manufacturer recommends an acceptable exposure limit of 500 ppm over an 8-hour TWA for HFO–1336mzz(Z).
Rigid polyurethane appliance ..	Methylal (dimethoxymethane)	Acceptable	Methylal (CAS Reg. No. 109–87–5) has a 100-yr GWP of less than three. This substitute is flammable and meets the definition of a flammable Class IB fluid under OSHA's regulations at 29 CFR 1910.106. The ACGIH has established a TLV of 1,000 ppm (8-hr TWA) for methylal (dimethoxymethane).
	HFO–1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene, Formacel® 1100).	Acceptable	HFO–1336mzz(Z) (CAS Reg. No. 692–49–9) has no ozone depletion potential (ODP) and a 100-year GWP of roughly 9. This compound is nonflammable. The manufacturer recommends an acceptable exposure limit of 500 ppm over an 8-hour TWA for HFO–1336mzz(Z).
Rigid polyurethane commercial refrigeration and sandwich panels.	Methylal (dimethoxymethane)	Acceptable	Methylal (CAS Reg. No. 109–87–5) has a 100-yr GWP of less than three. This substitute is flammable and meets the definition of a flammable Class IB fluid under OSHA's regulations at 29 CFR 1910.106. The ACGIH has established a TLV of 1,000 ppm (8-hr TWA) for methylal (dimethoxymethane).
	HFO–1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene, Formacel® 1100).	Acceptable	HFO–1336mzz(Z) (CAS Reg. No. 692–49–9) has no ODP and a 100-year GWP of roughly 9. This compound is nonflammable. The manufacturer recommends an acceptable exposure limit of 500 ppm over an 8-hour TWA for HFO–1336mzz(Z).

FOAM BLOWING AGENTS—Continued

End-use	Substitute	Decision	Further information[1]
Rigid polyurethane slabstock and other.	Methylal (dimethoxymethane)	Acceptable	Methylal (CAS Reg. No. 109–87–5) has a 100-yr GWP of less than three. This substitute is flammable and meets the definition of a flammable Class IB fluid under OSHA's regulations at 29 CFR 1910.106. The ACGIH has established a TLV of 1,000 ppm (8-hr TWA) for methylal (dimethoxymethane).
	HFO–1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene, Formacel® 1100).	Acceptable	HFO–1336mzz(Z) (CAS Reg. No. 692–49–9) has no ODP and a 100-year GWP of roughly 9. This compound is nonflammable. The manufacturer recommends an acceptable exposure limit of 500 ppm over an 8-hour TWA for HFO–1336mzz(Z).
Flexible polyurethane	Methylal (dimethoxymethane)	Acceptable	Methylal (CAS Reg. No. 109–87–5) has a 100-yr GWP of less than three. This compound is flammable and meets the definition of a flammable Class IB fluid under OSHA's regulations at 29 CFR 1910.106. The ACGIH has established a TLV of 1,000 ppm (8-hr TWA) for methylal (dimethoxymethane).
	HFO–1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene, Formacel® 1100).	Acceptable	HFO–1336mzz(Z) (CAS Reg. No. 692–49–9) has no ODP and a 100-yr GWP of roughly 9. This compound is nonflammable. The manufacturer recommends an acceptable exposure limit of 500 ppm over an 8-hour TWA for HFO–1336mzz(Z).
	Trans-1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)).	Acceptable	*Trans*-1-chloro-3,3,3-trifluoroprop-1-ene (CAS Reg. No. 102687–65–0) has an ODP of approximately 0.00024 to 0.00034. It has a 100-year GWP of 1 to 7. This compound is nonflammable. The American Industrial Hygiene Association has established a workplace environmental exposure limit of 800 ppm (8-hr TWA) for *trans*-1-chloro-3,3,3-trifluoroprop-1-ene.
Integral skin polyurethane	Methylal (dimethoxymethane)	Acceptable	Methylal (CAS Reg. No. 109–87–5) has a 100-yr GWP of less than three. This substitute is flammable and meets the definition of a flammable Class IB fluid under OSHA's regulations at 29 CFR 1910.106. The ACGIH has established a TLV of 1,000 ppm (8-hr TWA) for methylal (dimethoxymethane).
	HFO–1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene, Formacel® 1100).	Acceptable	HFO–1336mzz(Z) (CAS Reg. No. 692–49–9) has no ODP and a 100-yr GWP of roughly 9. This compound is nonflammable. The manufacturer recommends an acceptable exposure limit of 500 ppm over an 8-hour TWA for HFO–1336mzz(Z).
Phenolic insulation board and bunstock.	HFO–1336mzz(Z) ((Z)-1,1,1,4,4,4-hexafluorobut-2-ene, Formacel® 1100).	Acceptable	HFO–1336mzz(Z) (CAS Reg. No. 692–49–9) has no ODP and a 100-year GWP of roughly 9. This compound is nonflammable. The manufacturer recommends an acceptable exposure limit of 500 ppm over an 8-hour TWA for HFO–1336mzz(Z).

[1] Observe recommendations in the manufacturer's MSDS and manufacturer's guidance for using all listed foam blowing agents.

FIRE SUPPRESSION AND EXPLOSION PROTECTION

End-use	Substitute	Decision	Further information
Total flooding (occupied and unoccupied areas).	Powdered Aerosol D (Aero-K®, Stat-X®).	Acceptable	Use of this agent should be in accordance with the safety guidelines in the latest edition of the National Fire Protection Association 2010 standard for Aerosol Extinguishing Systems. For establishments manufacturing the agent or filling, installing, or servicing containers or systems to be used in total flooding applications, EPA recommends the following:

FIRE SUPPRESSION AND EXPLOSION PROTECTION—Continued

End-use	Substitute	Decision	Further information
			—the appropriate safety and personal protective equipment (PPE) (e.g., protective gloves, tightly sealed goggles, protective work clothing, and particulate-removing respirators with National Institute for Occupational Safety and Health type N95 or better filters) consistent with Occupational Safety and Health Administration (OSHA) guidelines should be used during manufacture, installation, servicing, and disposal of total flooding systems using the agent; —adequate ventilation should be in place to reduce airborne exposure to constituents of agent; —an eye wash fountain and quick drench facility should be close to the production area; —training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent; —workers responsible for clean up should allow for maximum settling of all particulates before reentering area and wear appropriate personal protective equipment; and —all spills should be cleaned up immediately in accordance with good industrial hygiene practices. As required by the manufacturer, units installed in normally occupied spaces will be equipped with features such as a system-isolate switch and cross-zone detection system to reduce risk of accidental activation of an agent generator while persons are present in the protected space. Also required by the manufacturer is warning of pending discharge and delay in release to ensure egress prior to activation of the agent to reduce the risk of exposure. See additional comments 1, 2, 3, 4, 5.

1. The EPA recommends that users consult Section VIII of the OSHA Technical Manual for information on selecting the appropriate types of personal protective equipment for all listed fire suppression agents. The EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.
2. Use of all listed fire suppression agents should conform to relevant OSHA requirements, including 29 CFR part 1910, subpart L, sections 1910.160 and 1910.162.
3. Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
4. Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.
5. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 14–125]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Waiver of iTRS Mandatory Minimum Standards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission eliminates certain waivers of the telecommunications relay service (TRS) requirements that are no longer necessary, given advances in communications technology. At the same time, it extends certain existing waivers of mandatory minimum standards for specific providers for which the provision of certain TRS features is technologically infeasible at this time. The Commission also eliminates certain TRS requirements that are either not applicable or technically not feasible, while ensuring that TRS consumers continue to have access to communications services that are functionally equivalent to voice telephone services. Lastly, the Commission eliminates an annual reporting requirement for TRS providers. These actions provide regulatory clarity and reduce administrative burdens on both TRS providers and the Commission and ensure that the TRS mandatory minimum standards are applicable and technologically appropriate for each type of TRS.

DATES: Effective December 22, 2014, except for terminations of waivers of §§ 64.604(a)(3)(vi)(B) and (C) of the Commission's rules, which shall become effective on October 21, 2014.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waiver of iTRS Mandatory Minimum Standards Report and Order and Order,* (*Order*), document FCC 14–125, adopted on August 20, 2014, and released on August 22, 2014, in CG Docket No. 03–123. In document FCC 14–125, the Commission also seeks comment in an accompanying Further Notice of Proposed Rulemaking (*FNPRM*), which is summarized in a

separate **Federal Register** publication. The full text of document FCC 14–125 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document FCC 14–125 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/encyclopedia/disability-rights-office-headlines.* 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).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 14–125 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will send a copy of document FCC 14–125 in a report to be sent to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. *Telecommunications Relay Services.* Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that TRS is available to enable a person with a hearing or speech disability to communicate with other telephone users in a manner that is functionally equivalent to voice communications service to the extent possible and in the most efficient manner. In accordance with this directive, the Commission's rules contain functional requirements, operations procedures and mandatory minimum standards to ensure the provision of functionally equivalent relay service. *See* 47 CFR 64.604. Many of these standards were adopted in the 1990s, at a time when there was only one form of TRS transmitted over the public switched telephone network (PSTN)—TTY-to-voice relay service. A text telephone, or TTY, is a text device that employs graphic communication in the transmission of coded signals through a wire or radio communication system. In a TTY-to-voice relay call, a communications assistant (CA) relays the call between parties by converting everything that the text caller with a hearing or speech disability types into voice for the hearing party and typing everything that the voice user responds back to the person with a disability. From 2000 to 2007, in light of advancing communication technologies and Internet-based innovations, the Commission recognized other forms of TRS as eligible for compensation from the Interstate Telecommunications Relay Service Fund (TRS Fund of Fund), including Captioned Telephone Service (CTS) and three forms of Internet-based TRS (iTRS): Video Relay Service (VRS), Internet Protocol Relay Service (IP Relay), and Internet Protocol Captioned Telephone Service (IP CTS). CTS permits people who can speak, but who have difficulty hearing over the telephone to simultaneously listen to the other party and read captions of what that party is saying. VRS allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband Internet connection using video equipment and a CA who relays the conversation back and forth by signing what the voice telephone user says to the deaf or hard of hearing user and responding in voice to the voice telephone user. IP Relay permits people with hearing or speech disabilities to communicate in text using an Internet Protocol-enabled device via the Internet. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the Internet, rather than through the PSTN. Today iTRS account for more than 90% of the total relay service minutes reimbursed from the Fund.

2. *Waivers Granted for iTRS and CTS.* The Commission's mandatory minimum standards are intended to ensure that the user experience when making TRS calls is comparable to a voice user's experience when making conventional telephone calls. Over the years, however, the Commission has granted TRS providers waivers of certain TRS mandatory minimum standards that were deemed either technologically infeasible for or inapplicable to a particular form of TRS. The waivers granted for IP CTS and Captioned Telephone Service (CTS) have been issued for indefinite periods, while most waivers granted for VRS and IP Relay have been limited in duration. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Declaratory Ruling (*IP CTS Declaratory Ruling*); published at 72 FR 6960, February 14, 2007; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Waiver Order (*2001 VRS Waiver Order*); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Petition for Clarification of WorldCom, Inc.,* CC Docket No. 98–67, Declaratory Ruling (*IP Relay Declaratory Ruling*); published at 67 FR 39863, June 11, 2002. Generally, the limited-duration waivers have been renewed periodically—in recent years on an annual basis. The Commission has conditioned many of the waivers on the filing of annual waiver reports in which providers are expected to detail their progress in achieving compliance with the underlying mandatory minimum standards.

3. *TRS Waiver NPRM.* On November 19, 2009, Hamilton Relay, Inc., AT&T, Inc., CSDVRS, LLC, Sorenson Communications, Inc., Sprint Nextel Corporation, and Purple Communications, Inc. (Petitioners) filed a ''Request for Extension and Clarification of Various iTRS Waivers'' (Hamilton Joint Request), requesting that the Commission extend indefinitely all iTRS waivers of limited duration and provide clarification on what Petitioners claim are discrepancies in some of the waivers. In September 2013, the Commission released a Notice of Proposed Rulemaking to take an in-depth look at the merits of making permanent or eliminating the waivers addressed in the Hamilton Joint Request, as well as waivers granted for CTS. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waivers of iTRS Mandatory Minimum Standards,* CG Docket No. 03–123, Notice of Proposed Rulemaking (*TRS Waiver NPRM*); published at 78 FR 63152, October 23, 2103. Specifically, the Commission sought public comment on the continuing need for, and technical feasibility and applicability of, the rules underlying each of these waivers as these rules apply to certain types of TRS.

4. Generally, the Commission sought input on the technological feasibility of compliance with, as well as the consumer need for, its waived mandatory minimum standards. The Commission divided the waivers addressed in its *TRS Waiver NPRM* into two categories, with the first group consisting of waivers for standards mandating the inclusion of features and functions available with voice telephone service in TRS, and the second group consisting of waivers for standards mandating the provision of specific communication services needed by people with speech or hearing disabilities. With respect to waivers that were limited in duration, the Commission sought comment on whether to exempt specified iTRS providers from the underlying waived mandatory minimum standards on a permanent basis, if they were determined to be inapplicable to the specified iTRS providers. Similarly, for waivers that were already of unlimited duration, the Commission sought comment on whether it should amend its rules to codify these as exemptions.

5. *Mandatory Minimum Standards for Features and Functions of Voice Telephone Service.* The first group of waived mandatory minimum standards relates to features and functions that are available with voice telephone service, including the types-of-calls requirement, equal access to interexchange carriers, pay-per-call (900) calls, three-way calling, and speed dialing. Each of these issues are addressed in turn.

6. *Types-of-Calls Requirement.* The Commission exempts iTRS providers from the types-of-calls requirement—to the extent that this standard requires providers to offer specific billing options traditionally offered for wireline voice services—so long as iTRS providers allow for long distance calls to be placed using calling cards or credit cards or do not charge for long distance service. Commission rules require TRS providers to be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. 47 CFR 64.604(a)(3)(ii). This requirement has been waived on a limited-duration basis for IP Relay and VRS providers (but not for IP CTS providers) to the extent that it requires providers to offer specific billing options, including ''operator-assisted'' billing, such as collect, calling card, and third party billing, as well as sent-paid billing for long distance calls. As a condition of this waiver, the Commission, and subsequently the Consumer and Governmental Affairs Bureau, required that VRS and IP Relay providers allow users to place long distance calls using calling cards or without charging users for such calls.

7. The Commission concludes that compliance with this mandatory minimum standard is not necessary to provide functionally equivalent telephone services for iTRS users and would not be cost effective or efficient, because it would be more costly to providers to establish a billing mechanism in order to bill for these calls than to handle them without billing consumers, as is providers' current practice. The types-of-calls requirement, adopted more than 20 years ago, was intended to ensure that certain billing options, including operator-assisted billing, that were available to voice telephone users in a PSTN-based environment would be similarly available to users of TTY-to-voice relay services. However, given the technological changes that have taken place over the past two decades, including the development of Internet-based forms of TRS, iTRS consumers do not need the same billing options that users who access relay services via the PSTN require. Accordingly, so long as iTRS providers allow consumers to use calling cards or credit cards or do not charge for long distance service, the Commission exempts all forms of iTRS from the types-of-calls requirement to the extent that the standard requires providers to offer the billing options traditionally offered for wireline voice services, and amends its rules accordingly.

8. *Equal Access to Interexchange Carriers.* The Commission exempts iTRS providers from the equal access to interexchange carriers requirement so long as they do not charge for long distance service. The Commission's rules require TRS providers to offer consumers access to their interexchange carrier of choice to the same extent that such access is provided to voice users. 47 CFR 64.604(b)(3). The Commission waived this requirement indefinitely for IP Relay and IP CTS, *IP Relay Declaratory Ruling, IP CTS Declaratory Ruling,* and on a limited-duration basis for VRS providers, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers,* CG Docket No. 03–123, WC Docket No. 05–196, Waiver Order, (*2012 TRS Waiver Order*), contingent on iTRS providers offering long distance service without charge.

9. The Commission exempts iTRS providers from the equal access to interexchange carriers requirement so long as iTRS providers do not charge for long distance service. First, the equal access to interexchange carriers requirement is not necessary to provide functionally equivalent telephone services for iTRS users so long as iTRS providers do not charge for long distance service. Consumers derive no value from equal access to long distance carriers where they do not pay long-distance charges for iTRS calls and, consequently, have no interest in price shopping for a long-distance provider. Finally, it is not feasible for iTRS providers to implement networking and routing solutions to allow iTRS users to choose their carriers. For these reasons, the Commission concludes that the equal access to interexchange carriers requirement is not necessary for iTRS providers and therefore exempt iTRS providers that do not charge for long distance service from this requirement.

10. *Pay-Per-Call (900) calls.* The Commission exempts iTRS providers from the requirement for TRS providers to be capable of handling pay-per-call (*i.e.,* 900-number) calls. Although the Commission's rules generally require TRS providers to be capable of handling pay-per-call calls, 47 CFR 64.604(a)(3)(iv), the Commission has previously waived this requirement indefinitely for IP CTS providers in the *IP CTS Declaratory Ruling,* and on a limited-duration basis for IP Relay and VRS providers because no billing mechanism has been available to handle the charges associated with pay-per-call calls. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Order on Reconsideration, (*IP Relay Order on Reconsideration*); published at 68 FR 50973, August 25, 20013; *2012 TRS Waiver Order.*

11. The Commission exempts iTRS providers from handling pay-per-call calls. The Commission bases its decision on the fact that, as holds true for the types-of-calls and equal interexchange access requirements discussed above, the pay-per-call requirement presupposes a billing relationship, or the ability to establish a billing relationship with iTRS users that providers presently do not have. The Commission is persuaded that requiring providers to establish such a billing relationship in order to provide pay-per-call calls would not be efficient given its high price tag and the very small demand for pay-per-call calls over TRS.

12. *Three-Way Calling.* The Commission terminates the indefinite waiver for IP CTS providers of the Commission's three-way calling

requirement. The Commission's rules require TRS providers to provide three-way calling functionality, 47 CFR 64.604(a)(3)(vi)(3), which allows more than two parties to be on the telephone line at the same time with the CA. 47 CFR 64.601(a)(34). The Commission granted IP CTS providers an indefinite waiver of the three-way calling requirement when it approved IP CTS as a form of reimbursable TRS. Because the record demonstrates that IP CTS providers are capable of offering three-way calling functionality, the Commission hereby terminates the indefinite waiver of the Commission's three-way calling requirement previously granted to IP CTS providers.

13. *Speed Dialing.* The Commission terminates the indefinite waiver for IP CTS providers of the Commission's speed dialing requirement. The Commission's rules require TRS providers to provide speed dialing functionality, which allows a TRS user to use a ''short-hand'' name or number for the user's most frequently called telephone numbers. 47 CFR 64.604(a)(3)(vi)(2). This permits users to place calls without having to remember or locate the number they want to call. In the *IP CTS Declaratory Ruling,* the Commission granted IP CTS providers an indefinite waiver of the speed dialing requirement, contingent on the providers filing annual reports addressing the waiver.

14. The Commission now terminates the indefinite waiver for IP CTS providers of the Commission's speed dialing requirement. The Commission recognizes that IP CTS users may dial calls before being connected to a CA. Accordingly, IP CTS providers will be permitted to fulfill the speed dialing requirement contained in the Commission's rules by offering speed dialing capability through users' iTRS access technology, such as through one-touch dialing. As a result, IP CTS providers need not offer a feature that allows a TRS user to communicate the speed dial ''short hand'' name or number directly to the CA in the context of an IP CTS call to comply with this requirement.

15. *Mandatory Minimum Standards to Provide Specific TRS Features.* The second group of waivers relates to standards mandating the provision of specific communication services needed by people with disabilities, including voice carryover (VCO), hearing carryover (HCO), text to voice and voice to text, speech-to-speech (STS), ASCII/Baudot, and call release. Each of these are addressed in turn.

16. *VCO and HCO.* The Commission concludes that certain iTRS providers must provide some, but not all, forms of VCO and HCO. With VCO, a deaf or hard of hearing person who is able to speak communicates by voice directly to the other party to the call without intervention by the CA, and the CA relays the other party's voice response as text or in sign language. 47 CFR 64.601(a)(42) (defining VCO in the context of TTY-based relay service). With HCO, a person who has a speech disability, but who is able to hear, listens directly to the other party's voice without intervention by the CA, and in reply has the CA convert his or her typed or signed responses into voice. 47 CFR 64.601(a)(13) (defining HCO in the context of TTY-based relay service). There are multiple forms of both VCO and HCO. The Commission has granted fixed-duration waivers for VRS and IP Relay of all of the VCO and HCO mandatory minimum standards except two-line VCO and two-line HCO, based on providers' representations that Internet connections are unable to deliver voice and data over a single line with the necessary quality. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket Nos. 90–571, 98–67, CG Docket No. 03–123, Report and Order, Order on Reconsideration (*2004 TRS Report and Order*); published at 69 FR 53346, September 1, 2004 (extending the one-line VCO and HCO waivers to VRS); *see also IP Relay Declaratory Ruling* (initially waiving the one-line VCO requirement for IP Relay for a period of one year); *IP Relay Order on Reconsideration,* (extending the one-line VCO waiver for five years and approving a waiver for one-line HCO for the same period, based on provider representations that the same technological obstacles exist for HCO as for VCO); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Americans with Disabilities Act of 1990,* CC Docket No. 98–67, CG Docket No. 03–123, Second Report and Order, Order on Reconsideration, (*2003 TRS Report and Order*), published at 68 FR 50973, August 25, 2003 (extending the waiver for IP Relay and VRS providers to VCO-to-TTY, HCO-to-TTY, VCO-to-VCO, and HCO-to-HCO types of TRS calls). The Commission also previously granted indefinite waivers of all of the VCO and HCO mandatory minimum standards for IP CTS. *See IP CTS Declaratory Ruling.* Finally, the Commission previously granted an indefinite waiver of its mandatory minimum standards addressing HCO for CTS. *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Declaratory Ruling (*CTS Declaratory Ruling);* published at 68 FR 55898, September 29, 2003.

17. *One-line VCO and one-line HCO for VRS Providers.* The Commission generally will allow the existing waivers for one-line VCO and one-line HCO for VRS providers to expire, although the Commission extends for one year a waiver of the requirement to offer one-line VCO and one-line HCO for VRS providers ASL Services Holdings, LLC (ASL Services) and Hancock, Jahn, Lee and Puckett, LLC d/b/a Communications Axess Ability Group (CAAG), as discussed below.

18. Because commenters confirm that it is now technologically feasible for VRS providers to offer their users one-line VCO and one-line HCO capabilities, the Commission declines Petitioners' original request to exempt all VRS providers from these mandatory minimum standards, and terminates the current waiver for these required features December 22, 2014. VRS providers may meet this obligation so long as they provide, upon a consumer's request for an equipment upgrade, at least one form of iTRS access technology that supports one-line VCO and one-line HCO. In other words, VRS providers need not support one-line VCO and one-line HCO in every version of the iTRS access technology that they distribute. Rather, VRS providers that provide at least one form of iTRS access technology that supports one-line VCO and one-line HCO will be in compliance with the mandatory minimum standard for one-line VCO and one-line HCO. This will allow the continued use of legacy VRS hardware for consumers who wish to keep their devices and who do not wish to use one-line versions of VCO or HCO.

19. In addition, the Commission waives the requirement for VRS providers to support one-line VCO and one-line HCO on VRS access technology distributed by another provider until the release of a Public Notice by the Commission indicating that the SIP standards-development process for VRS has progressed to the point where support for one-line VCO and one-line HCO on VRS access technology distributed by another provider is possible or the VRS access technology reference platform is implemented, whichever comes first.

20. VRS providers' limited ability to provide one-line VCO and one-line HCO using other providers' iTRS access technology due to the lack of standards for signaling the user's one-line VCO or

HCO preferences will be resolved once the SIP standards-development process for VRS has progressed to the point where support for one-line VCO and one-line HCO on VRS access technology distributed by another provider is possible or the VRS access technology reference platform is implemented. The Commission has ordered the development of a VRS access technology reference platform to ''allow providers to ensure that any VRS access technology they develop or deploy is fully compliant with [the Commission's] interoperability and portability requirements.'' *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket Nos. 10–51, 03–123, Report and Order and Further Notice of Proposed Rulemaking, (*VRS Reform Order*), published at 78 FR 40582, July 5, 2013, and at 78 FR 40407, July 5, 2013. Once the VRS access technology reference platform is tested and available for use, the Commission has explained that no VRS provider shall be compensated for minutes of use generated by the provider's VRS access technologies that are found to be non-interoperable with the reference platform. The Commission will release a Public Notice announcing the completion of the VRS access technology reference platform or the progression of the SIP standards development process to the point where support for one-line VCO and one-line HCO on VRS access technology distributed by another provider is possible, and the resulting termination of this waiver.

21. Although the Commission terminates the current, broadly-applicable waivers for one-line VCO and one-line HCO for VRS providers generally, the Commission extends for one year the waiver of these requirements for two VRS providers, ASL Services and CAAG. The Commission finds that neither ASL Services nor CAAG distribute hardware VRS access technology, that the current version of the software that ASL Services and CAAG distribute does not support one-line HCO or one-line VCO, and that the next version of their respective software is expected to have this capability. While covered by the prior waivers, ASL Services and CAAG nonetheless have engaged in efforts to develop solutions to provide these TRS features, as evidenced by their commitment to meet these mandatory minimum standards within one year. Based on the Joint Providers' statement that ASL Services and CAAG will be technically capable of offering their users these capabilities within one year, the Commission concludes that a waiver of this limited duration is appropriate.

22. Two VRS providers, Sorenson and Purple ask that the Commission confirm that their specific implementation of one-line VCO and one-line HCO meets the mandatory minimum standards for one-line VCO and one-line HCO. Sorenson explains that because not all interpreter stations are capable of supporting one-line VCO and HCO, deaf-to-hearing single-line VCO and HCO calls are routed to interpreting stations capable of handling those calls. The Commission confirms that this method of handling one-line VCO and one-line HCO calls satisfies the mandatory minimum standards for one-line VCO and one-line HCO. The one-line VCO and one-line HCO routing process described by Sorenson routes the call based on technical capability to handle the call, not the skill of the CA. Accordingly, the Commission concludes that Sorenson's method of implementing one-line VCO and one-line HCO does not use skill-based routing and meets the mandatory minimum standards for the provision of one-line VCO and one-line HCO.

23. *One-line VCO and one-line HCO for IP Relay Providers.* The Commission exempts IP Relay providers from the requirement to offer one-line VCO and one-line HCO. The Commission is persuaded that the significant engineering changes necessary to support one-line HCO and one-line VCO would not be practical given the current level of demand for one-line VCO or HCO. The Commission also agrees that because alternatives, such as IP CTS, are available to take the place of one-line VCO and HCO used in conjunction with IP Relay, the significant time and resources that would be associated with creating these features over IP Relay is not justified. As a result, the Commission amends its rules to exempt IP Relay providers from the requirement to offer one-line VCO and one-line HCO.

24. *VCO-to-TTY and HCO-to-TTY for VRS and IP Relay Providers.* The Commission exempts VRS and IP Relay providers from the requirement to offer VCO-to-TTY and HCO-to-TTY. The Commission concludes that the provision of these features is not necessary to achieve functionally equivalent telephone service in the most efficient manner. This conclusion is reinforced by the low to non-existent demand for VCO-to-TTY and HCO-to-TTY using VRS and IP Relay reported by providers and the lack of consumer comment in support of applying these TRS features. Moreover, with so little interest by the user community in accessing these services and the impracticality of providing such calls, the Commission concludes that it would not be an efficient use of TRS resources to require VRS and IP Relay providers to develop a solution to enable them. Accordingly, the Commission amends its rules to exempt VRS and IP Relay providers from the requirement to offer VCO-to-TTY and HCO-to-TTY.

25. *VCO-to-VCO and HCO-to-HCO for VRS and IP Relay Providers.* In 2003, the Commission adopted, with little discussion, minimum standards mandating the provision of HCO-to-HCO and VCO-to-VCO calls by TRS providers. *2003 TRS Report and Order.* Upon further analysis, the Commission eliminates the VCO-to-VCO and HCO-to-HCO requirements with respect to VRS and IP Relay providers. The Commission's rules define VCO as a form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. 47 CFR 64.601(a)(42) (emphasis added). Similarly, the Commission's rules define HCO as a form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. 47 CFR 64.601(a)(13) (emphasis added). Under these definitions, if two individuals were to use VCO or two individuals were to use HCO in the context of VRS or IP Relay services, then both would have to be able to speak as well as hear what the other party is saying, and a CA would not be necessary to provide functionally equivalent communication. For example, if individuals were to make a VCO-to-VCO call, they would be speaking directly to each other, and thus, the call would not require a CA. The same would hold true in an HCO-to-HCO call, in which both parties would be able to hear each other. Because HCO-to-HCO calls and VCO-to-VCO calls make use of CAs, but with the exception of CTS and IP CTS, do not require CAs for functionally equivalent communication, the Commission finds they should not be compensable relay calls. Therefore, the Commission concludes that the handling of HCO-to-HCO and VCO-to-VCO calls by VRS and IP Relay providers, to the extent that such calls would result in point-to-point calls for which a CA is involved even though not needed, is not required and thus not compensable from the TRS Fund.

26. *HCO for CTS and IP CTS Providers.* As noted above, IP CTS providers already have an indefinite waiver of all of the HCO mandatory minimum standards. In addition, an indefinite waiver of the Commission's mandatory minimum standards addressing HCO already is in place for CTS providers. The Commission now exempts IP CTS and CTS providers from all of the HCO mandatory minimum standards, because it concludes that these TRS features are not applicable to captioned telephone-based relay services. CTS and IP CTS are a form of VCO in that they enable a person with hearing loss to speak directly to the other party to the call and to receive the text of the other party's response. HCO involves particular functionalities that do not apply to captioned telephone calls because HCO users rely on the CA to speak the text as typed, but do not rely on printed text as the HCO user can hear the called party's response. In contrast, when using CTS, a person with some residual hearing can speak to the other party and in return both listen to what the other party is saying and read text of what that party is saying. Accordingly, CTS is simply not able to handle HCO relay calls. For similar reasons, the Commission has also exempted providers that offer the Internet-based form of CTS from the requirement to provide HCO services. Because the defining characteristics of CTS and IP CTS make requirements for HCO, two-line HCO, HCO-to-TTY, and HCO-to-HCO inapplicable to CTS and IP CTS, the Commission exempts IP CTS and CTS providers from these mandatory minimum standards.

27. *VCO for CTS and IP CTS Providers.* The Commission has previously granted IP CTS providers indefinite waivers for all of the VCO mandatory minimum standards. The Commission has not previously waived any of the mandatory minimum standards relating to VCO for CTS providers. The Commission now concludes that waivers for the requirements to provide two-line VCO and VCO-to-TTY for IP CTS providers are unnecessary because IP CTS already is a form of VCO. However, because IP CTS typically involves two lines, *i.e.,* a telephone line and an IP line, the Commission does not find it efficient to require IP CTS providers to provide one-line VCO, and amends its rules to exempt them from that requirement. For the same reason that waivers of the VCO requirements are unnecessary for IP CTS providers—*i.e.,* because CTS is a form of VCO—the Commission concludes that waivers for the provision of one-line VCO, two-line VCO, and VCO-to-TTY are unnecessary for CTS providers.

28. With respect to VCO-to-VCO, the Commission concludes that calls between two captioned telephone relay users are essentially a form of VCO-to-VCO and, accordingly, that a waiver of the VCO-to-VCO requirement is unnecessary for IP CTS and CTS providers. The Commission agrees that the use of multiple CAs currently is necessary to complete calls between two captioned telephone relay users. Specifically, each captioned telephone user must communicate through an individual CA, who re-voices what the other party says to that user. Similarly, the use of multiple CAs currently is necessary for captioned telephone-to-TTY calls and captioned telephone-to-VRS calls. Captioned telephone-to-TTY calls and captioned telephone-to-VRS calls require one CA to voice what the TTY or VRS user says to the captioned telephone user (which the captioned telephone user hears using residual hearing) and to type or sign what the captioned telephone relay user says to the TTY or VRS user, as well as another CA to re-voice what the TTY or VRS user says, through the TTY or VRS CA, to the captioned telephone user (which the captioned telephone user reads on his or her device). Because these calls currently cannot be completed without the use of multiple CAs, the Commission now amends its rules to make clear that compensation from the TRS Fund is allowed for such calls.

29. *Text-to-Voice and Voice-to-Text.* The Commission amends 47 CFR 64.604(a)(3)(v) to exempt VRS providers from providing text-to-voice and voice-to-text functionality and to exempt CTS and IP CTS providers from providing text-to-voice. VRS allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. A VRS user, through a CA, speaks to the called party using sign language and receives the called party's response in sign language. Accordingly, text-to-voice, in which the user types his or her message and has it read aloud by the CA, and voice-to-text, in which the user receives the called party's message as text, is not compatible with VRS, a service based on sign language. As a result, the Commission exempts VRS providers from the requirement to provide text-to-voice and voice-to-text. In addition, for the reasons discussed above—*i.e.,* that CTS and IP CTS are forms of VCO—the Commission finds that text-to-voice is inapplicable to CTS and IP CTS. By their nature, CTS and IP CTS allow the user to speak directly to the called party. Throughout a CTS and IP CTS call, the CA is completely transparent and does not participate in the call by voicing any part of the conversation. As a result, text-to-voice, which requires the CA to re-voice text typed by the TRS user, is incompatible with CTS and IP CTS. The Commission therefore exempts CTS and IP CTS providers from this standard.

30. *STS.* The Commission exempts VRS, IP Relay, IP CTS, and CTS providers from the STS requirement. The Commission's rules mandate the provision of STS by common carriers providing telephone voice transmission services. 47 CFR 64.603. The Commission has waived this requirement on a limited-duration basis for IP Relay providers and indefinitely for CTS, IP CTS, and VRS providers. *IP Relay Declaratory Ruling; CTS Declaratory Ruling; IP CTS Declaratory Ruling; Telecommunications Services for Individuals with Hearing and Speech Disabilities; Recommended TRS Cost Recovery Guidelines; Request by Hamilton Telephone Company for Clarification and Temporary Waivers,* CC Docket No. 98–67, Memorandum Opinion and Order (*2001 TRS Order*); published at 67 FR 4203, January 29, 2002.

31. STS is inapplicable to VRS, IP Relay, IP CTS, and CTS. Specifically, STS is purely speech-based, while IP Relay, CTS and IP CTS require the CA to provide communication in text, and, under the Commission's current rules, VRS requires the CA to provide communication in sign language. 47 CFR 64.601(a)(40). Because there are no speech capabilities in the relay leg of these text and video based forms of TRS, the Commission concludes that IP Relay, VRS, IP CTS, and CTS providers should be exempt from the requirement to offer STS, and amends its rules accordingly.

32. *ASCII/Baudot.* The Commission exempts iTRS, CTS and STS providers from the ASCII/Baudot requirement. The Commission's rules require TRS providers to support communications using the American Standard Code for Information Interexchange (ASCII) and Baudot formats, at any speed generally in use. 47 CFR 64.601(a)(5) and (7). The Commission finds that the ASCII/Baudot requirement is not applicable in the context of iTRS, CTS and STS because iTRS, CTS and STS do not use ASCII or Baudot protocol for their relay transmissions. Thus, the Commission exempts iTRS, CTS and STS providers from the requirement to handle ASCII or Baudot protocol in relay calls and amends its rules accordingly.

33. *Call Release.* The Commission exempts iTRS and CTS providers from

the call release functionality requirement. The Commission's rules require TRS providers to offer ''call release,'' a feature that allows the CA to drop out—or be ''released''—from the relay call after setting up a direct TTY-to-TTY connection between the caller and the called party. 47 CFR 64.601(a)(8), 47 CFR 64.604(a)(3)(vi). The Commission has waived this requirement indefinitely for CTS and IP CTS providers and on a limited-duration basis for VRS and IP Relay providers. *See CTS Declaratory Ruling; IP CTS Declaratory Ruling; 2003 TRS Report and Order; 2012 TRS Waiver Order.*

34. Call release is inapplicable to VRS and IP Relay because users of these services can already communicate directly via the Internet with other video and text users. In addition, the call release feature is not technically feasible or would raise numerous technological challenges for these services. Finally, call release is inapplicable to CTS and IP CTS because captioned telephone service, by its nature, requires the CA to remain on the line for the duration of the call, as the CA provides captioning of the called party's end of the conservation to ensure that the captioned telephone user does not miss any part of the called party's conversation. As a result, the CA would never be ''released'' from this type of call. Accordingly, the Commission amends the rules to exempt iTRS and CTS providers from the call release functionality requirement.

35. *Annual Reports.* Because the permanent exemptions granted herein are for standards that are either inapplicable in the context of iTRS or CTS or technologically infeasible for reasons that are unlikely to change any time in the near future, requiring providers to file annual reports for such exemptions would be a waste of resources. Therefore, the Commission will no longer require providers to file annual reports for those mandatory minimum standards for which the Commission by this Order has adopted permanent exemptions. In addition, because the Commission expects the temporary waiver extensions granted herein to be of a limited duration, at this time, the Commission does not require the submission of annual reports to justify their continuance.

Final Regulatory Flexibility Certification

36. The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

37. After consideration of the comments received in response to the *TRS Waiver NPRM,* document FCC 14–125 amends the Commission's rules to exempt TRS providers using the Internet to provide services such as VRS, IP Relay, and IP CTS as well as providers offering traditional CTS from certain operational, technical, and functional mandatory minimum standards applicable to the provision of TRS. Document FCC 14–125 adopts exemptions to these mandatory minimum standards for VRS, IP Relay, IP CTS, and CTS, either because it is not technologically feasible for providers to meet the requirement or the mandatory minimum standards are inapplicable to a particular form of TRS. Document FCC 14–125 incorporates these exemptions into the Commission's rules (1) to obviate the need for annual waivers to be applied for and granted; and (2) to harmonize the treatment of all TRS providers to which these mandatory minimum standards do not apply, given the technology through which the service is provided. Specifically, document FCC 14–125:

- Exempts iTRS providers from mandatory minimum standards for certain ''types-of-calls,'' equal-access to interexchange carriers, pay-per-call, STS, ASCII/Baudot-compatible services, and call-release;
- Exempts CTS providers from mandatory minimum standards for STS, ASCII/Baudot-compatible services, and call-release;
- Exempts VRS providers from mandatory minimum standards requiring text-to-voice and voice-to-text features and exempts CTS and IP CTS providers from mandatory minimum standards requiring text-to-voice features;
- Exempts IP Relay providers from mandatory minimum standards requiring one-line VCO, VCO-to-text telephone (TTY), one-line HCO, and HCO-to-TTY;
- Exempts VRS providers from mandatory minimum standards requiring VCO-to-TTY and HCO-to-TTY.
- Concludes that VRS and IP Relay providers are not required to provide HCO-to-HCO and VCO-to-VCO services because HCO-to-HCO and VCO-to-VCO, with one exception for IP CTS and CTS, are not compensable relay calls;
- Exempts IP CTS and CTS providers from mandatory minimum standards requiring one-line HCO, two-line HCO, HCO-to-TTY, and HCO-to-HCO;
- Exempts IP CTS providers from mandatory minimum standards requiring one-line VCO; and
- Eliminates the requirement for iTRS and CTS providers to file annual reports for those mandatory minimum standards for which the Commission by this Order has adopted exemptions and for waivers adopted in this Order.

38. Document FCC 14–125 terminates or declines to extend some existing waivers for mandatory minimum standards. Specifically, document FCC 14–125:

- Terminates the existing waiver for IP CTS providers for the mandatory minimum standards requiring three-way calling and speed dialing functionalities;
- Terminates the existing waivers for VRS providers for mandatory minimum standards requiring one-line VCO and one-line HCO, but extends for one year the waiver for VRS providers ASL Services and CAAG and extends the waiver for providers' support of one-line VCO and one-line HCO on VRS access technology distributed by another provider;
- Determines that a waiver for CTS providers for the mandatory minimum standard requiring one-line VCO is unnecessary; and
- Determines that waivers for IP CTS and CTS providers for mandatory minimum standards requiring two-line VCO, VCO-to-TTY, and VCO-to-VCO are unnecessary.

39. In document FCC 14–125, the Commission adopts its proposal to codify exemptions to certain mandatory minimum standards and determines, as it concluded in the Initial Regulatory Flexibility Certification, that this codification will not place any financial burden on iTRS or CTS providers, including small businesses, because these entities will be relieved from the necessity to periodically file for new waivers of the TRS mandatory minimum standards and from incurring unnecessary expenses in research and development of features or services that are inapplicable to certain types of TRS services. Therefore, those rules as amended in document FCC 14–125 that

exempt certain TRS mandatory minimum standards will not have a significant economic impact on any entities, including small businesses.

40. In addition, with respect to those waivers that are terminated or that are not extended, in the Initial Regulatory Flexibility Certification, the Commission concluded that the proposed rules would not impose a financial burden on entities, including small businesses, because the record showed that, as a result of technological advances, providers were generally providing the features that had been waived. No commenters opposed this proposal or the associated Initial Regulatory Flexibility Certification.

41. In document FCC 14–125, the Commission terminates or declines to extend waivers of certain mandatory minimum standards and determines that this action will not place any financial burden on iTRS or CTS providers, including small businesses, because the record shows that the providers are generally providing the features that had been waived. For example, the record shows that IP CTS providers are now able to offer three-way calling and speed dialing. Additionally, the record shows that all but two VRS providers are now able to offer one-line VCO and one-line HCO. Moreover, the record shows that the two VRS providers that are not currently capable of offering one-line VCO and one-line HCO plan to be able to do so when they each release the next version of their software. The Commission has extended for one year the waiver of this mandatory minimum standard to afford those two VRS providers sufficient time to implement their planned software release. Document FCC 14–125 also determines that waivers for mandatory minimum standards for VCO for CTS and IP CTS are unnecessary. However, because document FCC 14–125 concludes that CTS and IP CTS are a form of VCO, and, as a result, the mandatory minimum standards for the provision of various forms of VCO are subsumed in the provision of CTS and IP CTS, this action will not place any financial burden on IP CTS or CTS providers.

42. Finally, document FCC 14–125 eliminates the requirement that providers file annual reports for those mandatory minimum standards for which the Commission adopts exemptions or the waivers adopted in this Order and determines that this action will not place any financial burden on iTRS or CTS providers because providers benefit by being relieved from the necessity to file annual reports regarding their ability to provide services that are either inapplicable to their services or technologically infeasible.

43. Therefore, the Commission certifies that the requirements in document FCC 14–125 will not have a significant economic impact on a substantial number of small entities.

44. The Commission will send a copy of document FCC 14–125, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, Document FCC 14–125 and the Final Regulatory Flexibility Certification will be sent to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

Pursuant to sections 1, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 225, document FCC 14–125 IS *adopted*.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall Send* a copy of document FCC 14–125, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.603 by revising the introductory text to read as follows:

§ 64.603 Provision of services.

Each common carrier providing telephone voice transmission services shall provide, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Interstate Spanish language relay service shall be provided. Speech-to-speech relay service also shall be provided, except that speech-to-speech relay service need not be provided by IP Relay providers, VRS providers, captioned telephone relay service providers, and IP CTS providers. In addition, each common carrier providing telephone voice transmission services shall provide access via the 711 dialing code to all relay services as a toll free call. A common carrier shall be considered to be in compliance with these regulations:

* * * * *

■ 3. Amend § 64.604 by revising paragraphs (a)(3)(ii), (a)(3)(iv), (a)(3)(v), (a)(3)(vi), (b)(1), and (b)(3) and adding paragraph (c)(14) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(3) * * *

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call. Providers of Internet-based TRS need not provide the same billing options (*e.g.,* sent-paid long distance, operator-assisted, collect, and third party billing) traditionally offered for wireline voice services if they allow for long distance calls to be placed using calling cards or credit cards or do not assess charges for long distance calling. Providers of Internet-based TRS need not allow for long distance calls to be placed using calling cards or credit cards if they do not assess charges for long distance calling.

* * * * *

(iv) Relay services other than Internet-based TRS shall be capable of handling pay-per-call calls.

(v) TRS providers are required to provide the following types of TRS calls:

(A) Text-to-voice and voice-to-text;

(B) One-line VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; and

(C) One-line HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO. VRS providers are not required to provide text-to-voice and voice-to-text functionality. IP Relay providers are not required to provide one-line VCO and one-line HCO. IP Relay providers and VRS providers are not required to provide:

(*1*) VCO-to-TTY and VCO-to-VCO; and

(*2*) HCO-to-TTY and HCO-to-HCO. Captioned telephone service providers and IP CTS providers are not required to provide:

(*i*) Text-to-voice functionality; and

(*ii*) One-line HCO, two-line HCO, HCO-to-TTY, and HCO-to-HCO. IP CTS providers are not required to provide one-line VCO.

(vi) TRS providers are required to provide the following features:

(A) Call release functionality (only with respect to the provision of TTY-based relay service);

(B) Speed dialing functionality; and

(C) Three-way calling functionality.

* * * * *

(b) *Technical standards*—(1) *ASCII and Baudot.* TTY-based relay service shall be capable of communicating with ASCII and Baudot format, at any speed generally in use. Other forms of TRS are not subject to this requirement.

* * * * *

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services to the same extent that such access is provided to voice users. This requirement is inapplicable to providers of Internet-based TRS if they do not assess specific charges for long distance calling.

* * * * *

(c) * * *

(14) *TRS calls requiring the use of multiple CAs.* The following types of calls that require multiple CAs for their handling are compensable from the TRS Fund:

(i) VCO-to-VCO calls between multiple captioned telephone relay service users, multiple IP CTS users, or captioned telephone relay service users and IP CTS users;

(ii) Calls between captioned telephone relay service or IP CTS users and TTY service users; and

(iii) Calls between captioned telephone relay service or IP CTS users and VRS users.

[FR Doc. 2014–24532 Filed 10–20–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–56, RM–11718; DA 14–1360]

Radio Broadcasting Services; Centerville, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Bryan Broadcasting License Corporation, substitutes Channel 274A for vacant Channel 267A at Centerville, Texas, and grant the Application for Station KKEE, Centerville, Texas, File No. BMPH–20140324ADD. A staff engineering analysis indicates that Channel 274A can be allotted to Centerville, Texas consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction located 4.3 kilometers (2.7 miles) east of Centerville. The reference coordinates are 31–15–00 NL and 95–56–00 WL.

DATES: Effective November 3, 2014.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order,* DA 14–1360, adopted September 18, 2014, and released September 19, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via Web site at *www.BCPIWEB.com.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 267A at Centerville.

[FR Doc. 2014–23656 Filed 10–20–14; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 537, and 552

[(Change 59); GSAR Case 2013–G501; Docket No. 2014–0010; Sequence No. 1]

RIN 3090–AJ46

General Services Administration Acquisition Regulation; (GSAR); Qualifications of Offerors

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to remove the GSAR provision Qualifications of Offerors.

DATES: *Effective:* October 21, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Christina Mullins, Procurement Analyst, by phone at 202–969–4066, or by email at *christina.mullins@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2013–G501.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule in the **Federal Register** at 79 FR 24361 on April 30, 2014, amending the General Services Administration Acquisition Regulation (GSAR), to remove GSAR provision 552.237–70, Qualifications of Offerors, and provide other conforming changes. No comments were received on the proposed rule by the June 30, 2014 closing date.

This rule is a result of the Retrospective Analysis conducted under Executive Order 13563. Executive Order 13563 required agencies to review existing regulations and identify rules that are obsolete, unnecessary, unjustified, excessively burdensome or counterproductive and identify those rules that warrant repeal, amendment, or revision. The General Services Administration (GSA) identified GSAR provision 552.237–70 in GSA's Final

Plan for Retrospective Analysis approved by the Office of Management and Budget on August 18, 2011. GSA's Final Plan for Retrospective Analysis was published in the **Federal Register** on June 3, 2011, welcoming public comments. No comments were received. The GSA's Final Plan was also posted on *www.gsa.gov/open.*

II. Discussion and Analysis

GSAM Provision 552.237–70, Qualifications of Offerors, was utilized to support GSA's Public Buildings Service as outlined in GSAM 537.110. The provision requires all offerors considered for award for building services expected to exceed the simplified acquisition threshold and not initiated with Ability One under the Javis-Wagner-O-Day Act to furnish:

- Narrative statement listing comparable contracts performed.
- A general history of operating organization and complete experience.
- A statement of financial resources.
- Information on ability to maintain a staff of regular employees adequate to ensure continuous performance of the work.
- Demonstration that equipment and/or plant capacity for the work contemplated is sufficient, adequate and suitable.
- Information on competency in performing comparable building service contracts, acceptable financial resources, personnel staffing, plant, equipment and supply sources.

As a result of the Retrospective Analysis, GSA determined that the GSAR provision, 552.237–70, Qualifications of Offerors, is obsolete and is no longer necessary. The collection of information associated with this provision is captured in a variety of methods such as: Compliance with FAR Part 9 including pre-award information, System for Award Management (SAM) reports and receipt of contractor's proposal information submitted in response to the Government technical evaluation criteria.

The specific changes contained in this rule are as follows:

- Information Collection 3090–0197, Qualifications of Offerors is deleted in its entirety.
- Under Subpart 501.106—Delete GSAR reference to Information Collection 3090–0197 and GSAR Provision 552.237–70.
- Under GSAR 537.110, Solicitation provisions and contract clauses—Delete GSAR 537.110(a)(1).
- Under GSAR 552.2, Provisions and Clauses—GSAR 552.212–71, Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items, delete paragraph (a), and designate the clause introductory text as paragraph (a) and revise.
- Under GSAR 552.2, Provisions and Clauses—Delete Provision 552.237–70 in its entirety.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

GSA has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule reduces the burden on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* as the Information Collection 3090–0197, citing provision 552.237–70, Qualifications of Offerors, is no longer needed and is removed from the GSAR. Both large and small business entities will no longer be bound to submit data that the Government can freely obtain from a variety of other sources.

There were no comments by the public in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

This rule does not impose any new information collection requirements on small businesses. It will have no direct negative impact on any small business concern.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

OMB approved the withdrawal and discontinuation of the Information Collection 3090–0197 (Qualifications of Offerors) identifying GSAR Provision 552.237–70 on October 24, 2011. Therefore, this final rule does not contain any information collection requirements that require additional approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Parts 501, 537, and 552

Government procurement.

Dated: October 10, 2014.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 501, 537, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 501, 537, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

■ 2. Amend section 501.106, in the table, by removing GSAR Reference ''552.237–70'' and its corresponding OMB Control Number ''3090–0197''.

PART 537—SERVICE CONTRACTING

■ 3. Amend section 537.110 by revising paragraph (a) to read as follows:

537.110 Solicitation provisions and contract clauses.

* * * * *

(a) If the contract is expected to exceed the simplified acquisition threshold and it is not initiated with Ability One under the Javits-Wagner-O'Day Act insert 552.237–71, Qualifications of Employees, in the solicitation and contract. If needed, use supplemental provisions or clauses to describe specific requirements for employees performing work on the contract.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.212–71 [Amended]

■ 4. Amend section 552.212–71 by—

■ a. Revising the date of the clause;

■ b. Removing paragraph (a); and

■ c. Redesignating the clause introductory text as paragraph (a) and revising it to read as follows:

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.

* * * * *

Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (OCT 2014)

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The clauses in paragraph (b) of this section are incorporated by reference:

[*The Contracting Officer should check the clauses that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity.*]

* * * * *

552.237–70 [Removed and Reserved]

■ 5. Remove and reserve section 552.237–70.

[FR Doc. 2014–24992 Filed 10–20–14; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090313314–4831–02]

RIN 0648–AX78

Fisheries of the Exclusive Economic Zone Off Alaska; Modifications to Federal Fisheries Permits and Federal Processor Permits

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

ACTION: Final rule.

SUMMARY: NMFS revises regulations for the application process, use, surrender, and amendment of a Federal Fisheries Permit (FFP) or a Federal Processor Permit (FPP). This action will reduce industry compliance costs associated with fishing and processing permit regulations and NMFS' administrative costs associated with maintaining and updating permit application regulations and forms. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable laws.

DATES: Effective November 20, 2014.

ADDRESSES: Electronic copies of the proposed rule, the Categorical Exclusion, and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; or by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Sustainable Fisheries Division, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Regulatory Authority

NMFS Alaska Region manages the U.S. groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska. The fishery management plans were prepared by the North Pacific Fishery Management Council, under authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* and other applicable laws, and approved by the Secretary of Commerce. Regulations implementing the fishery management plans appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

NMFS published a proposed rule for these regulatory amendments in the **Federal Register** on April 18, 2014 (79 FR 21882). The 30-day comment period on the proposed rule ended on May 19, 2014. NMFS received one comment during the comment period on the proposed rule. The public comment and NMFS' response are found in the Comment and Response section below.

A detailed review, including rationale, for these regulations are provided in the preamble to the proposed rule (79 FR 21882, April 18, 2014) and are not repeated here (see **ADDRESSES**). A brief summary of the regulatory amendments follows.

This final rule incorporates six actions that will: (1) Eliminate the requirement to submit an original permit when surrendering the permit to NMFS or when applying for a permit revision. This action will also add a proof of permit application submission standard; (2) allow the use of a valid legible copy in place of an original FFP or FPP; (3) remove redundant FFP and FPP application form requirements; (4) clarify the circumstances under which an FFP or FPP must be held by fishery participants; (5) make minor clarifications to FPP regulations; and (6) make other regulatory corrections and revisions to regulatory text.

Action 1: Eliminate the Requirements To Submit an Original Permit When Surrendering the Permit to NMFS or When Amending an FFP or FPP, and Add a Proof of Application Submission Standard for Surrendering or Amending a Permit

Section 679.4(a)(9) governs surrender of permits issued by NMFS Alaska Region, and § 679.4(b) and (f) govern FFPs and FPPs, respectively. This rule revises paragraphs (a)(9), (b), and (f) to describe the process to surrender or amend a permit. Paragraph (a)(9) is amended to eliminate the requirement that the FFP holder or FPP holder mail the original permit to NMFS. Instead of mailing back the original permit, a permit holder will notify NMFS of intent to surrender or amend an FFP or FPP by submitting an FFP or FPP application form (see *http://www.alaskafisheries.noaa.gov*).

This rule adds a standard at § 679.4(a)(9)(iii) and (iv) that requires permit applicants to have ''objective written evidence'' to prove that their application to surrender or amend a permit was received by NMFS. In some circumstances, persons have unsuccessfully filed applications to surrender or amend a permit because they missed a filing deadline. This rule establishes a ''proof of receipt'' standard, in a case of disputed receipt within a filing deadline, that allows an applicant to prove that the deadline was met when surrendering or amending a permit to Restricted Access Management (RAM), the NMFS Alaska Region permit division. Objective written evidence will include, for example, the applicant's use of United States Post Office Priority mail delivery confirmation, or the United States Post Office ''green card'' with its confirmed receipt.

Regulations at § 679.4(a)(9)(iii) and (iv) state that the sender is responsible for keeping proof that the application form to amend or surrender a permit was received by NMFS. This does not directly impose an additional recordkeeping or reporting requirement on a permit holder. The objective written evidence standard will be used

by NMFS to determine if a permit application was received.

Action 2: Allowing the Use of a Legible Copy in Place of an Original FFP or FPP

This rule revises regulations at §§ 679.4(b) and (f) and §§ 679.7(a)(1), (a)(7), and (a)(15) to allow a legible copy of a valid FFP or FPP to take the place of the original permit. NMFS believes that a legible copy is sufficient evidence that a vessel holds an FFP, or a facility holds an FPP. Allowing legible copies of an FFP or FPP will simplify operations for permit holders and will allow operations to commence or continue without having to wait to receive an original FFP or FPP via mail. Removing this requirement will reduce potentially costly delays in operations and will not hamper enforcement.

Action 3: Remove Unnecessary FFP and FPP Application Requirements From Regulation

Sections 679.4(b) and 679.4(f) describe the FFP or FPP application forms. This rule removes instructions for completion of the application forms and specific address and contact information. NMFS has determined that it is unnecessary to specify this information in regulatory text because each FFP or FPP application form adequately specifies that information. The FFP and FPP applications are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/ram.*

Action 4: Clarify the Circumstances When an FFP Must Be Obtained and Held

Section 679.4(b) provides regulations for the FFP. An FFP is issued by NMFS and is required for vessels that retain groundfish in the GOA or BSAI or engage in any fishery in the GOA or BSAI that requires retention of groundfish. This rule amends § 679.4(b) to clarify the circumstances under which a vessel owner or authorized representative must hold an FFP. A vessel owner or authorized representative must hold an FFP when operating in the GOA or BSAI as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel. These vessel categories are described under existing regulations at § 679.2. This rule also amends § 679.4(b) to remove the requirement that a vessel owner or authorized representative must hold an original FFP, and amends paragraph (b) to require that vessels retaining groundfish have a legible copy of a valid FFP on board at all times.

Action 5: Minor Clarifications to FPP Regulations

Section 679.4(f) provides regulations for the FPP. An FPP is required for shoreside processors, stationary floating processors (SFPs) processing vessels that operate solely within Alaska State waters and for community quota entity (CQE) floating processors, each of whom receives or processes groundfish harvested in the GOA or BSAI. NMFS makes several changes to the FPP requirements. This rule amends paragraph (f) to provide that a shoreside processor, SFP, and CQE floating processor must have a legible copy of a valid FPP at the facility (or on board an SFP or CQE), instead of an original FPP. This rule revises the following additional portions of paragraph (f).

Paragraph (f)(1) is revised to add particular processor activities that must be conducted with an FPP. The regulation now provides than an owner of a shoreside processor, SFP, or CQE floating processor must hold an FPP in order to purchase or arrange to purchase groundfish. This requirement is added to the requirement that a shoreside processor, SFP, or CQE floating processor hold an FPP when receiving or processing groundfish. In many cases, shoreside processors, SFPs, or CQE floating processors neither receive nor process groundfish, but they do purchase groundfish or make purchase arrangements for other processors.

Paragraph 679.4(f)(1) is revised further:

- By adding text stating that a processor may not be operated in a category other than as specified on the FPP. The processor categories are: Shoreside Processor, SFP, and CQE Floating Processor.
- By replacing ''stationary floating processor'' with ''SFP'' and by replacing an incorrect cross-reference to paragraph (f)(2) with ''§ 679.2''.

Paragraph (f)(1) states that the FPP is issued without charge and paragraph (f)(2)(i) states that the FPP application is not considered complete until all fees are paid. For clarification, NMFS notes that the fees referred to in paragraph (f)(2)(i) are observer fees. If the required observer fees are not paid, the FPP will not be issued.

Paragraph (f)(2) is revised:

- By replacing ''amend or renew an FFP'' with ''amend, renew, or surrender an FPP.''
- By adding a heading ''Fees'' to newly redesignated (f)(2)(i) and then adding language to (f)(2)(i) identifying who is subject to the observer fee as specified at § 679.55(c).

Paragraph (f)(3) is removed because it is unnecessary text. This paragraph states that a completed application will result in issuance of an FPP.

Paragraph (f)(4) is redesignated as (f)(3). Newly redesignated paragraph (f)(3)(ii)(A) is revised by removing the third sentence, which is the NMFS/RAM contact information. New paragraph (f)(3)(ii)(B) is added to state that an owner or authorized representative must submit an FPP application when surrendering an FPP. Newly redesignated paragraph (f)(3)(iii) is redesignated as paragraph (f)(3)(iii)(A). Paragraph (f)(3)(iii)(B) is added to describe the requirements of an SFP holding a GOA inshore processing endorsement on the FPP. Paragraph (f)(3)(iii)(C) is added to describe the requirements of a vessel holding a CQE floating processor endorsement on the FPP.

Action 6: Other Corrections and Revisions

In addition to the changes described above, this rule makes the following corrections and revisions to standardize, simplify, and clarify regulatory text in § 679.4. The preamble to the proposed rule lists these changes and explains the need and rationale for these changes. This rule also includes a revision to § 679.4(a)(6) that was not included in the proposed rule. This revision is described below.

Comment and Response

NMFS received one comment letter on the proposed rule.

Comment: The commenter supported the changes described in the proposed rule and suggested an additional modification. The commenter recommended revising § 679.4(a)(6) to state that NMFS ''shall'' disclose a list of permitted harvesters and processors for public inspection, and not that NMFS ''may'' disclose a list of permitted harvesters and processors for public inspection.

Response: NMFS acknowledges the support for the rule overall. However, NMFS disagrees with the suggested change. As proposed, § 679.4(a)(6) stated that ''NMFS will maintain a list of permitted harvesters and processors that may be disclosed for public inspection.'' The proposed change to the previous statement added permitted harvesters to the list that NMFS currently maintains of permitted processors and discloses for public inspection on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/ram/ffpfpp.htm.* Modifying § 679.4(a)(6) to use ''shall'' instead of ''may'' is inconsistent with NMFS' current unilateral public disclosure practices. NMFS will not change this

rule in response to this comment because the change would unnecessarily impose a requirement upon NMFS.

Changes From the Proposed Rule

No changes were made to this final rule in response to the comment letter received. Several minor edits were necessary, such as addition of a comma, deletion of a mistakenly duplicated line of text, and correction of a misspelled word. Other changes are made to the final rule due to inadvertent omission of text in the instructions within the proposed rule. These changes are: Paragraph (f)(2)(i) is added to the regulatory text; paragraph (b)(1)(ii) is added to the regulatory text; and paragraph (a)(10)(ii) is added to the regulatory text.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, other provisions of the Magnuson-Stevens Act, and other applicable laws.

Small Entity Compliance Guide

Small Entity Compliance Guide Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide.

This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.* This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis (FRFA)

Section 604 of the Regulatory Flexibility Act requires that, when an agency promulgates a final rule under section 553 of Title 5 of the United States Code, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis.

Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

Need for and Objectives of the Rule

A statement of the need for, and objectives of, the rule is contained in the preamble to this final rule and is not repeated here.

Public and Chief Counsel for Advocacy Comments on the Proposed Rule

NMFS published the proposed rule on April 18, 2014 (79 FR 21882). An initial regulatory flexibility analysis (IRFA) was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The comment period closed on May 19, 2014. NMFS received one letter of public comment on the proposed rule. This comment did not address the IRFA or the economic impacts of the rule generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by the Actions

These actions directly regulate entities acquiring FFPs or FPPs. Estimates of the number of small entities holding FFPs and FPPs includes 821 catcher vessels, 10 catcher/processors, 154 fishing vessels without groundfish revenues, 24 support and tender vessels without fishing revenues, no motherships, 4 shoreside floating processors, and 60 groundfish shoreside processors. Small entity estimates reported in this FRFA have been updated from those in the IRFA to reflect recent revisions to Small Business Administration thresholds for identifying small entities (79 FR 33647, June 12, 2014). These changes increased the number of small catcher vessels by 7, and the number of fishing vessels without groundfish revenues by 3.

Recordkeeping and Reporting Requirements

These actions modify existing regulations for amending, applying for, revising, and surrendering an FFP and FPP with the intention of reducing the time, expense, and administrative effort associated with submitting permit requests to NMFS. These actions relax some compliance requirements for vessels required to carry FFPs and for processors required to carry FPPs. No new recordkeeping and reporting requirements are required. Instead of an original FFP or FPP, a current, legible copy of an FFP or FPP will be acceptable on board a vessel or on site a facility when fishing, purchasing, or processing groundfish. Instead of returning an original FFP or FPP to NMFS to revise or to surrender a permit, the Application for a Federal Fisheries Permit or Application for a Federal Processor Permit provides the respondent with a check box to indicate he or she wishes to surrender the permit.

The professional skills necessary to prepare the existing reporting and recordkeeping requirements under these actions include the ability to read, write, and understand English; the ability to use a computer and the Internet; and the authority to take actions on behalf of an entity.

Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual,

policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

The combined effect of these changes will reduce the industry costs of complying with existing permit regulations.

The preferred alternative for these actions accomplishes the objectives of these actions, relieves a restriction on small entities, and has no adverse impacts on any directly regulated small entities. We were unable to identify any alternatives that accomplish all of the desired objectives while placing a smaller burden on directly regulated small entities.

Collection-of-Information Requirements

This rulemaking contains collection of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0206.

Public reporting burden is estimated to average per response: 21 minutes for Application for Federal fisheries permit (FFP) and 21 minutes for Application for Federal processor permit (FPP). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 14, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.4:
■ a. Add paragraph headings for paragraphs (a)(3)(i) and (ii);
■ b. Revise paragraphs (a)(3)(iii); (a)(5); and (a)(9);
■ c. Revise paragraph (b)(1);
■ d. Remove paragraphs (b)(2), (b)(5), and (b)(7);
■ e. Redesignate paragraphs (b)(3) and (b)(4) as (b)(2) and (b)(3), respectively; (b)(6) as (b)(5); (b)(8) and (b)(9) as (b)(6) and (b)(7), respectively;
■ f. Revise newly redesignated paragraphs (b)(2); (b)(3)(i); (b)(3)(ii)(A), (B), and (C);
■ g. Add paragraph (b)(3)(ii)(D);
■ h. Revise newly redesignated paragraph (b)(3)(iii)(A);
■ i. Add paragraphs (b)(3)(iii)(D) and (E); and (b)(4);
■ j. Revise newly redesignated paragraphs (b)(5), (6), and (7);
■ k. Revise paragraphs (d)(1)(iii); (d)(2)(iv); (d)(3)(vi); (e)(2); (e)(3); (f)(1); and (f)(2);
■ l. Remove paragraph (f)(3);
■ m. Redesignate paragraphs (f)(4) through (f)(6) as (f)(3) through (f)(5), respectively;
■ n. Revise newly redesignated paragraphs (f)(3)(ii) and (iii); and (f)(4) and (5); and
■ o. Revise paragraphs (g)(1)(ii); (k)(6)(x); and (l)(5)(ii).

The revisions and additions read as follows:

§ 679.4 Permits.

(a) * * *

(3) * * *

(i) *Obtain and submit an application.* * * *

(ii) *Deficient application.* * * *

(iii) *Separate permit.* The operator, manager, Registered Buyer, or Registered Crab Receiver must obtain a separate permit for each applicant, facility, or vessel, as appropriate to each Federal permit in this section.

* * * * *

(5) *Alteration.* No person may alter, erase, mutilate, or forge any permit or document issued under this section. Any such permit or document that is intentionally altered, erased, mutilated, or forged is invalid.

* * * * *

(9) *Permit surrender.* (i) The Regional Administrator will recognize the voluntary surrender of a permit issued in this section, if a permit may be surrendered and if it is submitted by the person named on the permit, owner of record, or authorized representative.

(ii) Submit the original permit, except for an FFP or an FPP, to NMFS, P.O. Box 21668, Juneau, AK 99802. For surrender of an FFP and FPP, respectively, refer to paragraphs (b)(3)(ii) and (f)(3)(ii) of this section.

(iii) Objective written evidence is considered proof of a timely application. The responsibility remains with the sender to prove when the application to amend or to surrender a permit was received by NMFS (i.e., by certified mail or other method that provides written evidence that NMFS Alaska Region received it).

(iv) For applications delivered by hand delivery or carrier only, the receiving date of signature by NMFS staff is the date the application was received. If the application is submitted by fax or mail, the receiving date of the application is the date stamped received by NMFS.

(b) * * *

(1) *Requirements.* (i) No vessel of the United States may be used to retain groundfish in the GOA or BSAI or engage in any fishery in the GOA or BSAI that requires retention of groundfish, unless the owner or authorized representative first obtains an FFP for the vessel, issued under this part. An FFP is issued without charge. Only persons who are U.S. citizens are authorized to receive or hold an FFP.

(ii) Each vessel within the GOA or BSAI that retains groundfish must have a legible copy of a valid FFP on board at all times.

(2) *Vessel operations categories.* An FFP authorizes a vessel owner or authorized representative to deploy a vessel to conduct operations in the GOA or BSAI under the following categories: Catcher vessel, catcher/processor, mothership, tender vessel, or support vessel. A vessel may not be operated in a category other than as specified on the FFP, except that a catcher vessel, catcher/processor, mothership, or tender vessel may be operated as a support vessel.

(3) * * *

(i) *Length of permit effectiveness.* An FFP is in effect from the effective date through the expiration date, unless it is

revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

(ii) * * *

(A) An FFP may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. Except as provided under paragraphs (b)(3)(ii)(B) and (C) of this section, if surrendered, an FFP may be reissued in the same fishing year in which it was surrendered.

(B) For the BSAI, NMFS will not reissue a surrendered FFP to the owner or authorized representative of a vessel named on an FFP that has been issued with the following combination of endorsements: Catcher/processor vessel operation type, pot and/or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.

(C) For the GOA, NMFS will not reissue a surrendered FFP to the owner or authorized representative of a vessel named on an FFP that has been issued a GOA area endorsement and any combination of endorsements for catcher/processor operation type, catcher vessel operation type, trawl gear type, hook-and-line gear type, pot gear type, and/or jig gear type, until after the expiration date of the surrendered FFP.

(D) An owner or authorized representative, who applied for and received an FFP, must notify NMFS of the intention to surrender the FFP by submitting an FFP application found at the NMFS Web site at *http://www.alaskafisheries.noaa.gov* and indicating on the application that surrender of the permit is requested. Upon receipt and processing of an FFP surrender application, NMFS will withdraw the FFP from active status in the FFP data bases.

(iii) * * *

(A) An owner or authorized representative who applied for and received an FFP, must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS Web site at *http://alaskafisheries.noaa.gov.* The owner or authorized representative must submit the application form as instructed on the form. Except as provided under paragraphs (b)(3)(iii)(B) and (C) of this section, upon receipt and approval of an application form for permit amendment, NMFS will issue an amended FFP.

* * * * *

(D) If the application for an amended FFP required under this section designates a change or addition of a vessel operations category or any other endorsement, a legible copy of the valid, amended FFP must be on board the vessel before the new or modified type of operation begins.

(E) Selections for species endorsements will remain valid until an FFP is amended to remove those endorsements or the FFP with these endorsements is surrendered or revoked.

(4) *Submittal of application.* NMFS will process a request for an FFP provided that the application form contains the information specified on the form, with all required fields accurately completed and all required documentation attached. This application form must be submitted to NMFS using the methods described on the form. The vessel owner must sign and date the application form certifying that all information is true, correct, and complete. If the owner is not an individual, the authorized representative must sign and date the application form. An application form for an FFP will be provided by NMFS or is available from NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The acceptable submittal methods will be described on the application form.

(5) *Issuance.* (i) Except as provided in subpart D of 15 CFR part 904, upon receipt of a properly completed permit application, the Regional Administrator will issue an FFP required by this paragraph (b).

(ii) The Regional Administrator will send an FFP with the appropriate logbooks to the owner or authorized representative, as provided under § 679.5.

(iii) NMFS will reissue an FFP to the owner or authorized representative who holds an FFP issued for a vessel if that vessel is subject to sideboard provisions as described under § 679.82(d) through (f).

(iv) NMFS will reissue an FFP to the owner or authorized representative who holds an FFP issued to an Amendment 80 vessel.

(6) *Transfer.* An FFP issued under this paragraph (b) is not transferable or assignable and is valid only for the vessel for which it is issued.

(7) *Inspection.* A legible copy of a valid FFP issued under this paragraph (b) must be carried on board the vessel at all times operations are conducted under this type of permit and must be presented for inspection upon the request of any authorized officer.

* * * * *

(d) * * *

(1) * * *

(iii) An IFQ permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An annual IFQ permit will not be reissued in the same fishing year in which it was surrendered, but a new annual IFQ permit may be issued to the quota share holder of record in a subsequent fishing year.

(2) * * *

(iv) An IFQ hired master permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An IFQ hired master permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered.

(3) * * *

(vi) A Registered Buyer permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A Registered Buyer permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered.

* * * * *

(e) * * *

(2) *Halibut CDQ permit.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a legible copy of a halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ on board and must make the permit available for inspection by an authorized officer. A halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, surrendered, or modified. A halibut CDQ permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A halibut CDQ permit will not be reissued in the same fishing year in which it was surrendered, but a new annual halibut CDQ permit may be issued in a subsequent fishing year to the CDQ group entitled to a CDQ halibut allocation.

(3) An individual must have on board the vessel a legible copy of his or her halibut CDQ hired master permit issued by the Regional Administrator while harvesting and landing any CDQ halibut. Each halibut CDQ hired master permit will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ. A halibut CDQ hired master permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A halibut CDQ hired master permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered.

* * * * *

(f) * * *

(1) *Requirement.* No shoreside processor of the United States, SFP, or

CQE floating processor defined at § 679.2 may receive, process, purchase, or arrange to purchase unprocessed groundfish harvested in the GOA or BSAI, unless the owner or authorized representative first obtains an FPP issued under this part. A processor may not be operated in a category other than as specified on the FPP. An FPP is issued without charge.

(2) *FPP application.* To obtain, amend, renew, or surrender an FPP, the owner or authorized representative must complete an FPP application form per the instructions at *http://alaskafisheries.noaa.gov.*

(i) *Fees.* For the FPP application to be considered complete, all fees due to NMFS from the owner or authorized representative of a shoreside processor or SFP or person named on a Registered Buyer permit subject to the observer fee as specified at § 679.55(c) at the time of application must be paid.

(ii) *Signature.* The owner or authorized representative of the shoreside processor, SFP, or CQE floating processor must sign and date the application form, certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application form is completed by an authorized representative, proof of authorization must accompany the application form.

(3) * * *

(ii) *Surrendered permit.* (A) An FPP may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An FPP may be reissued to the permit holder of record in the same fishing year in which it was surrendered.

(B) An owner or authorized representative, who applied for and received an FPP, must notify NMFS of the intention to surrender the FPP by submitting an FPP application form found at the NMFS Web site at *http://alaskafisheries.noaa.gov* and indicating on the application form that surrender of the FPP is requested. Upon receipt and processing of an FPP surrender application form, NMFS will withdraw the FPP from active status in permit data bases.

(iii) *Amended permit*—(A) *Requirement.* An owner or authorized representative, who applied for and received an FPP, must notify NMFS of any change in the permit information by submitting an FPP application form found at the NMFS Web site at *http://alaskafisheries.noaa.gov.* The owner or authorized representative must submit the application form as instructed on the form. Upon receipt and approval of an FPP amendment application form, NMFS will issue an amended FPP.

(B) *GOA Inshore Processing endorsement.* A GOA inshore processing endorsement is required in order to process GOA inshore pollock and Eastern GOA inshore Pacific cod. If an SFP owner or authorized representative holds an FPP with a GOA Inshore Processing endorsement, the SFP is prohibited from processing GOA pollock and GOA Pacific cod in more than one single geographic location during a fishing year and is also prohibited from operating as a catcher/processor in the BSAI. Once issued, a GOA Inshore Processing endorsement cannot be surrendered for the duration of a fishing year.

(C) *CQE Floating Processor endorsement.* If a vessel owner or authorized representative holds an FPP with a GOA Inshore Processing endorsement in order to process Pacific cod within the marine municipal boundaries of CQE communities in the Western or Central GOA, the vessel must not meet the definition of an SFP and must not have harvested groundfish off Alaska in the same calendar year.

(D) Vessels are prohibited from holding both a GOA CQE Floating Processor endorsement and a GOA SFP endorsement during the same calendar year.

(4) *Transfer.* An FPP issued under this paragraph (f) is not transferable or assignable and is valid only for the processor for which it is issued.

(5) *Inspection.* A legible copy of a valid FPP issued under this paragraph (f) must be on site at the shoreside processor, SFP, or CQE floating processor at all times and must be presented for inspection upon the request of any authorized officer.

* * * * *

(g) * * *

(1) * * *

(ii) A scallop LLP license may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A surrendered scallop LLP license will cease to exist and will not be subsequently reissued.

* * * * *

(k) * * *

(6) * * *

(x) *Surrender of groundfish or crab LLP.* A groundfish or crab LLP license may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A surrendered groundfish or crab LLP license will cease to exist and will not be subsequently reissued.

* * * * *

(l) * * *

(5) * * *

(ii) *Surrender of permit.* An AFA inshore processor permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. An AFA inshore processor permit will not be reissued in the same fishing year in which it was surrendered, but may be reapplied for and if approved, reissued to the permit holder of record in a subsequent fishing year.

* * * * *

■ 3. In § 679.7, revise paragraphs (a)(1), (a)(7)(i), (a)(10)(ii), and (a)(15) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(1) *Federal Fisheries Permit (FFP).* (i) Fish for groundfish in the BSAI or GOA with a vessel of the United States that does not have on board a legible copy of a valid FFP issued under § 679.4.

(ii) Conduct directed fishing for Atka mackerel, Pacific cod, or pollock with pot, hook-and-line, or trawl gear from a vessel of the United States that does not have on board a legible copy of a valid FFP issued under § 679.4 and endorsed for Atka mackerel, Pacific cod, or pollock under § 679.4(b).

* * * * *

(7) *Inshore/offshore.* (i) Operate a vessel in the ''inshore component in the GOA'' as defined in § 679.2 without a valid Inshore Processing endorsement on the vessel's FFP or FPP.

* * * * *

(10) * * *

(ii) Alter, erase, mutilate, or forge any permit or document issued under §§ 679.4 or 679.5.

* * * * *

(15) *Federal processor permit (FPP).* (i) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP and in the Western and Central GOA regulatory areas, including Federal reporting areas 610, 620, and 630, that does not have on site a legible copy of a valid FPP issued pursuant to § 679.4(f).

(ii) Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA by a CQE floating processor that does not have on site a legible copy of a valid FPP issued pursuant to § 679.4(f).

* * * * *

[FR Doc. 2014–24758 Filed 10–20–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 203
Tuesday, October 21, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2014–BT–STD–0045]

Energy Conservation Program for Consumer Products: Test Procedures and Energy Conservation Standards for Residential Water Heaters

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

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is requesting comments, data, and information related to solar-thermal water heating systems where solar components are paired with electric and/or fossil fuel-fired water heaters, which are utilized as secondary heat sources. Although this document contains several specific topics on which DOE is particularly interested in receiving written comment, DOE welcomes suggestions and information from the public on any subject related to solar water heaters.

DATES: Written comments and information are requested on or before November 20, 2014.

ADDRESSES: Interested parties are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0045 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: ResWaterHeater2014STD0045@ee.doe.gov.* Include docket number EERE–2014–BT–STD–0045 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section III. of this document (Public Participation).

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
II. Discussion
A. Solar Water Heating Technology
B. Solar Water Heating Market
III. Public Participation

I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These include residential water heaters, the subject of this notice. (42 U.S.C. 6292(a)(4))

Under EPCA, energy conservation programs generally consist of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products and equipment must use as both the basis for certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted pursuant to EPCA, and for making other representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

A residential ''water heater'' is defined by EPCA as a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function. (42 U.S.C. 6291(27))

Water heaters are included in EPCA as covered products. The amendments to EPCA effected by the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12)

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

established standards for the residential water heaters and directed that DOE determine whether these standards should be amended. (42 U.S.C. 6295(e)(1); 42 U.S.C. 6295(e)(4))

On January 17, 2001, DOE published a final rule prescribing the current Federal energy conservation standards for residential water heaters manufactured on or after January 20, 2004, which set minimum energy factors (EFs) that vary based on the storage volume of the water heater, the type of energy it uses (*i.e.,* gas, oil, or electricity), and whether it is a storage, instantaneous, or tabletop model. 66 FR 4474; 10 CFR 430.32(d).

Table I.1 presents the current Federal energy conservation standards for residential water heaters. The water heater standards, set forth in 10 CFR 430.32(d), consist of minimum EF that vary based on the rated storage volume of the water heater, the type of energy it uses (*i.e.,* gas, oil, or electricity), and whether it is a storage, instantaneous, or tabletop model.

TABLE I.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL WATER HEATERS

Product class	Energy factor as of January 20, 2004
Gas-Fired Storage Water Heater	EF = 0.67 − (0.0019 × Rated Storage Volume in gallons).
Oil-Fired Storage Water Heater	EF = 0.59 − (0.0019 × Rated Storage Volume in gallons).
Electric Storage Water Heater	EF = 0.97 − (0.00132 × Rated Storage Volume in gallons).
Tabletop Water Heater	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).
Gas-Fired Instantaneous Water Heater	EF = 0.62 − (0.0019 × Rated Storage Volume in gallons).
Instantaneous Electric Water Heater	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).

On April 16, 2010, DOE published a final rule in the **Federal Register** amending the energy conservation standards for residential water heaters for a second time. 75 FR 20111. The updated standards maintained the existing product class structure, dividing water heaters based on the type of energy used (*i.e.,* gas, oil, or electricity) and whether it is a storage, instantaneous, or tabletop model, but also differentiated standard levels for electric and gas-fired storage water heaters based on whether the rated storage volume is greater than 55 gallons, or less than or equal to 55 gallons. Compliance with the energy conservation standards contained in the April 2010 final rule will be required starting on April 16, 2015.

Table I.2 presents the amended Federal energy conservation standards for residential water heaters, which are also set forth in 10 CFR 430.32(d).

TABLE I.2—AMENDED FEDERAL ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL WATER HEATERS ESTABLISHED BY APRIL 2010 FINAL RULE

Product class	Energy factor as of April 16, 2015
Gas-Fired Storage Water Heater	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.675 − (0.0015 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 0.8012 − (0.00078 × Rated Storage Volume in gallons).
Oil-Fired Storage Water Heater	EF = 0.68 − (0.0019 × Rated Storage Volume in gallons).
Electric Storage Water Heater	For tanks with a Rated Storage Volume at or below 55 gallons: EF = 0.960 − (0.0003 × Rated Storage Volume in gallons). For tanks with a Rated Storage Volume above 55 gallons: EF = 2.057 − (0.00113 × Rated Storage Volume in gallons).
Tabletop Water Heater	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).
Gas-Fired Instantaneous Water Heater	EF = 0.82 − (0.0019 × Rated Storage Volume in gallons).
Instantaneous Electric Water Heater	EF = 0.93 − (0.00132 × Rated Storage Volume in gallons).

II. Discussion

This section briefly discusses the solar water heating systems that are the subject of this RFI and raises the key issues on which DOE seeks comment. As noted in section I, a residential ''water heater'' means ''a product which utilizes oil, gas, or electricity to heat potable water.'' DOE has previously determined that water heaters that use solar energy as the sole energy source (e.g., solar thermal collectors without the use of a secondary heat source) are not covered as residential water heaters. 75 FR 20111, 20126. However, many solar water heating systems utilize electricity or gas as a secondary heat source, and these types of solar water heating systems (with a secondary electric or fossil fuel heat source) are the subject of this notice.

A. Solar Water Heating Technology

Solar water heating systems consist of a solar collector to capture heat from the sun and storage tanks that maintain the potable water that has been heated by the solar collector. These systems typically require some type of secondary heat source when the sun is not available to provide adequate hot water for the residence. That heat source could be provided within the storage tank, in a second tank that is plumbed downstream of the solar storage tank, or by means of an instantaneous water heater installed downstream of the solar storage tank.

Systems can be characterized as being either ''active'' or ''passive.''[3] Active systems rely on pumps to circulate fluid from the solar collectors to the storage tank. These types of systems can pump potable water directly through the solar collector and into the storage tank in climates where it rarely freezes (''direct circulation systems'') or can circulate a non-freezing, heat-transfer fluid through the collectors and a heat exchanger to transfer the heat from the collector into the potable water (''indirect circulation systems''). Passive solar water heating systems require no pumps, instead relying on pressure from the water main

[3] U.S. Department of Energy, ''Solar Water Heaters,'' *http://energy.gov/energysaver/articles/solar-water-heaters,* last accessed October 2, 2014.

to move water through the system or on natural convection to transfer heat to the potable water. An integral collector storage system is a passive system in which the storage tank also serves as the collector, with the entire storage and collection system being located outdoors in a location where it captures sunlight. Thermosyphon systems are types of passive solar water heating systems that rely on the fact that heated water rises to transfer heated water from a collector to a storage tank that is located above the collector.

As noted, a secondary heating method is required for times when the sun does not provide sufficient heat to raise the water to a temperature required by the end user. DOE is aware of storage tanks that utilize electric resistance elements or gas burners to provide that secondary heat. Those tanks could be part of a single tank system, in which the heat from the solar collectors and the secondary source is applied to the same tank of water, or a dual-tank system, in which one tank stores water heated by the solar collectors and serves as the supply to a second tank downstream that supplies any necessary additional heat. Additionally, DOE is aware that instantaneous water heaters utilizing gas or electricity can also be used to raise the water temperature from that which is stored in the storage tank to the end use temperature. The components that provide supplemental heat are the primary topic on which DOE seeks information in this RFI.

DOE requests comment on design differences between storage and instantaneous water heaters used in solar systems and those that are used in non-solar applications in typical residences, particularly as they are supplied by the manufacturer as opposed to modified in the field. These water heaters could include storage tanks with heating capability based on any fuel source, instantaneous water heaters designed specifically for solar water heating systems, or other technologies that may not be known to the Department.

DOE also requests comments on the heating capacity of water heaters meant for solar water heating systems compared to those meant for non-solar applications. Related to this question, DOE seeks comments on the amount of hot water that the secondary heat source of a solar water heating system can provide without a solar collector compared with water heaters that are designed for non-solar applications.

Finally, DOE requests information on whether water heaters designed to be a component in a solar water heating system are a direct substitute for traditional water heating technology and whether conventional water heaters can be directly used as a component in a solar water heating system. Considering that some storage tanks designed for solar water heating systems may contain built-in heat exchangers and multiple inlet and outlet ports to accommodate both potable water and the heat transfer fluid carrying heat from the solar collectors, DOE also seeks comment on whether solar thermal storage tanks can be easily modified in the field to convert them for use in a residence without solar collectors. Likewise, DOE seeks information on whether conventional water heaters can be easily modified for use in solar installations. In summary, DOE seeks comment on the following issues related to solar water heating technologies:

Issue 1. Solar water heating technologies that utilize a secondary heating source that are currently available to the consumer.

Issue 2. Design differences between water heaters that are designed to be part of a solar water heating system compared to those meant for typical residences without a solar water heating system.

Issue 3. Heating rates and the amount of hot water that can be supplied by water heaters meant to serve as a secondary heat source for a solar collector compared to the heating rates and hot water supply capacity water heaters.

B. Solar Water Heating Market

DOE has conducted preliminary research to investigate the solar water heating equipment market. Based on a report by the National Renewable Energy Laboratory (NREL),[4] DOE distinguished between two distinctive periods of solar water heater installations. From 1985 to 2005, when there were no tax incentives for solar water heaters, the number of installations ranged from approximately 5,000 to 10,000 annually. Federal and State tax incentives were instituted in 2006. Between 2006 and 2010, there were between approximately 18,000 and 33,500 solar thermal water heater systems installed annually in the U.S.

Additionally, ENERGY STAR® Unit Shipment Data[5] reports that in 2010, 2011, and 2012, 10,000, 10,000, and 7,000 ENERGY STAR-qualified solar water heaters were shipped, respectively. Almost all ENERGY STAR models are indirect forced circulation systems. However, all available installation and shipment data do not provide information on the types of secondary water heaters used with these systems.

DOE also examined data on the stock of solar water heaters from the American Housing Survey (AHS) and the Energy Information Administration's (EIA) Residential Energy Consumption Survey (RECS) from 1990 to 2011. These data indicate a decreasing trend from around 300,000 solar water heaters installed in primary and secondary housing units in the 1990s to approximately 150,000 or less in the 2000s. RECS 2009 reports that 135,000 solar water heaters served as the household primary water heater. AHS reports that in 2011, 163,000 solar water heaters served as the household primary water heater.

Based on ENERGY STAR model data,[6] DOE determined that the following companies manufacture solar water heaters (collector and storage tank): A.O. Smith Corporation; Agua Del Sol, L.L.C.; EZINC Metal San. Tic. A. S.; NY Thermal Inc.; Pacific West Solar; Integrated Solar, LLC; and Rheem-Ruud Manufacturing. In addition, from manufacturer literature, DOE determined that several more manufacturers produce secondary water heaters (storage and instantaneous) used in solar thermal water heating installations, including Bradford White, Rinnai, and Heliodyne.[7]

Regarding the market for solar water heating systems, DOE seeks comment on the following issues:

Issue 4. DOE seeks comment on the fractions of single tank and dual tank solar water heating systems, and whether the secondary water heaters used include design features that differ from conventional residential water heaters.

Issue 5. DOE seeks comment on the manufacturers of water heaters used in solar thermal installations. DOE also seeks input regarding the market share of each manufacturer, and whether any of them are small businesses.

Issue 6. DOE understands that solar water heaters may be installed with secondary water heaters of varying rated

[4] Hudon, K., T. Merrigan, J. Burch, and J. Maguire. *Low-Cost Solar Water Heating Research and Development Roadmap.* National Renewable Energy Laboratory. August 2012. NREL/TP–5500–54793.

[5] U.S. Environmental Protection Agency: ENERGY STAR, *Unit Shipment Data Archives,* 2014. (Last accessed October 2014) (Available at: *http://www.energystar.gov/index.cfm?c=partners.unit_shipment_data_archives*).

[6] U.S. Environmental Protection Agency, *ENERGY STAR Certified Water Heaters,* 2014. (Last accessed October 2013). (Available at: *http://www.energystar.gov/productfinder/product/certified-water-heaters/results*).

[7] Bradford White: *http://www.bradfordwhite.com/products/solar.* Rinnai: *http://www.rinnai.us/.* Heliodyne: *http://www.heliodyne.com/.*

volumes (e.g., 60 gal, 80 gal, 120 gal, etc.), input capacity, and fuel type. DOE seeks input regarding the total annual shipments of the market for solar water heating systems that utilize secondary heat sources, the fractions of water heaters that are used to provide secondary water heating by rated volume, input capacity, and fuel type.

Issue 7. DOE seeks comment on any other attributes of solar water heating systems that utilize secondary heating tanks, which distinguish them from conventional storage or instantaneous water heaters.

III. Public Participation

DOE will accept comments, data, and information regarding this RFI and other matters relevant to solar water heating equipment no later than the date provided in the **DATES** section at the beginning of this RFI. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this RFI.

Instructions: All submissions received must reference the Office of Energy Efficiency and Renewable Energy and Docket Number EERE–2014–BT–STD–0045. No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendees' lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0045.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about the subject of this notice should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on October 10, 2014.

Kathleen Hogan,

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

[FR Doc. 2014–24978 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0016–0017]

RIN 1904–AB99

Energy Conservation Program: Test Procedures for Fluorescent Lamp Ballasts; Correction

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to amend its test procedures for fluorescent lamp ballasts. Proposed changes include adopting text at its regulations concerning test procedures for the measurement of energy and water consumption to clarify the requirement to use the test procedures in Appendix Q1 to demonstrate compliance with the new and revised energy conservation standards that apply to fluorescent lamp ballasts manufactured on or after November 14, 2014. These revisions follow the intent of the fluorescent lamp ballast test procedure final rule to support any new or revised energy conservation standards at the time those standards require compliance. This notice of proposed rulemaking (NOPR) would also correct the formula for power factor, which contained a mathematical error as adopted in that final rule.

DATES: DOE will accept comments, data, and information regarding this NOPR no later than November 20, 2014. See section V, ''Submission of Comments,'' for details.

ADDRESSES: Any comments submitted must identify the NOPR for Test Procedures for fluorescent lamp ballasts, and provide docket number EERE–2009–BT–TP–0016–0017 and/or regulatory information number (RIN) number 1904–AB99. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email:* [*FLB–2009–TP–0016@ee.doe.gov*] Include the docket number and/or RIN in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Submission of Comments).

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/62.* This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *fluorescent_lamp_ballasts@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel,

GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler*@hq.doe.gov.

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I. Authority and Background

Title III, Part B[1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or, ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [2] These include fluorescent lamp ballasts, the subject of this NOPR. (42 U.S.C. 6292(a)(13))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to the Department of Energy (DOE) that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

DOE published a test procedure final rule on May 4, 2011 (hereafter the ''May 2011 test procedure final rule'') establishing revised active mode test procedures. 76 FR 25211. The May 2011 test procedure final rule established appendix Q1 to subpart B of 10 CFR part 430. DOE also published a final rule adopting new and revised energy conservation standards for fluorescent lamp ballasts on November 14, 2011 (hereafter the ''November 2011 standards final rule''), which completed the second energy conservation standard rulemaking required under 42 U.S.C. 6295(g)(7). 76 FR 70548. The November 2011 standards final rule established the regulations located at 10 CFR 430.32(m)(8)–(10).

II. Summary of the Notice of Proposed Rulemaking

DOE discovered an error in the formula for power factor located in 10 CFR part 430, subpart B, Appendix Q1. DOE proposes to correct that formula. DOE also proposes to update 10 CFR 430.23 to reflect the requirement to determine compliance with the November 2014 standards by testing conducted in accordance with Appendix Q1. This revision follows the intent of the May 2011 test procedure final rule to support any new or revised energy conservation standards at the time those standards require compliance. 76 FR 25211, 25213 (May 4, 2011). DOE notes that it intends to publish a NOPR in the near future to clarify several additional issues raised by stakeholders concerning the applicability and requirements of the energy conservation standards and test procedures for fluorescent lamp ballasts.

III. Discussion

In the November 2011 standards final rule, DOE amended existing energy conservation standards and adopted standards for additional ballasts. 76 FR 70548. The new and amended standards were based on ballast luminous efficiency (BLE) and apply to all products listed in the table of BLE standards, codified at 10 CFR 430.32(m)(8)(iii)(C). DOE requires compliance with these BLE standards beginning November 14, 2014.

DOE proposes to revise 10 CFR 430.23 to clarify the requirement to use the test procedures in Appendix Q1 to demonstrate compliance with the new and revised energy conservation standards that apply to fluorescent lamp ballasts manufactured on or after November 14, 2014, codified at 10 CFR 430.32(m)(8)–(10). These revisions follow the intent of the May 2011 test procedure final rule that new Appendix Q1 is to support the new and revised energy conservation standards adopted in the November 2011 standards final rule. DOE did not include these revisions at the time of the May 2011 test procedure final rule because the standards and associated compliance date of the subsequent standards final rule were not yet known. DOE also proposes to revise Appendix Q1 to correct an error in the formula for calculating power factor as adopted in the May 2011 test procedure final rule.

In any rulemaking to amend test procedures, DOE must determine to what extent, if any, the proposed test procedures would alter the measured energy efficiency of any covered products as determined under the existing test procedures. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedures would alter the measured efficiency of covered products, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)) Because the changes proposed in this NOPR simply provide clarification, these revisions do not alter the measured energy efficiency of the covered products measured by this test procedure.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[2] All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

This rulemaking clarifies existing requirements for testing and compliance with energy conservation standards and does not change the burden associated with fluorescent lamp ballast regulations on any entity large or small. Therefore, DOE has determined that this rulemaking would not have a significant economic impact on a substantial number of small entities.

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review under 5 U.S.C. 605(b). DOE certifies that this rule would have no significant impact on a substantial number of small entities. DOE seeks comment regarding whether this proposed rule would have a significant economic impact on any small entities.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of fluorescent lamp ballasts must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for fluorescent lamp ballasts, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including fluorescent lamp ballasts. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes amendments to the test procedures for fluorescent lamp ballasts. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal

governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the test procedures for fluorescent lamp ballasts is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule does not revise the existing incorporation of industry standards regarding fluorescent lamp ballasts. Therefore, DOE concludes that the requirements of section 32(b) of the FEAA, (*i.e.,* that the standards were developed in a manner that fully provides for public participation, comment, and review) do not apply to this rulemaking.

V. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this NOPR.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the

comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on October 14, 2014.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.23 is amended by revising paragraph (q) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(q) *Fluorescent Lamp Ballasts.* (1) Calculate the estimated annual energy consumption (EAEC) for fluorescent lamp ballasts, expressed in kilowatt-hours per year, by multiplying together the following values:

(i) The input power in kilowatts measured in accordance with section 2.5.1.6 of Appendix Q1 to this part; and

(ii) The representative average use cycle of 1,000 hours per year. Round the resulting product to the nearest kilowatt-hour per year.

(2) Calculate ballast luminous efficiency (BLE) using section 2.6.1 of Appendix Q1 to this subpart.

(3) Calculate the estimated annual operating cost (EAOC) for fluorescent lamp ballasts, expressed in dollars per year, by multiplying together the following values:

(i) The representative average unit energy cost of electricity in dollars per kilowatt-hour as provided by the Secretary,

(ii) The representative average use cycle of 1,000 hours per year, and

(iii) The input power in kilowatts measured in accordance with section 2.5.1.6 of appendix Q1 to this part. Round the resulting product to the nearest dollar per year.

* * * * *

■ 3. Appendix Q1 to subpart B of part 430 is amended by revising section 2.6.2 to read as follows:

Appendix Q1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

* * * * *

2.6.2. Calculate Power Factor (PF).

$$PF = \frac{Input\ Power}{Input\ Voltage\ \times Input\ Current}$$

Where: Input power is determined in accordance with section 2.5.1.6, input voltage is determined in accordance with section 2.5.1.7, and input current is determined in accordance with section 2.5.1.8.

* * * * *

[FR Doc. 2014–24985 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2014–BT–STD–0027]

RIN 1904–AD31

Energy Conservation Program for Certain Commercial Industrial Equipment: Conservation Standards for Commercial Pre-Rinse Spray Valves

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

ACTION: Extension of public comment period.

SUMMARY: This document announces an extension of the time period for submitting comments, data, and information on the framework document for commercial pre-rinse spray valves, published on September 11, 2014. The comment period is extended to November 12, 2014.

DATES: The comment period for the framework document for commercial pre-rinse spray valves, published on September 11, 2014 (79 FR 54213) is extended to November 12, 2014.

ADDRESSES: Interested persons may submit comments by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: SprayValves20104STD0027@ee.doe.gov.* Include EERE–2014–BT–STD–0027 and/or regulation identifier number (RIN) 1904–AD31 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter. Submit electronic comments in WordPerfect, Microsoft Word, portable data format (PDF), or American Standard Code for Information Interchange (ASCII) file format, and avoid the use of special characters or any form of encryption.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Notice of Availability of Framework Document for Commercial Pre-rinse Spray Valves, EERE–2014–BT–STD–0027 and/or RIN 1904–AD31, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. (Please note that comments sent by mail are often delayed and may be damaged by mail screening processes.)
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Phone:* (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

All submissions received must include docket number EERE–2014–BT–STD–0027 and/or regulatory identification number (RIN) 1904–AD31.

Docket: The docket is available for review at *http://www.regulations.gov,* and will include **Federal Register** notices, framework document, notice of proposed rulemaking, public meeting attendee lists and transcripts, comments, and other supporting documents/materials throughout the rulemaking process. The regulations.gov Web page contains simple instructions on how to access all documents, including public comments, in the docket. The docket can be accessed by searching for docket number EERE–2014–BT–STD–0027 on the regulations.gov Web site. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *jim.raba@ee.doe.gov.*

In the Office of General Counsel, contact Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On September 11, 2014, the U.S. Department of Energy (DOE) published a document in the **Federal Register** initiating a rulemaking and data collection process to consider establishing energy conservation standards for commercial pre-rinse spray valves. 79 FR 54213. In that document, DOE announced the availability of a framework document. The document provided for the submission of written comments by October 27, 2014, and oral comments were also accepted at a public meeting held on September 30, 2014. The Plumbing Manufacturers International requested, by letter dated October 9, 2014, an extension of the public comment period for the framework document, in view of the breadth, technical nature, and amount of data requested, and to ensure that key domestic and international industry representatives have adequate time to review and provide comments.

DOE has determined that an extension of the public comment period for the framework document is appropriate to allow interested parties additional time to submit comments for DOE's consideration. Thus, DOE is extending the comment period by 15 days. DOE will consider any comments received by November 12, 2014 to be timely submitted.

Issued in Washington, DC, on October 10, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–24982 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2014–BT–STD–0042]

RIN 1904–AD34

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Water Heating Equipment

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

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is initiating a rulemaking to consider amended energy conservation standards for commercial water heaters, hot water supply boilers, and unfired hot water storage tanks (commercial water heating equipment). Once completed, this rulemaking will fulfill DOE's statutory obligation to either propose amended energy conservation standards for commercial

water heating equipment or to determine that the existing standards do not need to be amended. This notice seeks to solicit information to help DOE determine whether national standards more stringent than those currently in place would result in a significant amount of additional energy savings and whether such amended national standards would be technologically feasible and economically justified. In overview, this document presents a brief description of the analysis DOE plans to perform for this rulemaking and requests comment on various issues relating to each of the analyses (*e.g.,* market assessment, engineering analysis, energy use analysis, life-cycle cost and payback period analysis, and national impact analysis). Although this document contains several specific topics on which DOE is particularly interested in receiving written comment, DOE welcomes suggestions and information from the public on any subject within the scope of this rulemaking, including topics not raised in this RFI.

DATES: Written comments and information are requested on or before November 20, 2014.

ADDRESSES: Interested parties are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0042 and/or regulatory identification number (RIN) 1904–AD34 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: ComWaterHeating2014STD0042@ee.doe.gov.* Include docket number EERE–2014–BT–STD–0042 and/or RIN 1904–AD34 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section Public Participation of this document.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. Ron Majette, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7935. Email: *Ronald.Majette@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

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I. Introduction

A. Authority

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes provisions covering the commercial water heating equipment that are the subject of this notice.[2] In general, this program addresses the energy efficiency of certain types of commercial and industrial equipment. Relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The initial Federal energy conservation standards and test procedures for commercial water heating equipment were added to EPCA as an amendment made by the Energy Policy Act of 1992 (EPACT). (42 U.S.C. 6313(a)(5)) These initial energy conservation standards corresponded to the efficiency levels contained in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1 (ASHRAE Standard 90.1) in effect on October 24, 1992. The statute provided that if the efficiency levels in ASHRAE Standard 90.1 were amended after October 24, 1992, the Secretary must establish an amended uniform national standard at new minimum levels for each equipment type specified in ASHRAE Standard 90.1, unless DOE determines, through a rulemaking supported by clear and convincing evidence, that national standards more stringent than the new minimum levels would result in significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(II)) In deciding whether a proposed amended standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the proposed standard exceed its burdens by, to the greatest extent practicable, considering the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;
3. The total projected amount of energy savings, or as applicable, water savings, likely to result directly from the standard;

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act of 2012, Public Law 112–210 (Dec. 18, 2012).

4. Any lessening of the utility or the performance of the covered equipment likely to result from the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

6. The need for national energy and water conservation; and

7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii))

Section 5(b) of the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012), amended EPCA to include a requirement for DOE to conduct an evaluation of whether to amend the standards for certain types of commercial and industrial equipment [3] every six years. (42 U.S.C. 6313(a)(6)(C)(i)) AEMTCA also mandated that DOE must publish the first document of an expedited rulemaking within 1 year of the date of AEMTCA's enactment (*i.e.,* December 18, 2012) to consider amended energy conservation standards for any covered equipment of those types as to which more than six years had elapsed since the issuance of the most recent final rule establishing or amending a standard for the equipment. (42 U.S.C. 6313(a)(6)(C)(vi)) [4]

DOE issued the most recent final rule for commercial water heating equipment on January 12, 2001 (hereinafter, the ''January 2001 final rule''), which adopted the amended energy conservation standards at levels equivalent to efficiency levels in ASHRAE Standard 90.1, as it was revised in October 1999. 66 FR 3336. Because more than six years has passed since issuance of the last final rule for commercial water heating equipment, DOE is required to publish either a notice of determination that the current standards for these equipment types do not need to be amended, or a notice of proposed rulemaking proposing amended energy conservation standards for these equipment types. In addition, the energy conservation standards for commercial oil-fired storage water heaters were increased to a level beyond the current federal standards in ASHRAE Standard 90.1–2013. Therefore DOE is required to adopt these new standards unless there is clear evidence that adopting stricter standards would produce significant additional energy savings while being both technologically feasible and economically justified.

To meet the requirements under AEMTCA, DOE is reviewing its existing energy conservation standards for the equipment types listed in 42 U.S.C. 6313(a) for which at least six years have elapsed since the issuance of the most recent final rule, including the commercial water heating equipment that is the subject of this notice. This notice represents the initiation of the mandatory review process required by AEMTCA. DOE seeks input from the public to assist with its determination on whether to amend the current standards for commercial water heating equipment.

B. Background

On October 29, 1999, ASHRAE released an updated Standard 90.1–1999, which included amended efficiency levels for numerous categories of commercial water heaters, hot water supply boilers, and unfired hot water storage tanks. DOE evaluated these efficiency levels and subsequently adopted energy conservation standards affecting eight different water heating equipment categories in a final rule published in the January 2001 final rule. 66 FR 3336. However, DOE did not adopt the efficiency level contained in ASHRAE Standard 90.1–1999 for commercial electric storage water heaters, since the ASHRAE Standard 90.1–1999 level was less stringent than the standard in EPCA and would have increased energy consumption, and under those circumstances, DOE could not adopt the new efficiency level. 66 FR at 3350. The current Federal energy conservation standards for this equipment including those adopted in the January 2001 final rule are shown in Table 1.

TABLE 1—MINIMUM EFFICIENCY LEVELS FOR COMMERCIAL WATER HEATING EQUIPMENT

Equipment	Size	Energy conservation standard [a b]	
		Minimum thermal efficiency (percent)	Maximum standby loss [c]
Electric storage water heaters	All	N/A	$0.30 + 27/V_m$ (%/hr).
Gas-fired storage water heaters	≤155,000 Btu/hr	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/hr).
	>155,000 Btu/hr	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/hr).
Oil-fired storage water heaters	≤155,000 Btu/hr	78	$Q/800 + 110(V_r)^{1/2}$ (Btu/hr).
	>155,000 Btu/hr	78	$Q/800 + 110(V_r)^{1/2}$ (Btu/hr).
Gas-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80	N/A.
	≥10 gal	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/hr).
Oil-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80	N/A.
	≥10 gal	78	$Q/800 + 110(V_r)^{1/2}$ (Btu/hr).
Equipment	**Size**	**Minimum thermal insulation**	
Unfired hot water storage tank	All	R–12.5	

[a] V_m is the measured storage volume and V_r is the rated volume, both in gallons. Q is the nameplate input rate in Btu/hr.

[b] For hot water supply boilers with a capacity of less than 10 gallons: (1) The standards are mandatory for products manufactured on and after October 21, 2005, and (2) products manufactured prior to that date, and on or after October 23, 2003, must meet either the standards listed in this table or the applicable standards in subpart E of this part for a ''commercial packaged boiler.''

[c] Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if (1) the tank surface area is thermally insulated to R–12.5 or more, (2) a standing pilot light is not used and (3) for gas or oil-fired storage water heaters, they have a fire damper or fan assisted combustion.

[3] This equipment includes small, large, and very large commercial package air conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks. (42 U.S.C. 6313(a)(6))

[4] It is noted that AEMTCA inadvertently assigned two separate provisions to 42 U.S.C. 6313(a)(6)(C)(vi). The provision cited above is the one most relevant to this RFI.

DOE reviewed and adopted amended test procedures for commercial water heating equipment in a direct final rule published on October 21, 2004. 69 FR 61974. These test procedure amendments incorporated by reference certain sections of the American National Standards Institute Standard (ANSI) Z21.10.3–1998 (ANSI Z21.10.3–1998), ''Gas Water Heaters Volume III Storage Water Heaters, with Input Ratings Above 75,000 Btu per Hour, Circulating and Instantaneous.'' *Id.* On May 16, 2012, DOE published a final rule in the **Federal Register** to update the test procedures for certain commercial water heating equipment by adopting and incorporating by reference the most recent version of the relevant industry test procedure, ANSI Z21.10.3–2011. 77 FR 28928. These updates did not materially alter the procedure.

The divisions between residential and commercial water heaters were first established in EPCA. The current specifications for residential water heaters are shown below in Table 2, as specified in 10 CFR 430.2. A water heater exceeding any of the limits expressed below for input, volume, input/volume, or max temperature is classified as commercial water heating equipment.

TABLE 2—CLASSIFICATION OF RESIDENTIAL WATER HEATING EQUIPMENT

Type	Input	Volume (gal)	Input/volume (BTU/(h*gal))	Max temp (°F)
Gas Storage	<75,000 BTU/h	20–100	<4,000	<180
Oil Storage	<105,000 BTU/h	<50	<4,000	<180
Electric Storage	<12 kW	20–120	<4,000	<180
Gas Instantaneous	50,000–200,000 BTU/h	<2	≥4,000	<180
Oil Instantaneous	<210,000 BTU/h		≥4,000	<180
Electric Instantaneous	<12 kW		≥4,000	<180
Heat Pump [a]	<12 kW	<120		<180

[a] To be classified as residential, heat pump water heaters must also not exceed a current rating 24 A or 250 V.

C. Rulemaking Process

In addition to the specific statutory criteria discussed in section I.A that DOE must follow in prescribing amended standards for covered equipment, DOE uses a specific process to assess the appropriateness of amending the standards that are currently in place for a given type of equipment. For commercial water heating equipment, DOE plans to conduct its analyses in stages, with a positive result leading to a subsequent stage of the analysis. Under this approach, DOE will first evaluate whether more-stringent standards are technologically feasible and whether such standards would result in significant additional energy savings. If either of these criteria is not met, DOE will conduct no further analysis, because the statutory criteria for adoption of the more-stringent standard could not be met. However, if this initial assessment is positive, DOE will conduct in-depth technical analyses of the costs and benefits of the potential amended standards to determine whether such amended standards would be economically justified. The analyses undertaken at this stage would include: (1) Engineering analysis; (2) energy use analysis; (3) markups analysis; (4) life-cycle cost and payback period analysis; and (5) national impacts analysis. If, after conducting those analyses, DOE determines that there is a high likelihood that more-stringent standards would be economically justified, DOE will conduct downstream analyses including: (1) Manufacturer impacts analysis; (2) emission impacts analysis; (3) utility impacts analysis; (4) employment impacts analysis; and (5) regulatory impacts analysis. DOE will also conduct several other analyses that support those previously listed, including the market and technology assessment, the screening analysis (which contributes to the engineering analysis), and the shipments analysis (which contributes to the national impact analysis). As detailed throughout this RFI, DOE is publishing this notice as the first step in the analytical process and is requesting input and data from interested parties to aid in the development of the technical analyses.

DOE anticipates moving from this RFI directly to publication of either a determination that the commercial water heating equipment standards do not need to be amended or a notice of proposed rulemaking for amended standards.

II. Planned Rulemaking Analyses

In this section, DOE summarizes the rulemaking analyses and identifies a number of issues on which it seeks input and data in order to aid in the development of the technical and economic analyses to determine whether amended energy conservation standards may be warranted. In addition, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this notice.

A. Test Procedures

DOE's existing test procedures for commercial water heating equipment are specified at 10 CFR 431.106, and reference ANSI Z21.10.3–2011. The test procedures provide methods for determining the thermal efficiency and standby loss of gas-fired, oil-fired, and electric storage and instantaneous water heaters. AEMTCA amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for covered residential water heaters and commercial water heating equipment by December 18, 2013 (*i.e.,* within one year of the enactment of AEMTCA). (42 U.S.C. 6295(e)(5)(B)) The final rule must replace the current energy factor (for residential water heaters) and thermal efficiency and standby loss (for commercial water heaters) metrics with a uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(C)) AEMTCA allowed DOE to provide an exclusion from the uniform efficiency descriptor for specific categories of otherwise covered water heaters that do not have residential uses, that can be clearly described, and that are effectively rated using the current thermal efficiency and standby loss descriptors. (42 U.S.C. 6295(e)(5)(F))

DOE published a final rule for test procedures for residential water heaters and certain commercial water heaters on July 11, 2014 that, among other things, established the Uniform Energy Factor (UEF), a revised version of the current residential Energy Factor metric, as the uniform efficiency descriptor required by AEMTCA. 79 FR 40542. The uniform efficiency descriptor only applies to commercial water heaters that meet the definition of ''residential-duty commercial water heater,'' which is

defined as any gas-fired, electric, or oil storage or instantaneous commercial water heater that meets the following conditions:

(1) For models requiring electricity, uses single-phase external power supply;

(2) Is not designed to provide outlet hot water at temperatures greater than 180 °F; and

(3) Is not excluded by any of the specified limitations regarding rated input and storage volume established in Table 3 (below). *Id.* at 40546

The input and volume limitations for the definition of a residential-duty commercial water heater are shown below by equipment class.

TABLE 3—CLASSIFICATION OF RESIDENTIAL-DUTY COMMERCIAL WATER HEATING EQUIPMENT

Water heater type	Indicator of non-residential application
Gas-fired Storage	Rated input >105 kBtu/h; Rated storage volume >120 gallons.
Oil-fired Storage	Rated input >140 kBtu/h; Rated storage volume >120 gallons.
Electric Storage	Rated input >12 kW; Rated storage volume >120 gallons.
Heat Pump with Storage	Rated input >12 kW; Rated current >24 A at a rated voltage of not greater than 250 V; Rated storage volume >120 gallons.
Gas-fired Instantaneous	Rated input >200 kBtu/h; Rated storage volume >2 gallons.
Electric Instantaneous	Rated input >58.6 kW; Rated storage volume >2 gallons.
Oil-fired Instantaneous	Rated input >210 kBtu/h; Rated storage volume >2 gallons.

Commercial water heaters not meeting the definition of residential-duty commercial water heater were deemed to be sufficiently characterized by the current thermal efficiency and standby loss metrics.

This rulemaking, therefore, includes commercial water heating equipment covered by the uniform efficiency descriptor, as well as water heaters that will continue to be covered by the existing thermal efficiency and standby loss metrics. DOE plans to conduct analyses for this rulemaking using the UEF for residential-duty commercial water heaters. For residential-duty commercial water heaters, DOE will develop a conversion factor (as required by AEMTCA) that will be used to translate the existing thermal efficiency and standby loss ratings into UEF for its analyses. The conversion factor will be developed as part of a separate rulemaking. DOE plans to conduct analyses for all other types of commercial water heaters (i.e., other than the residential-duty commercial water heaters) using the existing thermal efficiency and standby loss metrics.

DOE notes that for unfired storage tanks, the Federal energy conservation standard is expressed as an R-value requirement for the tank thermal insulation. In an RFI published on February 27, 2014 that addresses commercial water heater test procedures (February 2014 RFI), DOE sought comment on whether a single test method for R-value should be used (and if so, which industry method is most appropriate), or whether replacing R-value with standby loss or some other metric as the energy efficiency metric for unfired storage tanks would be appropriate. 79 FR 10999. Any amended standards for unfired storage tanks for this rulemaking will be established in the metric chosen in the noted test procedure rulemaking.

Lastly, DOE may consider including commercial heat pump water heaters within the scope of coverage of this rulemaking, as discussed below in Section II.B. DOE does not currently have a test procedure for determining the energy efficiency of commercial heat pump water heaters, but may develop a procedure as described in the February 2014 RFI. If DOE ultimately adopts a test method for commercial heat pump water heaters, then DOE would consider those products in the analyses for this rulemaking.

B. Market Assessment

The market and technology assessment provides information about the commercial water heating equipment industry that will be used throughout the rulemaking process. For example, this information will be used to determine whether the existing equipment class structure requires modification based on the statutory criteria for setting such classes and to explore the potential for technological improvements in the design and manufacturing of such equipment. DOE uses qualitative and quantitative information to assess the past and present industry structure and market characteristics. DOE will use existing market materials and literature from a variety of sources, including industry publications, trade journals, government agencies, and trade organizations. DOE will also consider conducting interviews with manufacturers to assess the overall market for commercial water heating equipment.

The current equipment classes as established in the Code of Federal Regulations (CFR) for commercial water heaters are characterized by energy source, equipment type (*i.e.,* storage vs. instantaneous and hot water supply boilers), and size (*i.e.,* input capacity rating and rated storage volume). Unfired hot water storage tanks are also included in a separate equipment class. As a starting point, DOE plans to use the existing equipment class structure which divides commercial water heating equipment into the equipment classes as shown in the table in 10 CFR 431.110 and summarized below in Table 4.

TABLE 4—EQUIPMENT CLASSES FOR COMMERCIAL WATER HEATING EQUIPMENT

Equipment	Size
Electric storage water heaters	All.
Gas-fired storage water heaters	≤155,000 Btu/h.
	>155,000 Btu/h.
Oil-fired storage water heaters	≤155,000 Btu/h.
	>155,000 Btu/h.
Gas-fired instantaneous water heaters and hot water supply boilers	<10 gal.
	≥10 gal.
Oil-fired instantaneous water heaters and hot water supply boilers	<10 gal.

TABLE 4—EQUIPMENT CLASSES FOR COMMERCIAL WATER HEATING EQUIPMENT—Continued

Equipment	Size
	≥10 gal.
Unfired hot water storage tank	All.

DOE plans to create separate equipment classes for residential-duty commercial water heaters, as residential-duty commercial water heaters will use a different metric for energy conservation standards (see section II.A). DOE will consider additional equipment classes for capacities or other performance-related features which inherently affect efficiency and justify the establishment of a different energy conservation standard. DOE will also consider consolidating equipment classes, if warranted. DOE notes that both gas-fired and oil-fired storage water heaters are divided into equipment classes for equipment with an input capacity at or below 155,000 Btu/h and equipment with an input capacity above 155,000 Btu/h. However, as shown in Table 1, the current energy conservation standard levels are identical for both equipment classes. DOE may consider consolidating these equipment classes to remove the input capacity designations, if appropriate.

DOE may also expand the scope of this rulemaking to include covered equipment that is not currently regulated, such as electric instantaneous water heaters or commercial heat pump water heaters, and may consider separate product classes for such equipment. DOE notes that EPCA defines ''commercial instantaneous water heaters'' as water heaters with an input rating of at least 4,000 Btu/h per gallon of stored water. (42 U.S.C. 6311(12)(B)) DOE believes this definition could include both commercial electric instantaneous water heaters and commercial electric add-on heat pump water heaters. Commercial electric heat pump water heaters may include both units that do not contain any storage volume and can be externally connected to a storage tank or tank water heater (i.e., add-on type) and units that contain an integrated heat pump and storage tank (i.e., integrated type). DOE is not aware of any integrated type commercial heat pump water heaters currently on the market but may consider their inclusion due to their possible development in the future.[5] However, any such units would be classified as commercial electric storage water heaters. Commercial add-on electric heat pump water heaters may also extract heat for water heating from either air (air-source) or water (water-source), both of which DOE could consider for new efficiency standards.

If appropriate, DOE may also consider establishing efficiency standards separately for electric instantaneous water heaters using electric resistance heat. However, DOE notes that the thermal efficiency of electric instantaneous water heaters is already nearly 100 percent due to the high efficiency of electric resistance heating elements, and that a thermal efficiency standard may be unnecessary.

Issue 1: DOE requests feedback on the current equipment classes and seeks information regarding other equipment classes it should consider for inclusion in its analysis.

Issue 2: DOE requests comment on whether the 155,000 Btu/h input capacity divisions in the current equipment classes for gas-fired and oil-fired storage water heaters are necessary.

Issue 3: DOE seeks comment on whether to include commercial electric instantaneous water heaters and/or commercial heat pump water heaters in the scope of this rulemaking.

Issue 4: DOE seeks comment on whether to include both add-on and integrated commercial heat pump water heater types in the scope of this rulemaking.

Issue 5: DOE seeks comment on whether to include both air-source and water-source commercial heat pump water heater types in the scope of this rulemaking.

C. Technology Options for Consideration

DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed energy conservation standards. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. Initially, this list will include all those technologies considered to be technologically feasible and will serve to establish the maximum technologically feasible design. DOE is currently considering the specific technologies and design options listed below.

- Heat traps
- Improved insulation [6]
- Power and direct venting
- Fully condensing technology [7]
- Improved flue design [8]
- Sidearm heating and two-phase thermosiphon technology
- Electronic ignition systems
- Improved heat pump water heaters [9]
- Thermophotovoltaic and thermoelectric generators
- Improved controls [10]
- Self-cleaning
- Improved burners [11]

Issue 6: DOE seeks information related to these or other efficiency-improving technologies. Specifically, DOE is interested in comments regarding their applicability to the current market and how these technologies improve efficiency of commercial water heating equipment.

D. Engineering Analysis

The engineering analysis estimates the cost-efficiency relationship of equipment at different levels of increased energy efficiency. This relationship serves as the basis for the cost-benefit calculations for commercial customers, manufacturers, and the nation. In determining the cost-efficiency relationship, DOE will estimate the increase in manufacturer cost associated with increasing the efficiency of equipment above the baseline to the maximum technologically feasible (''max-tech'') efficiency level for each equipment

[5] A commercial integrated heat pump water heater is an integrated heat pump water heater that surpasses any of the limitations for heat pump water heaters expressed in Table 2.

[6] This includes increasing jacket insulation, insulating the tank bottom or using a plastic tank (electric only), advanced insulation types, foam insulation, and pipe and fitting insulation.

[7] This includes storage, instantaneous, and hybrid heaters, as well as pulse combustion.

[8] This includes using high-efficiency flue baffles, multiple flues, submerged combustion chambers, and optimized flue geometry.

[9] This includes absorption heat pump water heaters, carbon dioxide heat pump water heaters, advanced compressors, and using centrifugal fans.

[10] This includes incorporating timer controls, modulating controls, and intelligent and wireless controls and communication.

[11] This includes incorporating variable firing-rate burners, low-stage firing burners, and modulating burners.

class. The baseline model is used as a reference point for each equipment class in the engineering analysis and the life-cycle cost and payback-period analyses. DOE considers equipment that just meets the current minimum energy conservation standard as baseline equipment. For equipment that does not have an existing minimum energy conservation standard, DOE considers the least efficient equipment on the market as baseline equipment. DOE will establish a baseline for each equipment class using the applicable metric(s): Thermal Efficiency and Standby Loss, or Uniform Energy Factor.

Issue 7: DOE requests comment on approaches that it should consider when determining a baseline for equipment classes being transitioned to the uniform descriptor, including information regarding the merits and/or deficiencies of such approaches.

Issue 8: DOE requests information on max-tech efficiency levels achievable in the current market and associated technologies.

In order to create the cost-efficiency relationship, DOE anticipates that it will structure its engineering analysis using both a reverse-engineering (or cost-assessment) and catalog teardown approach. A reverse-engineering or cost-assessment approach relies on a teardown analysis of representative units at the baseline efficiency level and higher efficiency levels up to the maximum technologically feasible designs. A teardown analysis (or physical teardown) determines the production cost of a piece of equipment by disassembling the equipment ''piece-by-piece'' and estimating the material and labor cost of each component. A catalog teardown approach uses published manufacturer catalogs and supplementary component data to estimate the major physical differences between a piece of equipment that has been physically disassembled and another piece of similar equipment. These two methods would be used together to help DOE estimate the manufacturer production cost of equipment at various efficiency levels.

Issue 9: DOE requests feedback on the planned approach for the engineering analysis and on the appropriate representative capacities and characteristics for each equipment class.

1. Analyzing Standby Loss Standards

For each equipment class examined, the baseline, or current standard is determined, and then several intermediate efficiency levels are analyzed incrementally up to the max-tech level, which corresponds to the most efficient unit on the market. For the analysis of amended thermal efficiency standards and uniform efficiency descriptor standards, DOE expects this will be a straightforward process. However, selecting efficiency levels for analysis of amended standby loss (SL) standards for gas and oil storage heaters is more complex for several reasons.

First, the standard for standby loss (BTU/hr) oil and gas storage water heaters is a multivariable equation depending upon both rated input (Q, BTU/hr) and volume (V, gal), as shown below.

$$SL = \frac{Q}{800} + 110\sqrt{V}$$

As discussed later in this section, DOE plans to analyze representative units for the engineering analysis that have the most common attributes of a given equipment class. As a result, DOE will select equipment for analysis with storage volumes and input ratings at discrete representative values within the range of products available on the market. DOE will then need to expand its analysis of efficiency levels at the representative volume(s) and input(s) for the market, and these levels must be extrapolated to apply to the range of volumes and inputs covered by the standard. Because the current standard depends on both volume and input without an intercept, it is only possible to change the slopes for each variable when modifying the standard to fit the analyzed efficiency levels. This could be undesirable if shifting the standard up or down (maintaining the slopes) would better fit the distribution of units outside the representative input and volume. Analysis performed thus far by DOE using an approach of varying the volume slope to change the relationship between SL and input for units at the representative volume appears to yield viable results.

One method to avoid issues stemming from adjusting a multi-variable standard is to remove one of the variables from the equation and establish discrete bins for that variable. Within each of these bins, the SL standard would be a single-variable equation, allowing for manipulation of either the slope or intercept. While bins could be created for input or volume, preliminary analysis indicates that creating bins for volume with standards based on input within each bin would yield better trends for establishing new standard levels.

Issue 10: DOE requests comment on approaches to selecting efficiency levels for its analysis of amended SL energy conservation standards for gas and oil storage heaters, including the possibility of establishing discrete bins for one of the variables and establishing SL standards based on one instead of two variables.

The second issue is that the SL is calculated using the amount of fuel consumed over a given time period, and therefore the heat loss as measured in the SL is partially dependent on the thermal efficiency (TE) of the water heater. Because TE for commercial gas storage heaters can vary from 80–99%, TE can account for a difference of up to 19% of SL values (only 4% for oil storage heaters). Removing this dependency on TE would allow more accurate and representative standards for non-condensing and condensing water heaters. DOE notes that preliminary analysis has shown a large discrepancy in SL range for non-condensing and condensing water heaters; condensing water heater have units with values in a similar range to non-condensing models, but the range also extends to much lower SL values. Further analysis is required to determine to what degree the technologies that allow these significantly lower values are inherent to condensing heaters (i.e. less heat lost in flue due to condensation), as otherwise these technologies could be considered for non-condensing units as well. One possible way to mitigate the impact of TE on SL would be to incorporate the thermal efficiency into the standby loss standard, as a third variable. Another approach would be to analyze SL levels for condensing (92–99% TE) and non-condensing (80–84% TE) gas storage models separately, so that non-condensing models have a proportionately less strict standard, accounting for the lower average TE.

Issue 11: DOE requests comment whether to account for the impact of thermal efficiency on standby loss and on approaches to separate the effect of thermal efficiency from standby loss for gas storage heaters. This includes the possibility of separate standards for non-condensing and condensing units, as well as adding thermal efficiency to the current SL standard.

E. Markups Analysis

To carry out the life-cycle cost (LCC) and payback period (PBP) calculations, DOE needs to determine the cost to the commercial customer of baseline equipment that satisfies the currently applicable standards, and the cost of the more-efficient unit the customer would purchase under potential amended standards. This is done by applying a markup multiplier to the manufacturer's

selling price to estimate the commercial customer's price.

Markups depends on the distribution channels for a product (i.e., how the equipment passes from the manufacturer to the customer). For commercial water heating equipment, various distribution channels are characterized.

Two different markets exist for commercial water heating systems: (1) New construction and (2) replacements. DOE plans to characterize the replacement distribution channels for commercial water heating systems as follows:

Manufacturer → Wholesaler → Mechanical contractor → Customer

In the case of new construction, DOE plans to characterize the distribution channel as follows:

Manufacturer → Wholesaler → Mechanical contractor → General contractor → Customer

In addition, DOE plans to consider distribution channels where the manufacturer sells the equipment directly to a commercial consumer through a national account or the commercial consumer purchases the equipment directly through a wholesaler as follows:

Manufacturer → Wholesaler → Customer

or

Manufacturer → Customer

The latter channels reflect those cases where the installation can be accomplished by site personnel.

DOE also plans to consider cases when the contractor's sale of the equipment includes a start-up/check-out contract, in which cases the equipment markup is included in the contract costs.

Issue 12: DOE seeks input from stakeholders on whether the distribution channels described above are appropriate for commercial water heaters and are sufficient to describe the distribution market.

Issue 13: DOE seeks input on the percentage of equipment being distributed through the different distribution channels, and whether the share of equipment through each channel varies based on equipment capacity or water heater class.

To develop markups for the parties involved in the distribution of the equipment, DOE would utilize several sources including: (1) The Heating, Air-Conditioning & Refrigeration Distributors International (HARDI) 2013 Profit Report [12] to develop wholesaler markups, (2) the 2005 Air Conditioning Contractors of America's (ACCA) financial analysis for the heating, ventilation, air-conditioning, and refrigeration (HVACR) contracting industry [13] to develop mechanical contractor markups, and (3) U.S. Census Bureau's 2007 Economic Census data [14] for the commercial and institutional building construction industry to develop general contractor markups.

Issue 14: DOE seeks recent data and recommendations regarding data sources to establish the markups for the parties involved with the distribution of the equipment.

F. Energy Use Analysis

The purpose of the energy use analysis is to assess the energy requirements of commercial water heating products described in the engineering analysis for a representative sample of building types that utilize the product, and to assess the energy-savings potential of increased product efficiencies. DOE uses the annual energy consumption and energy-savings potential in the LCC and PBP analysis to establish the operating costs savings at various product efficiency levels. DOE will estimate the annual energy consumption of commercial water heaters at specified energy efficiency levels across a range of applications, building types, and climate zones. The annual energy consumption includes use of natural gas, liquefied petroleum gas (LPG), oil, or electricity for hot water production, as well as use of electricity for the auxiliary components.

DOE intends to base the energy use analysis on building characteristics from the Energy Information Administration's (EIA) 2003 Commercial Building Energy Consumption Survey (CBECS) [15] for the subset of building types that use the type of commercial water heating equipment covered by the standards. DOE also plans to look at the use of commercial water heaters in residential applications, such as multi-family buildings. Therefore, DOE plans to include characteristics from EIA's 2009 Residential Energy Consumption Survey (RECS) [16] for the subset of building types in RECS that use commercial water heating equipment covered by this standard.

Both CBECS and RECS survey data include information on the physical characteristics of building units, water heating equipment used, fuels used, energy consumption and expenditures, and other building characteristics.[17] DOE will also consult the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) [18] and Electric Power Research Institute (EPRI) [19] handbooks, which contain data on the typical types and sizes (both input capacity and rated volume) of commercial water heaters used for different building types and applications, and can be used to compare to, supplement, and corroborate the CBECS and RECS data. Based on these data, DOE will develop a representative population of buildings for each commercial water heater equipment class.

Based on the data in the ASHRAE and EPRI Handbooks, as well as data from National Renewable Energy Laboratory (NREL),[20] and Lawrence Berkeley National Laboratory (LBNL) [21] regarding typical energy use profiles and other commercial building usage characteristics, DOE will develop representative hot water usage, water heating usage profile, water volumetric loads, and hot water usage temperatures for various applications for each

[12] Heating, Air Conditioning & Refrigeration Distributors International 2013 Profit Report, (Available at: *http://www.hardinet.org/Profit-Report*) (Last accessed July 8, 2014).

[13] Air Conditioning Contractors of America (ACCA), Financial Analysis for the HVACR Contracting Industry: 2005, (Available at: *https://http://www.acca.org/store/product.php?pid=142)* (Last accessed April 10, 2013).

[14] U.S. Census Bureau, 2007 Economic Census Data. (2007) (Available at: *http://www.census.gov/econ/*) (Last accessed April 10, 2013).

[15] Energy Information Administration (EIA). 2003 Commercial Building Energy Consumption Survey (CBECS). (Available at: *http://www.eia.gov/consumption/commercial/*) (Last accessed April 10, 2013). Note CBECS 2012 building characteristics have been released in preliminary form by EIA and will be reviewed for possible incorporation into this analysis, however, the full release of CBECS 2012 data is not expected until winter 2015.

[16] Energy Information Administration (EIA). 2009 Residential Energy Consumption Survey (RECS). (Available at: *http://www.eia.gov/consumption/residential/*) (Last accessed April 10, 2013).

[17] Neither CBECS nor RECS provide data on whether the water heater used in the building is a commercial water heater covered in this rulemaking (i.e., water heating could also be provided by a commercial boiler, residential boiler, or residential water heater). Therefore, DOE intends to develop a methodology for adjusting its building sample to reflect buildings that use a commercial water heater covered in this rulemaking.

[18] American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE). ASHRAE Handbook of HVAC Applications: Chapter 50 (Service Water Heating) (2011) pgs. 50.1 to 50.32.

[19] Electric Power Research Institute (EPRI). Commercial Water Heating Applications Handbook. (1992) CU–6666.

[20] National Renewable Energy Laboratory (NREL). U.S. Department of Energy Commercial Reference Building Models of the National Building Stock. February 2011. (Available at: *http://www.nrel.gov/docs/fy11osti/46861.pdf*) (Last accessed April 10, 2013).

[21] Huang, J., Akbari, H., Rainer, L, Ritschard, R. 481 Prototypical Commercial Buildings for 20 Urban Market Areas, LBL–29798, April 1991 (Available at: *https://publications.lbl.gov/islandora/object/ir%3A94368*) (Last accessed October 03, 2014).

commercial water heater and building type combination being analyzed. This approach will capture the variability in water heating use due to factors such as building activity, schedule, occupancy, water supply temperature, tank losses, cycling losses, and distribution system piping losses.

DOE plans to consider market changes or future efficiency standards in equipment technologies that reduce water heating loads in commercial applications, such as more efficient commercial dishwashers and commercial clothes washers. In addition, DOE intends to review other data sets (e.g., the technology penetration curves used in the National Energy Modeling System (NEMS),[22] data from the End-Use Load and Consumer Assessment Program (ELCAP),[23] and 2009 Commercial Building Stock Assessment for the Northwest),[24] to determine whether a significant fraction of the current building population is not represented by CBECS 2003.

Issue 15: DOE requests comment on the overall method to determine water heating energy use and if other factors should be considered in developing the energy use or energy use methodology.

Issue 16: DOE seeks input on the current distribution of equipment efficiencies in the building population for different equipment classes.

Issue 17: DOE seeks input on typical types and sizes (including fuel type, input capacity and rated volume) of commercial water heaters, including gas condensing and heat pump water heaters, used for different building types and applications.

Issue 18: DOE seeks input on representative hot water usage, water heating usage profile, water volumetric load profiles or aggregate loads, and representative hot water usage temperatures for various commercial water heater applications.

Issue 19: DOE seeks input and sources of data or recommendations for tools to support sizing of water heater typical commercial water heater and multifamily residential applications.

Issue 20: DOE seeks input on the fraction and types of buildings that use recirculation loops associated with commercial water heaters and the impact of recirculation loops on water heater performance.

Issue 21: DOE requests comment on the fraction of commercial or residential boilers used in commercial water heating applications.

Issue 22: DOE requests comment on the fraction and classes of commercial water heaters which are used in residential-duty applications as well as other commercial water heaters that may serve residential multi-family buildings. DOE also requests input on the fraction of residential water heaters that are used for commercial applications.

G. Life-Cycle Cost and Payback Period Analysis

The purpose of the LCC and PBP analysis is to analyze the effects of potential amended energy conservation standards on customers of commercial water heater equipment by determining how a potential amended standard affects their operating expenses (usually decreased) and their total installed costs (usually increased).

DOE intends to analyze the potential for variability by performing the LCC and PBP calculations on a representative sample of individual commercial buildings. DOE plans to utilize the sample of buildings developed for the energy use analysis and the corresponding simulations results.[25] Within a given building, one or more commercial water heater units may serve the building's water heating needs, depending on the hot water requirements of the building. As a result, DOE intends to express the LCC and PBP results for each of the individual commercial water heaters installed in the building. DOE plans to model uncertainty in many of the inputs to the LCC and PBP analysis using Monte Carlo simulation and probability distributions. As a result, the LCC and PBP results will be displayed as distributions of impacts compared to the base case (without amended standards) conditions.

Issue 23: DOE requests comment on the overall method that it intends to use to conduct the LCC and PBP analysis for commercial water heaters.

Inputs to the LCC and PBP analysis are categorized as: (1) Inputs for establishing the purchase expense, otherwise known as the total installed cost, and (2) inputs for calculating the operating expense.

The primary inputs for establishing the total installed cost are the baseline customer price, standard-level customer price increases, and installation costs. Baseline customer prices and standard-level customer price increases will be determined by applying markups to manufacturer selling price estimates. The installation cost is added to the customer price to arrive at a total installed cost. DOE intends to develop installation costs using the most recent RS Means data available.

Issue 24: DOE seeks input on the approach and data sources it intends to use to develop installation costs, specifically, its intention to use the most recent RS Means Mechanical Cost Data.[26]

The primary inputs for calculating the operating costs are equipment energy consumption and demand, equipment efficiency, energy prices and forecasts, maintenance and repair costs, equipment lifetime, and discount rates. Both equipment lifetime and discount rates are used to calculate the present value of future operating expenses.

The equipment energy consumption is the site energy use associated with providing water heating to the building. DOE intends to utilize the energy use calculation methodology described in Section II.F to establish equipment energy use.

DOE will identify an approach to account for the gas, propane, oil and electricity prices paid by consumers for the purposes of calculating operating costs, savings, net present value, and payback period. DOE intends to consider determining gas, oil, and electricity prices based on geographically available fuel cost data such as state level data, with consideration for the variation in energy costs paid by different building types. This approach calculates energy expenses based on actual energy prices that customers are paying in different geographical areas of the country. As a potential additional source, DOE may consider data to compare provided in EIA's Form 861 data[27] to calculate

[22] For more information on NEMS, refer to the U.S. Department of Energy, Energy Information Administration (EIA) documentation. A useful summary is *National Energy Modeling System: An Overview 2003,* DOE/EIA–0581 (2003). Each year, EIA uses NEMS to produce an energy forecast for the United States, the Annual Energy Outlook (AEO). For this analysis, DOE intends to use the version of NEMS based on *AEO 2013.* (Available at: *http://www.eia.gov/forecasts/aeo/*).

[23] Bonneville Power Administration. End-Use Load and Consumer Assessment Program (ELCAP) Data from 1986 to 1989. 2012. (Available at: *http://rtf.nwcouncil.org/ELCAP/*) (Last accessed April 10, 2013).

[24] Northwest Energy Efficiency Alliance (NEEA). Commercial Building Stock Assessment. 2009. (Available at: *http://neea.org/resource-center/regional-data-resources/commercial-building-stock-assessment*) (Last accessed April 10, 2013).

[25] DOE plans to utilize the building types defined in CBECS 2003 as well as residential buildings that use commercial water heaters such as multi-family buildings. Definitions of CBECS building types can be found at *http://www.eia.gov/emeu/cbecs/building_types.html.*

[26] RS Means. 2014 Mechanical Cost Data. (Available at: *http://rsmeans.reedconstructiondata.com/60023.aspx*) (Last accessed April 10, 2014).

[27] Energy Information Administration (EIA), Survey form EIA–861—Annual Electric Power

Continued

commercial electricity prices, EIA's Natural Gas Navigator [28] to calculate commercial natural gas prices, and EIA's State Energy Data Systems (SEDS) [29] to calculate liquefied petroleum gas (LPG) and fuel oil prices. Future energy prices will likely be projected using trends from the EIA's 2013 *Annual Energy Outlook* (*AEO*).[30]

Issue 25: DOE seeks comment and sources on its approach for developing gas, oil, and electricity prices.

Maintenance costs are expenses associated with ensuring continued operation of the covered equipment over time. DOE intends to develop maintenance costs for its analysis using the most recent RS Means data available.[31] DOE plans also to consider the cases when the equipment is covered by service and/or maintenance agreements.

Issue 26: DOE seeks input on the approach and data sources it intends to use to develop maintenance costs, specifically, its intention to use the most recent RS Means Facilities Maintenance & Repair Cost Data, as well as to consider the cost of service and/or maintenance agreements.

Repair costs are expenses associated with repairing or replacing components of the covered equipment that have failed. DOE intends to assess whether repair costs vary with equipment efficiency as part of its analysis.

Issue 27: DOE seeks comment as to whether repair costs vary as a function of equipment efficiency. DOE also requests any data or information on developing repair costs.

Equipment lifetime is the age at which a unit of covered equipment is retired from service. The average equipment lifetime for commercial water heaters is estimated by various sources to be between 7 and 25 years based on application and equipment type.[32 33 34 35 36 37 38] Based on these data, DOE plans to determine average lifetime for each commercial water heater product class as the primary input for developing a Weibull probability distribution to characterize commercial water heater lifetime.[39]

Issue 28: DOE seeks comment on its approach of using a Weibull probability distribution to characterize equipment lifetime. DOE also requests equipment lifetime data and information on whether equipment lifetime varies based on equipment characteristics, equipment application, or efficiency level considerations.

The discount rate is the rate at which future expenditures are discounted to establish their present value. DOE intends to derive the discount rates by estimating the cost of capital of companies that purchase commercial water heater equipment.

DOE's analysis includes measures of LCC and PBP impacts of potential standard levels relative to a base case that reflects the likely market in the absence of amended standards. DOE plans to develop market-share efficiency data (*i.e.,* the distribution of equipment shipments by efficiency) for the equipment classes DOE is considering, for the year in which compliance with any amended standards would be required.

DOE also plans to assess the applicability of the ''rebound effect'' in the energy consumption for commercial water heaters. A rebound effect occurs when a piece of equipment that is made more efficient is used more intensively, so that the expected energy savings from the efficiency improvement may not fully materialize. However, at this time, DOE is not aware of any information about the rebound effect for this equipment type.

Issue 29: DOE requests data on current efficiency market shares (of shipments) by equipment class, and also input on similar historic data.

Issue 30: DOE also requests information on expected future trends in efficiency for commercial water heaters classes, including the relative market share of condensing versus non-condensing equipment in the market in the absence of new efficiency standards.

Issue 31: DOE seeks comments and data on any rebound effect that may be associated with more efficient commercial water heaters.

H. Shipment Analysis

DOE uses shipment projections by equipment class to calculate the national impacts of standards on energy consumption, net present value (NPV) of customer benefits, and future manufacturer cash flows.

DOE intends to develop a shipments model for commercial water heater equipment based on historical AHRI shipments data for commercial gas and electric storage water heaters.[40] DOE currently does not have any historical shipments information for other product classes described in the engineering analysis.

Issue 32: DOE seeks historical shipments data for commercial water heaters by product class, particularly for product classes other than commercial gas and electric storage water heaters.

The shipments model will consider three market segments: (1) New commercial buildings acquiring equipment; (2) existing buildings replacing old equipment; and (3) existing buildings acquiring new equipment for the first time. Two stock

Industry Report. (Available at: *http://www.eia.gov/electricity/data/eia861/index.html*) (Last accessed April 15, 2013).

[28] Energy Information Administration (EIA), Natural Gas Navigator. (Available at: *http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm*) (Last accessed April 15, 2013).

[29] Energy Information Administration (EIA), State Energy Data System (SEDS). (Available at: *http://www.eia.gov/state/seds/*) (Last accessed April 15, 2013).

[30] Energy Information Administration (EIA). 2013 Annual Energy Outlook (AEO) Full Version. (Available at: *http://www.eia.gov/forecasts/aeo/*). (Last accessed April 15, 2013).

[31] RS Means. 2013 Facilities Maintenance & Repair Cost Data. (Available at: *http://rsmeans.reedconstructiondata.com/60303.aspx*) (Last accessed April 10, 2013).

[32] National Renewable Energy Laboratory (NREL). U.S. Department of Energy Commercial Reference Building Models of the National Building Stock. February 2011. (Available at: *http://www.nrel.gov/docs/fy11osti/46861.pdf*) (Last accessed April 10, 2013). Pg. 38.

[33] RS Means. 2013 Facilities Maintenance & Repair Cost Data. (Available at: *http://rsmeans.reedconstructiondata.com/60303.aspx*) (Last accessed April 10, 2013). pgs. 184–188.

[34] Mark Ellis & Associates. ''National Appliance and Equipment Energy Efficiency Program, Analysis of Potential for Minimum Energy Performance Standards for Miscellaneous Water Heaters. Prepared for the Australian Greenhouse Office. (2001) (Available at: *www.energyrating.com.au/library/pubs/tech-ewhmisc2001.pdf*) (Last accessed April 18, 2013).

[35] Ryan Firestone and Danielle Gidding. ''Energy Savings from Electric Water Heaters in Commercial Applications.'' Prepared for Bonneville Power Administration. Prepared by Navigant Consulting and Bonneville Power Administration. (Presented June 1, 2010) (Available at: *rtf.nwcouncil.org/meetings/2010/0601/WaterHeatersinCommercialApplications_v05.ppt*) (Last accessed: April 18. 2013). Slide 31.

[36] Gas Foodservice Equipment Network. ''Straight Talk About Tankless Water Heaters, Can They Really Keep You in Hot Water?'' Cooking for Profit. (December 15, 2007) (Available at: *http://www.crescentcity-fl.com/Gas%20Documents/Dec%2007%20GFEN%20%20final_Tankless.pdf*) (Last accessed: April 18, 2013).

[37] Federal Energy Management Program (FEMP). FEMP Designated Product: Commercial Gas Water Heaters. 2012. (Available at: *http://www1.eere.energy.gov/femp/technologies/eep_com_gaswaterheaters.html*) (Last accessed: April 18, 2013).

[38] Note that for some commercial water heaters the usage and application would be similar to a residential water heater. For these situations the Weibull distribution derived for DOE's 2010 residential water heater standards rulemaking could be applicable. (More information about the derivation the residential water heater lifetime is available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2006-STD-0129*).

[39] If the data is available, DOE also plans to take into account differences in commercial water heater lifetime based on usage and application of the water heater.

[40] Air-Conditioning, Heating, and Refrigeration Institute (AHRI). Commercial Storage Water Heaters Historical Data: 1992–2011. (Available at: *http://www.ahrinet.org/site/494/Resources/Statistics/Historical-Data/Commercial-Storage-Water-Heaters-Historical-Data*) (Last accessed July 3, 2014).

categories are also considered: (1) Equipment that has received only normal maintenance repairs; and (2) equipment that has had its useful life extended through additional repairs. To determine whether a customer would choose to repair rather than replace their commercial water heater equipment, the shipments model explicitly accounts for the combined effects of changes in purchase price, annual operating cost, and the value of commercial floor space on the purchase versus repair decision. Changes to the purchase price and operating costs due to amended energy conservation standards are the drivers for shipment estimates for the standards cases relative to the base case (*i.e.,* the case without amended standards).

DOE intends to utilize the U.S. Census Bureau data [41] to establish historical new construction floor space, as well as historical stock floor space. The *Annual Energy Outlook* will be used to forecast both new construction and stock floor space. Using these and historical equipment saturation data from CBECS, DOE will estimate shipments to the three market segments identified above. The utility function to estimate the repair versus replacement decision will be based on income per square foot data from the Building Owners and Managers Association (BOMA) Commercial Building Survey reports,[42] equipment purchase price index (PPI) data estimated from the Bureau of Labor Statistics,[43] and operating cost data derived from the LCC and PBP analysis.

Issue 33: DOE seeks input on the approach and data sources it intends to use in developing the shipments model and shipments forecasts for this analysis.

I. National Impact Analysis

The purpose of the national impact analysis (NIA) is to estimate aggregate impacts of potential energy conservation standards at the national level. Impacts that DOE reports include the national energy savings (NES) from potential standards and the net present value (NPV) of the total customer benefits.

To develop the NES, DOE calculates annual energy consumption for the base case and the standards cases. DOE calculates the annual energy consumption using per-unit annual energy use data multiplied by projected shipments.

To develop the NPV of customer benefits from potential energy conservation standards, DOE calculates annual energy expenditures and annual equipment expenditures for the base case and the standards cases. DOE calculates annual energy expenditures from annual energy consumption by incorporating projected energy prices. DOE calculates annual equipment expenditures by multiplying the price per unit times the projected shipments. The difference each year between energy bill savings, increased maintenance and repair costs, and increased equipment expenditures is the net savings or net costs.

A key component of DOE's estimates of NES and NPV are the equipment energy efficiencies forecasted over time for the base case and for each of the standards cases. For the base case trend, DOE will consider whether historical data show any trend and whether any trend can be reasonably extrapolated beyond current efficiency levels. In particular, DOE is interested in historical and future shipments of equipment with step changes in efficiency, such as condensing gas equipment or HPWHs.

Issue 34: DOE requests comment and any available data on historical, current, and future market share of equipment with step changes in efficiency, such as gas condensing equipment and HPWHs, as compared to less efficient equipment, such as non-condensing gas water heaters and electric water heaters, respectively, for each equipment class.

For the various standards cases, to estimate the impact that amended energy conservation standards may have in the year compliance becomes required, DOE would likely use a ''roll-up'' scenario. Under the ''roll-up'' scenario, DOE assumes: (1) Equipment efficiencies in the base case that do not meet the new or amended standard level under consideration would ''roll up'' to meet that standard level; and (2) equipment shipments at efficiencies above the standard level under consideration would not be affected. After DOE establishes the efficiency distribution for the assumed compliance date of a standard, it may consider future projected efficiency growth using available trend data.

DOE intends to determine whether there is a rebound effect associated with more efficient commercial water heaters. If data indicate that there is a rebound effect, DOE will account for the rebound effect in its calculation of NES.

III. Public Participation

DOE will accept comments, data, and information regarding this RFI and other matters relevant to DOE's consideration of amended energy conservations standard for commercial water heating equipment no later than the date provided in the **DATES** section at the beginning of this RFI. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this RFI. After the close of the comment period, DOE will begin collecting data, conducting the analyses, and reviewing the public comments. These actions will be taken to aid in the development of a NOPR for commercial water heating equipment if DOE decides to amend the standards for commercial water heaters.

Instructions: All submissions received must be identified by docket number EERE–2014–BT–STD–0042 and/or regulatory identification number (RIN) 1904–AD34. No telefacsimilies (faxes) will be accepted.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendees' lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0042.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public

[41] U.S. Census Bureau. Statistical Abstract of the United States: 2011, Table No 933—Construction Contracts—Value of Construction and Floor Space of Buildings by Class of Construction. (Available at: *https://www.census.gov/compendia/statab/2011/cats/construction_housing/construction_indices_and_value.html*) (Last accessed April 10, 2013).

[42] Building Owners and Managers Association International (BOMA). Experience Exchange Report (2013) (Available at: *https://www.bomaeer.com/*) (Last accessed April 10, 2013).

[43] U.S. Department of Labor, Bureau of Labor Statistics. Producers Price Index: Industry: Refrigeration and Heating Equipment (Available at: *http://www.bls.gov/ppi/home.htm*) (Last accessed April 10, 2013).

provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on October 10, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–24983 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2010–BT–STD–0043]

RIN 1904–AC36

Energy Conservation Program: Energy Conservation Standards for High-Intensity Discharge Lamps

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

ACTION: Notice of proposed determination (NOPD).

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, requires DOE to prescribe test procedures and energy conservation standards for high-intensity discharge (HID) lamps for which it has determined that standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice, DOE proposes to determine that energy conservation standards for high-intensity discharge (HID) lamps do not meet these criteria.

DATES: DOE will accept comments, data, and information regarding this NOPD no later than December 22, 2014. Interested parties may further request, no later than November 5, 2014, a public meeting to discuss this NOPD. See section VII Public Participation for details.

ADDRESSES: Any comments submitted must identify the NOPD for Energy Conservation Standards for High-Intensity Discharge Lamps and provide docket number EE–2010–BT–STD–0043 and/or regulatory information number (RIN) 1904–AC36. Comments may be submitted using any of the following methods:

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

2. *Email: HIDLamps-2010-STD-0043@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/23.* This Web page contains a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII for further information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *high_intensity_discharge_lamps@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov.*

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I. Summary of the Proposed Determination

DOE proposes to determine that energy conservation standards for HID lamps do not meet the EPCA requirements described in section I.A, that such standards be technologically feasible, economically justified, and result in a significant conservation of energy. (42 U.S.C. 6317(a)(1)) Specifically, DOE concludes that standards for high-pressure sodium (HPS) lamps are not technologically feasible, and that standards for mercury vapor (MV) and metal halide (MH) lamps are not economically justified (HPS, MV, and MH lamps are subcategories of HID lamps). DOE's proposed determination is based on analysis of several efficacy levels (ELs) as a means of conserving energy. These analyses and DOE's results are described in the following sections of this notice and in the notice of proposed determination (NOPD) technical support document (TSD).

A. Legal Authority

Title III of EPCA (42 U.S.C. 6291, et seq), Public Law 94–163, sets forth a variety of provisions designed to improve energy efficiency. Part C of title III, which for editorial reasons was re-designated as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317), establishes the ''Energy Conservation Program for Certain Industrial Equipment,'' a program covering certain industrial equipment, which include the HID lamps that are the subject of this proposed determination. Pursuant to EPCA, DOE must prescribe test procedures and energy conservation standards for HID lamps for which DOE has determined that standards would be technologically feasible, economically justified, and would result in a significant conservation of energy. (42 U.S.C. 6317(a)(1))

B. Background

1. Current Standards

There are currently no Federal energy conservation standards for HID lamps.

2. History of Standards Rulemaking for High-Intensity Discharge Lamps

Pursuant to EPCA, in 2010 DOE published a final determination [1] (hereafter the ''2010 determination'') that standards for certain HID lamps are technologically feasible, economically justified, and would result in significant energy savings (a positive determination). 75 FR 37975 (July 1, 2010). As a result of the 2010 determination, DOE initiated a test procedure rulemaking for the specified lamps (see section III.A).

DOE also initiated an energy conservation standards rulemaking in response to the 2010 determination. On February 28, 2012, DOE published in the **Federal Register** an announcement of the availability of a framework document for energy conservation standards for HID lamps, as well as a notice of a public meeting. DOE held a public meeting on March 29, 2012, to receive feedback in response to the framework document.

DOE gathered additional information and performed interim analyses to develop potential energy conservation standards for HID lamps. On February 28, 2013, DOE published in the **Federal Register** an announcement of the availability of the interim technical support document (the interim TSD) and notice of a public meeting (hereafter, the ''February 2013 notice'') to discuss and receive comments on the following matters: (1) The equipment classes DOE planned to analyze; (2) the analytical framework, models and tools that DOE used to evaluate standards; (3) the results of the interim analyses performed by DOE; and (4) potential standard levels that DOE could consider. 78 FR 13566. In the February 2013 notice, DOE requested comment on issues that would affect energy conservation standards for HID lamps or that DOE should address in the following analysis stage. The interim TSD is available at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/23.*

The interim TSD summarized the activities DOE undertook in developing standards for HID lamps. It also described the analytical framework that DOE uses in a typical energy conservation standards rulemaking, including a description of the methodology, the analytical tools, and the relationships among the various analyses that are part of the rulemaking. The interim TSD presented and described in detail each analysis DOE performed, including descriptions of inputs, sources, methodologies, and results.

The public meeting for the interim analysis took place on April 2, 2013. At this meeting, DOE presented the methodologies and results of the analyses set forth in the interim TSD. Interested parties discussed the following major issues at the public meeting: the scope of the interim analysis, equipment classes, sapphire arc tube technology, the engineering analysis (including the representative units, baselines, and candidate standard levels [CSLs]), the life-cycle cost (LCC) and payback period (PBP) analysis, and the shipment analysis.

All comments received by DOE in response to the framework document were considered when performing the interim analysis for HID lamps. Chapter 2 of this NOPD TSD summarizes and responds to comments received on the framework document and the interim analysis.

After revising the interim analyses based on stakeholder comments and updated information, DOE proposes in this NOPD to determine that standards for HID lamps are no longer justified based on technological feasibility and economic justification.

3. Changes From the 2010 Determination

As discussed previously, DOE published a determination in 2010 that concluded that standards for certain HID lamps would be technologically feasible, economically justified, and would result in significant energy savings. 75 FR 37975 (July 1, 2010) Since the publication of the 2010 determination, DOE held public meetings and received written comments, conducted interviews with

[1] The final determination is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/60.*

manufacturers, and conducted additional research. Based upon this new information, DOE revised its analyses for potential HID lamp energy conservation standards. The following sections summarize the major changes in assumptions and analyses between the 2010 determination and this NOPD, in which DOE proposes to determine that standards for HID lamps would not be technologically feasible and economically justified, and would not result in significant energy savings.

a. Color

In contrast to the 2010 determination, DOE established separate equipment classes based on correlated color temperature (CCT) in the interim analysis and in this NOPD. CCT represents the color appearance of a light source and is expressed in kelvins (K). The higher the CCT, the cooler or more blue the light appears, and the lower the CCT, the warmer or more red the light appears. HID lamps are available with a wide range of CCT values depending on lamp type and design. DOE's analysis of commercially available lamp catalog data concluded that CCT is correlated with lamp efficacy. DOE determined that higher-CCT lamps were less efficacious than lower CCT lamps of the same wattage. Because CCT is an approximation of the color appearance of a lamp, customers typically specify different CCTs for different applications. Some lamp substitutions are not suitable because certain applications have specific color requirements (typically indoor applications that demand white light). Because CCT affects HID lamp efficacy and impacts consumer utility, DOE has established separate equipment classes based on CCT.

DOE established equipment classes based on three different ranges of CCT. HPS lamps were included in the 1900 K–2800 K equipment class while MH lamps were included in the 2800 K–4500 K or 4500 K–7000 K equipment classes. DOE investigated higher efficacy replacement options for HPS lamps such that customers could save energy while maintaining the utility (*e.g.,* CCT) of the lamp type. As discussed in section IV.A.3, DOE concluded no technology options exist for improving the efficacy of HPS lamps. Therefore, DOE tentatively determined standards for HPS lamps are not technologically feasible in this NOPD.

b. Replacement Options

In the 2010 determination, DOE assumed that any customer purchasing a compliant lamp would choose a reduced-wattage lamp more efficacious than their existing non-compliant lamp. However, DOE received feedback from manufacturer interviews that not all customers would choose to reduce wattage in response to standards for HID lamps. Some customers would choose to continue using their existing wattage (e.g., a more-efficacious, increased lumen output lamp that complies with standards, but has the same wattage) for the convenience and lower cost of not purchasing a new fixture and/or ballast that may be necessary for use with the reduced-wattage lamp. During interviews, manufacturers also indicated that some customers may not understand the metrics used to measure light output and would opt to keep lamps at their existing wattage because wattage is the metric they most commonly consider for lighting. The result for these customers would be an increase in light output, but no energy savings. As a result of this information, DOE models a percentage of customers replacing lamps with more efficacious, equal wattage lamps in this NOPD. The results of the model indicate a reduced potential for energy savings and corresponding operating cost savings associated with HID lamp standards. See chapter 5 of the NOPD TSD for more details about the engineering analysis and chapter 12 of the NOPD TSD for more detail about the national impact analysis (NIA).

c. Shipments

For the 2010 determination, DOE calculated the installed base of HID lamps using historical shipments data provided by the National Electrical Manufacturers Association (NEMA). DOE projected future lamp shipments based on the lamp lifetimes and operating scenarios developed for the LCC and PBP analysis, as well as estimated market and substitution trends in the base case and standards case. 75 FR 37975, 37981 (July 1, 2010). The shipments analysis and NIA for this NOPD (see sections IV.H and IV.I) draw upon the same historical NEMA lamp shipments data in calculating the installed base of HID lamps, supplemented with additional shipments data and manufacturer input on HID market trends. DOE's current projections illustrate a sharper decline in and lower overall HID lamp shipments than projected in the 2010 determination.

d. Summary of Changes

Since the publication of the 2010 determination, DOE received additional information from public meetings, written comments, manufacturer interviews, and further research. This new information led to the following major changes presented in this NOPD: (1) The determination that equipment classes should be separated based on CCT; (2) the introduction of a percentage of customers replacing lamps with more efficacious, equal wattage lamps in response to potential standards; and (3) the revision downward of projected HID lamp shipments in the shipments analysis, based on supplemental data and collected manufacturer input on HID market trends. As a result of the update regarding separate equipment classes for CCT, DOE tentatively determined that standards for HPS lamps are not technologically feasible in this NOPD. Additionally, as a result of the updates regarding customers replacing lamps with equal wattage lamps and supplemental shipment data, the NIA yielded negative NPVs in this NOPD (see section V.C for a discussion of NIA results in the NOPD). As such, DOE tentatively proposes to determine that standards for MV and MH lamps would not be economically justified.

II. Issues Affecting the Lamps Analyzed by This Determination

A. Lamps Analyzed by This Determination

HID is the generic name for a family of lamps including MV, MH, and HPS lamps. Although low-pressure sodium lamps are often included in the family, the definition of HID lamp set forth in EPCA requires the arc tube wall loading to be greater than three watts per square centimeter. (42 U.S.C. 6291(46)) Because low-pressure sodium lamps do not satisfy this requirement, they are not considered HID lamps according to the statute, and are therefore not considered in this NOPD. Definitions for these lamps are discussed in chapter 2 of the NOPD TSD.

DOE first analyzed the potential energy savings of the HID lamp types that fall within the EPCA definition of ''HID lamp'', as well as the technological feasibility of more efficient lamps for each type. For the HID lamps that passed those criteria, DOE conducted a full economic analysis with the LCC analysis, NIA, and manufacturer impact analysis (MIA) (see sections IV.G, IV.I, and IV.J) to determine whether standards would be economically justified.

After considering the comments on the interim analysis, and additional feedback from manufacturer interviews, DOE determined that there are no design options to increase the efficacy of HPS lamps, indicating that standards for this lamp technology are not

technologically feasible. Specifically, DOE determined that sapphire arc tube technology is not a valid technology option for increased efficacy in HPS lamps (see section IV.B for further details).

Available information indicates that energy conservation standards for certain MV and MH lamps are both technologically feasible and would save a significant amount of energy. Therefore, DOE conducted the full economic analysis for those lamp types to determine whether standards would be economically justified. Specifically, DOE analyzed the economic justification of potential energy conservation standards for MH lamps with a rated wattage of greater than or equal to 50 watts (W) and less than or equal to 2000 W, and CCTs greater than or equal to 2800 K and less than 7000 K. DOE also analyzed the economic justification of energy conservation standards for MV lamps with a rated wattage greater than or equal to 50 W and less than or equal to 1000 W, and CCTs greater than or equal to 3200 K and less than or equal to 6800 K. Table II.1 provides a summary of the HID lamps analyzed.

TABLE II.1—CCT AND WATTAGE RANGES ANALYZED

Lamp type	Wattage	CCT
MV ..	50 W–1000 W	3200 K–6800 K.
MH ..	50 W–2000 W	2800 K–6999 K.

In summary, DOE excluded the following HID lamps from its analysis based on those lamps not meeting the criteria of potential for significant energy savings or technological feasibility:

- HPS lamps;
- directional HID lamps;
- self-ballasted HID lamps;
- lamps designed to operate exclusively on electronic ballasts;
- high-color rendering index (CRI) lamps (a CRI greater than or equal to 95);
- colored MH lamps (a CRI of less than 40);
- MV lamps that are double-ended, have a non-screw base, and have no outer bulb;
- HID lamps that have a CCT of 5000 K–6999 K, have a non-screw base, and have non-T-shaped bulbs; and
- electrodeless HID lamps.

See chapter 2 of the NOPD TSD for a more detailed discussion of which HID lamps did and did not meet the criteria for analysis and of the rationale behind those selections.

B. Standby/Off Mode

EPCA defines active mode as the condition in which an energy-using piece of equipment is connected to a main power source, has been activated, and provides one or more main functions (42 U.S.C. 6295)(gg)(1)(A)). Standby mode is defined as the condition in which an energy-using piece of equipment is connected to a main power source and offers one or more of the following user-oriented or protective functions: facilitating the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; or providing continuous functions, including information or status displays (including clocks) or sensor-based functions. *Id.* Off mode is defined as the condition in which an energy-using piece of equipment is connected to a main power source, and is not providing any standby or active mode function. *Id.*

DOE conducted an analysis of the applicability of standby mode and off mode energy use for HID lamps. DOE tentatively determined that HID lamps that are subject of this NOPD do not operate in standby mode or off mode. HID lamps do not offer any secondary user-oriented or protective functions or continuous standby mode functions. Because all energy use of HID lamps is accounted for in the active mode, DOE does not analyze potential standards for lamp operation in standby and off mode in this NOPD.

C. Metric

To analyze energy conservation standards related to HID lamps, DOE must select a metric for rating the performance of the lamps. In the framework document and interim analysis, DOE considered a number of potential metrics for the energy conservation standards of HID lamps and requested comment. In response to comments received and based on DOE's own analysis, DOE used initial efficacy for consideration and analysis of energy conservation standards for HID lamps. For a full description of metrics explored and discussion of stakeholder comments, see chapter 2 of the NOPD TSD.

D. Coordination of the Metal Halide Lamp Fixture and HID Lamp Rulemakings

For this NOPD, DOE continued to use shared data sources between the metal halide lamp fixture (MHLF) standards rulemaking [2] and this HID lamp determination. DOE's analysis of HID lamps assumes that MHLFs purchased after the compliance date of the MHLF final rule use ballasts compliant with those standards.

III. General Discussion

A. Test Procedures

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314) Manufacturers of covered equipment must use these test procedures to certify to DOE that their equipment complies with EPCA energy conservation standards and to quantify the efficiency of their equipment. Also, these test procedures must be used whenever testing is required in an enforcement action to determine whether covered equipment complies with EPCA standards.

Based on comments received on the HID lamps test procedures notice of proposed rulemaking (NOPR) and subsequent additional research, DOE proposed revisions to and clarification of the proposed HID lamp test procedures. DOE published these revisions and clarifications in a test procedure supplemental notice of proposed rulemaking (SNOPR).[3] 79 FR 29631 (May 22, 2014). The analysis in this NOPD is based upon the test procedures put forward in the test procedure SNOPR.

B. Technological Feasibility

1. General

In this NOPD, DOE conducted a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficacy of HID lamps. As the first step in such an analysis, DOE developed a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determined which of those means for improving efficacy are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible, pursuant to 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are

[2] A final rule for MHLF energy conservation standards was published in February 2014. For more information on the MHLF standards rulemaking, see *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/16.*

[3] The HID lamp test procedure SNOPR is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/21.*

technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). For further details on the screening analysis, see section IV.B of this NOPD and chapters 2 and 4 of the NOPD TSD.

2. Maximum Technologically Feasible Levels

When DOE analyzes a new standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for that product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficacy for HID lamps, using the design parameters for the most efficacious products available on the market or in working prototypes. (See chapter 5 of the NOPD TSD.) The max-tech levels that DOE determined for this NOPD are described in chapters 2 and 5 of the NOPD TSD.

C. Energy Savings

1. Determination of Savings

For each EL in each equipment class, DOE projected energy savings for the equipment that is the subject of this NOPD purchased in the 30-year period that would begin in the expected year of compliance with any new standards (2017–2046). The savings are measured over the entire lifetime of equipment purchased in the 30-year analysis period.[4] DOE quantified the energy savings attributable to each EL as the difference in energy consumption between each standards case and the base case. The base case represents a projection of energy consumption in the absence of new mandatory efficacy standards, and it considers market forces and policies that affect demand for more efficient equipment.

DOE used its NIA spreadsheet model to estimate energy savings from potential standards for the equipment that are the subject of this NOPD. The NIA spreadsheet model (described in section IV.I of this notice) calculates energy savings in site energy, which is the energy directly consumed by equipment at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the source (primary) energy savings, which is the savings in the energy that is used to generate and transmit the site energy. To convert site energy to source energy, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA's) *Annual Energy Outlook 2013* (*AEO2013*).

DOE has begun to also estimate full-fuel-cycle (FFC) energy savings. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels, and thus presents a more complete picture of the impacts of energy efficiency standards. DOE's evaluation of FFC savings is driven in part by the National Academy of Science's (NAS) report on FFC measurement approaches for DOE's Appliance Standards Program.[5] The NAS report discusses that FFC was primarily intended for energy efficiency standards rulemakings where multiple fuels may be used by particular equipment. In the case of this NOPD pertaining to HID lamps, only a single fuel—electricity—is consumed by the equipment. DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered equipment. Although the addition of FFC energy savings in rulemakings is consistent with the recommendations, the methodology for estimating FFC does not project how fuel markets would respond to a potential standards rulemaking. The FFC methodology simply estimates how much additional energy, and in turn how many tons of emissions, may be displaced if the estimated fuel were not consumed by the equipment covered in this NOPD. It is also important to note that inclusion of FFC savings does not affect DOE's choice of potential standards. For more information on FFC energy savings, see section IV.I of this notice, and chapter 11 and appendix 11A of the NOPD TSD.

2. Significance of Savings

To adopt standards that are more stringent for a covered product, DOE must determine that such action would result in ''significant'' energy savings. 42 U.S.C. 6295(o)(3)(B) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' DOE analyzed the energy savings for each potential standard level for each equipment class in this NOPD (presented in section V.C.1).

D. Economic Justification

In determining whether potential energy conservation standards for HID lamps would be economically justified, DOE analyzed the results of the following analyses: (1) A market and technology assessment that characterizes where and how HID lamps are used; (2) an engineering analysis that estimates the relationship between product costs and energy use; (3) an LCC and PBP analysis that estimates the costs and benefits to users from increased efficacy in HID lamps; (4) an NIA that estimates potential energy savings on a national scale and potential economic costs and benefits that would result from improving energy efficacy in the considered HID lamps; and (5) an MIA that determines the potential impact new standards for HID lamps would have on manufacturers.

IV. Methodology and Discussion

A. Market and Technology Assessment

1. General

In conducting the market and technology assessment for this NOPD, DOE developed information that provides an overall picture of the market for the equipment concerned, including the purpose of the products, the industry structure, and the market characteristics. This activity included both quantitative and qualitative assessments based on publicly available information. The subjects addressed in the market and technology assessment for this NOPD include: Equipment classes and manufacturers; historical shipments; market trends; regulatory and non-regulatory programs; and technologies that could improve the efficacy of the HID lamps under examination. See chapter 3 of the NOPD TSD for further discussion of the market and technology assessment.

[4] In the past DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of equipment purchased in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

[5] ''Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards,'' (Academy report) was completed in May 2009 and included five recommendations. A copy of the study can be downloaded at: *www.nap.edu/catalog.php?record_id=12670.*

2. Equipment Classes

For this NOPD, DOE divided equipment into classes by: (a) The type of energy used, (b) the capacity of the equipment, or (c) any other performance-related features that justifies different standard levels, such as features affecting consumer utility. (42 U.S.C. 6295(q)) DOE then considers establishing separate standard levels for each equipment class based on the criteria set forth in 42 U.S.C. 6295(o).

In this NOPD, DOE analyzed CCT, wattage, bulb finish, and luminaire characteristics as the equipment-class-setting factors. DOE analyzed 24 equipment classes for HID lamps, as shown in Table IV.1. See chapters 2 and 3 of the NOPD TSD for a more detailed discussion on equipment classes analyzed for HID lamps.[6]

TABLE IV.1—EQUIPMENT CLASSES ANALYZED IN NOPD

CCT Range *K*	Wattage *W*	Bulb finish *	Luminaire characteristic **
≥2800 and ≤4500	≥50 and ≤400	Clear	Enclosed.
			Open.
		Coated	Enclosed.
			Open.
	>400 and ≤1000	Clear	Enclosed.
			Open.
		Coated	Enclosed.
			Open.
	>1000 and ≤2000	Clear	Enclosed.
			Open.
		Coated	Enclosed.
			Open.
>4500 and <7000	≥50 and ≤400	Clear	Enclosed.
			Open.
		Coated	Enclosed.
			Open.
	>400 and ≤1000	Clear	Enclosed.
			Open.
		Coated	Enclosed.
			Open.
	>1000 and ≤2000	Clear	Enclosed.
			Open.
		Coated	Enclosed.
			Open.

* MV lamps regardless of bulb finish are placed in the clear equipment classes for their respective CCT and wattage.
** MV lamps are placed in the enclosed equipment classes for their respective wattage and CCT.

3. Technology Options

The following sections detail the technology options that DOE is analyzing in this NOPD as viable means of increasing the efficacy of HID lamps.

a. Mercury Vapor

MV ballasts, other than specialty application MV ballasts, have been banned from import or production in the United States since January 1, 2008. (42 U.S.C. 6295(ee)) This ban effectively limits the installation of new MV fixtures and ballasts, meaning the only MV lamps currently sold are replacement lamps. DOE understands there is limited industry design emphasis on MV lamps and that there are limited methods to improving the efficacy of MV lamps. DOE found that the only pathway to increase efficacy is a change of technology to MH lamps, and considers a change of technology as the sole technology option for MV lamps in this NOPD.

b. High-Pressure Sodium Lamps

HPS lamps are already very efficacious (up to 150 lumens per watt), but have intrinsically poor color quality. DOE did not identify any technology options currently utilized in commercially available HPS lamps. In the interim analysis, DOE identified academic papers that indicated potential increases in efficacy were possible by constructing the arc tubes out of a sapphire material, or single crystal aluminum oxide. Several manufacturers produced HPS lamps with a sapphire arc tube beginning in the late 1970s, but these lamps have since been discontinued.

In the interim analysis, DOE found that sapphire had five percent greater transmission of light compared to the traditionally used polycrystalline alumina (PCA) and equated this with a potential five percent increase in lamp efficacy. However, DOE has since received feedback from manufacturers that the increase in transmission associated with using sapphire material instead of PCA does not necessarily result in an equal increase in efficacy. This is because the material does not transmit all wavelengths uniformly, which affects the perceived brightness of the light. Because these lamps are no longer manufactured, DOE cannot empirically validate the potential increase in efficacy using sapphire arc tubes. Additionally, DOE has received feedback that HPS lamps using sapphire arc tubes are much more susceptible to catastrophic failure and would require enclosed fixtures for safe operation. Currently all HPS lamps that are commercially available can be used in open fixtures. An enclosed fixture would reduce the efficacy of the sapphire HPS system (due to absorption in the lens used to enclose the fixture) and likely negate any small increase in efficacy gained from using sapphire arc tubes.

For these reasons, DOE does not believe that the use of sapphire arc

[6] When writing out the equipment class CCT ranges of ≥2800 K and ≤4500 K and of >4500 K and <7000 K in text, DOE uses the shorthand 2800 K–4500 K and 4501 K–6999 K, respectively. Similarly, when writing out the equipment class wattage ranges of ≥50 W and ≤400 W, >400 W and ≤1000 W, and >1000 W and ≤2000 W in text, DOE uses the shorthand 50 W–400 W, 401 W–1000 W, and 1001 W–2000 W, respectively.

tubes would increase the efficacy of HPS lamps in practice. As such, DOE no longer finds sapphire arc tubes to be a valid technology option for HPS lamps in this NOPD.

c. Metal Halide

DOE identified a number of technology options that could improve MH lamp efficacy. These technology options include improving arc tube design through the use of ceramic arc tubes, optimization of the arc tube, and optimization of the arc tube fill gas.

d. Summary

Table IV.2 summarizes the technology options identified for HID lamps in this NOPD. For more detail on the technology options that DOE considered to improve MV, HPS, and MH lamp efficacy, see chapters 2 and 3 of the NOPD TSD.

TABLE IV.2—NOPD HID LAMP TECHNOLOGY OPTIONS

Lamp type	Technology option	Description
MV	Change Lamp Type	Use MH technology instead of MV technology.
MH	Ceramic Arc Tubes	Use CMH technology instead of quartz MH lamps.
	Arc Tube Optimization	Design the shape of the arc tube so that it facilitates an increase in MH vapor pressure; change the thickness of quartz, optimize electrode positioning, improve the purity of the materials; and improve the manufacturing processes to ensure the consistency and quality of the arc tube construction.
	Fill Gas Optimization	Optimize the gas fill pressure and chemistry.

B. Screening Analysis

DOE consults with industry, technical experts, and other interested parties to develop a list of technology options for consideration. In the screening analysis, DOE determines which technology options to consider further and which to screen out.

Appendix A to subpart C of 10 CFR part 430, ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' (the Process Rule), sets forth procedures to guide DOE in its consideration and promulgation of new or revised energy conservation standards. These procedures elaborate on the statutory criteria provided in 42 U.S.C. 6295(o) and, in part, eliminate problematic technologies early in the process of prescribing an energy conservation standard. In particular, sections 4(b)(4) and 5(b) of the Process Rule provide guidance to DOE for determining which technology options are unsuitable for further consideration: Technological feasibility, practicability to manufacture, install and service, adverse impacts on product utility or product availability, and adverse impacts on health or safety.

For MH lamps, DOE identified ceramic arc tubes as a technology option. While CMH lamps are commercially available from 50 W–400 W, they are not manufactured from 401 W–2000 W.[7] DOE learned from manufacturers that it is technologically possible to create CMH lamps in this wattage range on an individual scale in laboratory conditions. However, the difficulty in mass manufacturing these lamps would result in a very costly lamp which may not be able to be produced at a large enough scale to serve the entire market. Because of this, DOE determined that ceramic arc tubes from 401 W–2000 W do not pass the criterion that they be practicable to manufacture, install, and service. In this NOPD, DOE does not consider ceramic arc tubes as design options for MH lamps from 401 W–2000 W.

All other technology options for MV and MH lamps meet the screening criteria and are considered as design options in the engineering analysis. These design options are summarized in Table IV.3. Chapters 2 and 4 of the NOPD TSD provide additional information regarding the design options considered in the NOPD.

TABLE IV.3—NOPD HID LAMP DESIGN OPTIONS

Lamp type	Technology option	Description
MV	Change Lamp Type	Use MH technology instead of MV technology.
MH	Ceramic Arc Tubes	Use CMH technology instead of quartz MH lamps.
	Arc Tube Optimization	Design the shape of the arc tube so that it facilitates an increase in MH vapor pressure; change the thickness of quartz, alter the fill gas chemistry; optimize electrode positioning; improve the purity of the materials; and improve the manufacturing processes to ensure the consistency and quality of the arc tube construction.
	Fill Gas Optimization	Optimize the gas fill pressure and chemistry.

C. Engineering Analysis

For this NOPD, DOE derived ELs in the engineering analysis and lamp end-user prices in the equipment price determination. The engineering analysis focuses on selecting commercially available lamps that incorporate design options that improve efficacy. The following discussion summarizes the general steps and results of the engineering analysis.

1. Representative Equipment Classes

When multiple equipment classes exist, to streamline analysis, DOE selects certain classes as ''representative,'' primarily because of their high market volumes and unique performance characteristics. DOE then adapts the ELs from representative equipment classes to those equipment classes it does not analyze directly.

[7] There is one example of a CMH lamp in this wattage range. It is an 860 W CMH lamp that is designed to be used on a 1000 W ballast and can operate on both probe-start and pulse-start ballasts. Because this lamp employs proprietary technology, DOE does not use this lamp as an example of CMH lamps being commercially available from 401 W–1000 W.

Table IV.4 lists the equipment classes that DOE selected as representative.

TABLE IV.4—REPRESENTATIVE EQUIPMENT CLASSES FOR HID LAMPS

CCT Range *K*	Wattage *W*	Bulb finish *	Luminaire characteristic **
≥2800 and ≤4500	≥50 and ≤400	Clear	Enclosed.
	>400 and ≤1000	Clear	Enclosed.
	>1000 and ≤2000	Clear	Enclosed.

* MV lamps regardless of bulb finish are placed in the clear equipment classes for their respective CCT and wattage.
** MV lamps are placed in the enclosed equipment classes for their respective wattage and CCT.

2. Baseline Lamps and Representative Lamp Types

Because no federal energy conservation standards exist for HID lamps, the baseline lamps represent the most common, least efficacious lamps sold within the equipment class. For each baseline lamp, DOE selected more efficacious replacement lamps to measure potential energy-saving improvements. DOE refers to the baseline lamp and its more efficacious replacements collectively herein as a ''representative lamp type.'' The representative lamp type is named by its baseline unit. For example, the 400 W MV representative lamp type refers to the 400 W MV baseline lamp and all of its more efficacious replacements.

DOE uses performance data presented in manufacturer catalogs to determine lamp efficacy. DOE also considers other lamp characteristics in choosing the most appropriate baseline for each equipment class. These characteristics include the wattage and technology type (*i.e.,* MH or MV), among others. For some of the representative lamp types, DOE selects multiple baseline models to ensure consideration of different high-volume lamps and their associated customer economics. For example, although MV lamps are the least efficacious products available, the HID market has largely shifted away from MV lamps and customers of MH lamp-and-ballast systems incur different costs than customers of MV lamp-and-ballast systems. For these reasons, DOE selects both MV and MH lamps as baselines for certain equipment classes.

Table IV.5 lists the baseline lamps and representative lamp types. See chapters 2 and 5 of the NOPD TSD for additional detail.

TABLE IV.5—BASELINE LAMPS AND REPRESENTATIVE LAMP TYPES

CCT Range	Wattage	Bulb finish *	Luminaire characteristic **	Representative lamp type	Baseline lamp type	Baseline wattage
2800 K–4500 K	50 W–400 W	Clear	Enclosed	100 W MV	MV	100
					MH	70
				175 W MV	MV	175
					MH	150
				250 W MV	MV	250
					MH	175
				400 W MV	MV	400
					MH	250
				400 W MH	MH	400
	401 W–1000 W	Clear	Enclosed	1000 W MV	MV	1000
				1000 W MH	MH	1000
	1001 W–2000 W	Clear	Enclosed	2000 W MH	MH	2000

* MV lamps regardless of bulb finish are placed in the clear equipment classes for their respective CCT and wattage.
** MV lamps are placed in the enclosed equipment classes for their respective wattage and CCT.

3. More Efficacious Substitutes

DOE selects commercially available HID lamps with efficacies above the baseline as replacements for the baseline model(s) in each representative equipment class. When selecting more efficacious substitute lamps, DOE considers only design options that meet the criteria outlined in the screening analysis (see section IV.B). Depending on the equipment class, DOE analyzes standard efficacy quartz MH, high efficacy quartz MH, and CMH lamps as more efficacious substitutes for the baseline lamps.

In this NOPD, DOE considers a number of different potential pathways a customer might choose when identifying replacements that are more efficacious. When purchasing a new and compliant lamp, a customer can purchase just a new lamp, a new lamp-and-ballast system, or an entirely new fixture. For each of these options, a customer can also choose between keeping the lighting system at the wattage they already had or reducing the wattage of the lighting system. See chapters 2 and 5 of the NOPD TSD for additional detail.

4. Determine Efficacy Levels

DOE develops ELs based on: (1) The design options associated with the equipment class studied and (2) the max-tech EL for that class. DOE's ELs are based on catalog data. Table IV.6 summarizes the EL equations for each representative equipment class. More information on the described ELs can be found in chapters 2 and 5 of the NOPD TSD.

TABLE IV.6—EFFICACY LEVEL EQUATIONS FOR THE REPRESENTATIVE EQUIPMENT CLASSES

Representative equipment class	Minimum initial efficacy † (lm/W)		
	EL1	EL2	EL3
2800 K–4500 K, 50 W–400 W, clear/enclosed	$38.5 \times P^{0.1350}$	$44.4 \times P^{0.1350}$	$40.4 \times P^{0.1809}$
2800 K–4500 K, 401 W–1000 W, clear/enclosed	$0.0116 \times P + 81.8$	$0.0173 \times P + 92.8$	N/A
2800 K–4500 K, 1001 W–2000 W, clear/enclosed	93.4	N/A	N/A

* MV lamps are placed in the clear equipment classes for their respective CCT and wattage regardless of bulb finish.
** MV lamps are placed in the enclosed equipment classes for their respective wattage and CCT.
† P is defined as the rated wattage of the lamp.

5. Scaling to Equipment Classes Not Directly Analyzed

For the equipment classes not analyzed directly, DOE scaled the ELs from the representative to non-representative equipment classes based on efficacy ratios observed in catalog data. For example, DOE calculated an average percentage difference in efficacy between lamps in different equipment classes (one representative and one non-representative) and used this percentage difference to scale the ELs from the representative to the non-representative equipment classes. Table IV.7 lists the scaling factors calculated in the NOPD analysis.

TABLE IV.7—SCALING FACTORS

Bulb finish	Luminaire characteristic	CCT
0.945	0.950	0.812

* To calculate the efficacy requirement for a scaled equipment class, the representative equipment class equation is multiplied by each scaling factor of the characteristics of the equipment class that differ from the representative class.

6. HID Systems

In this NOPD, DOE is only analyzing standards for HID lamps. However, HID lamps are just one component of an HID lighting system. HID lamps must be paired with specific ballasts to regulate the current and power supplied to the lamp. These lamp-and-ballast systems are then housed in an HID lamp fixture [8] to protect the components, enable mounting, and direct the light to the target area. When considering changes to HID lamps, DOE recognizes the importance of also analyzing the impact on both the ballast and the fixture. Additional components may also be required if placing a new lamp-and-ballast system in an existing fixture, including an appropriate lamp socket and ballast brackets. See chapters 2, 5, and appendices 5A and 5B of the NOPD TSD for additional detail.

D. Equipment Price Determination

The equipment price determination describes the methodology followed in developing end-user prices for HID lamps and manufacturer selling prices (MSPs) for ballasts, fixtures, and retrofit kit components (brackets and sockets) analyzed in this NOPD. DOE developed ballast and fixture MSPs in addition to lamp MSPs because a change of ballast and fixture is often required when switching to a more efficacious lamp. In addition, DOE developed MSPs for brackets and sockets packaged in lamp-and-ballast retrofit kits because customers will sometimes also have the option of keeping the fixture housing and installing a new lamp-and-ballast system. These systems will often require a change in the socket and brackets used for mounting the ballast.

For HID lamps, DOE developed three sets of discounts from blue-book prices, representing low (State procurement), medium (electrical distributors), and high (Internet retailers) end-user lamp prices. For MH ballasts, fixtures, sockets, and brackets, DOE performed teardown analyses to estimate manufacturer production costs (MPCs) and a manufacturer markup analysis to estimate the MSPs. For additional detail on the equipment price determination, see chapters 2, 6, and appendix 6A of the NOPD TSD.

E. Markups Analysis

Markups are multipliers that relate MSPs to end-user purchase prices, and vary with the distribution channel through which purchase the equipment. DOE estimated end-user prices for representative HID lamp designs directly, rather than develop MSPs from a bill of materials and manufacturer markup analysis (NOPD TSD chapter 6).[9] However, DOE also estimated price markups to calculate end-user prices from MSPs for HID ballasts and fixtures as inputs to the LCC and PBP analysis, and the NIA (chapters 9 and 11, respectively, of the NOPD TSD). Appendix 6A of the NOPD TSD describes the process by which DOE developed MPCs and MSPs for HID ballasts and fixtures. Chapters 2 and 7 of the NOPD TSD provide additional detail on the markups analysis for developing end-user prices for HID ballasts and fixtures.

F. Energy Use Analysis

For the energy use analysis, DOE estimated the energy use of HID lamp-and-ballast systems in actual field conditions. The energy use analysis provided the basis for other DOE analyses, particularly assessments of the energy savings and the savings in operating costs that could result from DOE's adoption of potential new standard levels. DOE multiplied annual usage (in hours per year) by the lamp-and-ballast system input power (in watts) to develop annual energy use estimates. Chapters 2 and 8 of the NOPD TSD provide a more detailed description of DOE's energy use analysis.

G. Life-Cycle Cost and Payback Period Analysis

DOE conducted the LCC and PBP analysis to evaluate the economic effects of potential energy conservation standards for HID lamps on individual customers. For any given EL, DOE calculated the PBP and the change in LCC relative to an estimated baseline equipment EL. The LCC is the total customer expense over the life of the

[8] Here, DOE uses the term ''fixture'' to refer to the enclosure that houses the lamp and ballast.

[9] For this NOPD, DOE used estimated markups to develop MSPs for HID lamps for the MIA (see chapter 12 of the NOPD TSD).

equipment, consisting of purchase, installation, and operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounted future operating costs to the time of purchase and summed them over the lifetime of the equipment. The PBP is the estimated amount of time (in years) it takes customers to recover the increased purchase cost (including installation) of more efficacious equipment through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost (normally higher) by the change in average annual operating cost (normally lower) that results from the more stringent standard. Chapters 2 and 9, and appendices 9A and 9B, of the NOPD TSD provide details on the spreadsheet model and all the inputs to the LCC and PBP analysis.

H. Shipments Analysis

DOE projected equipment shipments to calculate the national effects of potential standards on energy use, NPV, and future manufacturer cash flows. DOE developed shipment projections based on an analysis of key market drivers for each considered HID lamp type. In DOE's shipments model, shipments of equipment are driven by new construction, stock replacements, and other types of purchases. The shipments model takes an accounting approach, tracking market shares of each equipment class and the vintage of units in the existing stock. Stock accounting uses equipment shipments as inputs to estimate the age distribution of in-service equipment stocks for all years. The age distribution of in-service equipment stocks is a key input to calculations of both the NES and the NPV, because operating costs for any year depend on the age distribution of the stock. Chapters 2 and 10 of the NOPD TSD provide a more detailed description of DOE's shipments analysis.

I. National Impact Analysis

DOE's NIA assessed the cumulative NES and the cumulative national economic impacts of ELs (*i.e.,* potential standards cases) considered for the equipment classes analyzed. The analysis measures economic impacts using the NPV metric, which presents total customer costs and savings expected to result from potential standards at specific ELs, discounted to their present value. For a given EL, DOE calculates the NPV, as well as the NES, as the difference between a baseline projection and the standards-case projections. Chapters 2 and 11, and appendices 11A and 11B, of the NOPD TSD provide details on the spreadsheet model and all the inputs to the NIA.

J. Manufacturer Impact Analysis

DOE conducted an MIA for HID lamps to estimate the financial impact of potential energy conservation standards on manufacturers. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for HID lamps covered in this NOPD. The key GRIM inputs are industry cost structure data, shipment data, equipment costs, and assumptions about markups and conversion costs. The key MIA output is INPV. DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a base case and various ELs at each equipment class (the standards case). The difference in INPV between the base and standards cases represents the financial impact of potential energy conservation standards on HID lamp manufacturers. Different sets of assumptions (scenarios) produce different INPV results. The qualitative part of the MIA addresses how potential standards could impact manufacturing capacity and industry competition, as well as any differential impact the potential standard could have on any particular subgroup of manufacturers. See chapter 12 of this NOPD TSD for additional details on DOE's MIA.

V. Analytical Results

A. Economic Impacts on Individual Customers

To evaluate the net economic impact of standards on customers, DOE conducted an LCC and PBP analysis for each EL. In general, a higher efficacy product would affect customers in two ways: (1) Annual operating expenses would decrease; and (2) purchase prices would increase. Section IV.G of this notice discusses the inputs DOE used for calculating the LCC and PBP.

The key outputs of the LCC analysis are mean LCC savings relative to the baseline case, as well as a probability distribution or likelihood of LCC reduction or increase, for each efficacy level and equipment class.[10] In its LCC analysis, DOE traditionally assumes that the customer purchases a covered design upon the effective date of potential standards (in this case, 2017). The resulting values then necessarily reflect the projected market for HID equipment in 2017, and are reported by equipment class in Table V.1, Table V.2, and Table V.3. The LCC analysis also estimates the fraction of customers for which the LCC will decrease (net benefit), remain unchanged (no impact), or increase (net cost) relative to the baseline case. The last column in each table contains the median PBPs for the customers purchasing a design compliant with the efficacy level.

In evaluating these results relative to cumulative NPV, it is important to note that the LCC and PBP analysis does not reflect the long-term dynamics of the declining market for HID equipment, which are captured in the NIA shipments period (2017–2046). As a result, the average LCC savings—based on the projected 2017 market—may be positive in some cases (*e.g.,* EL2 and EL3 for the >2800 K and ≤4500 K and ≥50 W to ≤400 W equipment class), whereas the cumulative NPV results for these ELs are negative (see Table V.16). DOE explored the effects of the declining HID market on average LCC savings by conducting a sensitivity analysis based on the projected market in 2022, with results reported by equipment class in Table V.4, Table V.5, and Table V.6. These results show a general erosion of average LCC savings, and demonstrate increasing consistency with the cumulative NPV results. For the >2800 K and ≤4500 K and ≥50 W to ≤400 W equipment class, average LCC savings for EL2 become negative, with a majority of affected customers remaining negatively impacted. Average LCC savings for EL3 in this equipment class—while still positive—are significantly diminished, with a majority of affected customers experiencing a net cost. Following this trend, DOE would expect LCC savings for EL3 to become increasingly negative for an increasing proportion of affected customers over the NIA analysis period.

Based on this sensitivity analysis, DOE believes its main LCC and PBP analysis results (including some cases of positive average LCC savings) are consistent with negative cumulative NPV results in the NIA, given the declining market for HID equipment. Chapter 9 of the NOPD TSD examines the relationship of the LCC and PBP analysis and projected HID market in further detail.

[10] Customers, in the base-case scenario, who buy the equipment at or above the EL under consideration, would be unaffected (no impact) if the potential standard were to be set at that EL.

TABLE V.1—HID LAMPS >2800 K AND ≤4500 K AND ≥50 W TO ≤400 W—LCC AND PBP RESULTS

Efficacy level	Life-cycle cost 2012$			Life-cycle cost savings				Median payback period years
	Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percentage of customers that experience *			
					Net cost	No impact	Net benefit	
Baseline	309.16	1671.22	1980.38	.....	.....	.....	.....	.....
1	316.37	1667.70	1984.07	−3.69	2	98	0	100
2	368.59	1602.68	1971.27	9.11	53	35	12	100
3	520.38	1374.17	1894.55	85.83	35	23	42	11.3

* Any minor incongruities among various reported metrics are the result of rounding.

TABLE V.2—HID LAMPS >2800 K AND ≤4500 K AND >400 AND ≤1000 W—LCC AND PBP RESULTS

Efficacy level	Life-cycle cost 2012$			Life-cycle cost savings				Median payback period years
	Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percentage of customers that experience *			
					Net cost	No impact	Net benefit	
Baseline	444.54	5755.21	6199.75	.....	.....	.....	.....	.....
1	445.65	5754.56	6200.22	−0.47	0	100	0	100
2	486.34	5792.61	6278.94	−79.19	91	7	1	100

* Any minor incongruities among various reported metrics are the result of rounding, including cases where the percentage of customers experiencing a net cost or net benefit are greater than zero, but round to zero.

TABLE V.3—HID LAMPS >2800 K AND ≤4500 K AND >1000 W TO ≤2000 W—LCC AND PBP RESULTS

Efficacy level	Life-cycle cost 2012$			Life-cycle cost savings				Median payback period years
	Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percentage of customers that experience *			
					Net cost	No impact	Net benefit	
Baseline	534.23	596.88	1131.11	.....	.....	.....	.....	.....
1	592.96	554.33	1147.29	−16.18	6	91	2	39.1

* Any minor incongruities among various reported metrics are the result of rounding.

TABLE V.4—HID LAMPS >2800 K AND ≤4500 K AND ≥50 W TO ≤400 W—LCC AND PBP RESULTS

[2022 Projected market basis]

Efficacy level	Life-cycle cost 2012$			Life-cycle cost savings				Median payback period years
	Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percentage of customers that experience *			
					Net cost	No impact	Net benefit	
Baseline	303.01	1626.38	1929.39	.....	.....	.....	.....	.....
1	303.41	1626.17	1929.58	−0.19	0	100	0	100
2	508.38	1479.10	1987.48	−58.09	52	37	11	41.3
3	569.12	1337.34	1906.45	22.94	42	23	35	16.1

* Any minor incongruities among various reported metrics are the result of rounding, including cases where the percentage of customers experiencing a net cost or net benefit are greater than zero, but round to zero.

TABLE V.5—HID LAMPS >2800 K AND ≤4500 K AND >400 AND ≤1000 W—LCC AND PBP RESULTS

[2022 Projected market basis]

Efficacy level	Life-cycle cost 2012$			Life-cycle cost savings				Median payback period years
	Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percentage of customers that experience *			
					Net cost	No impact	Net benefit	
Baseline	442.66	5772.61	6215.27	.....	.....	.....	.....	.....
1	442.66	5772.61	6215.27	0.00	0	100	0	N/A**
2	695.12	5718.91	6414.03	−198.76	91	8	0	100

* Any minor incongruities among various reported metrics are the result of rounding.
** Zero impacted customers (median PBP calculated for affected customers only).

TABLE V.6—HID LAMPS >2800 K AND ≤4500 K AND >1000 W TO ≤2000 W—LCC AND PBP RESULTS

[2022 Projected market basis]

Efficacy level	Life-cycle cost 2012$			Life-cycle cost savings				Median payback period years
	Installed cost	Discounted operating cost	LCC	Average savings 2012$	Percentage of customers that experience *			
					Net cost	No impact	Net benefit	
Baseline	581.65	611.01	1192.67	.....	.....	.....	.....	.....
1	649.70	562.86	1212.57	−19.90	9	88	3	30.6

* Any minor incongruities among various reported metrics are the result of rounding.

B. Economic Impacts on Manufacturers

DOE performed the MIA to estimate the impact of potential energy conservation standards on manufacturers of HID lamps. The section below describes the expected impacts on HID lamp manufacturers at each EL for each equipment class. Chapter 12 of the NOPD TSD explains the MIA in further detail.

1. Industry Cash-Flow Analysis Results

The tables in the following sections depict the financial impacts (represented by changes in INPV) of potential energy conservation standards on HID lamp manufacturers as well as the conversion costs that DOE estimates HID lamp manufacturers would incur at each EL for each equipment class. To evaluate the range of cash-flow impacts on the HID lamp industry, DOE modeled two markup scenarios that correspond to the range of anticipated market responses to potential standards. Each scenario results in a unique set of cash flows and corresponding industry values at each EL for each equipment class. In the following discussion, the INPV results refer to the difference in industry value between the base case and the standards case that result from the sum of discounted cash flows from the base year (2014) through the end of the analysis period.

To assess the upper (less severe) end of the range of potential impacts on HID lamp manufacturers, DOE modeled a flat, or preservation of gross margin, markup scenario. This scenario assumes that in the standards case, manufacturers would be able to pass along all the higher production costs required for more efficacious equipment to their customers. To assess the lower (more severe) end of the range of potential impacts, DOE modeled a preservation of operating profit markup scenario. The preservation of operating profit markup scenario assumes that in the standards case, manufacturers would be able to earn the same operating margin in absolute dollars as they would in the base case. This represents the lower bound of industry profitability in the standards case.

Table V.7 and Table V.8 present the projected results of the 50 W–400 W equipment class under the flat and preservation of operating profit markup scenarios.

TABLE V.7—MANUFACTURER IMPACT ANALYSIS FOR THE 50 W–400 W EQUIPMENT CLASS—FLAT MARKUP SCENARIO

	Units	Base Case	EL		
			1	2	3
INPV	*(2012$ millions)*	351.0	346.6	327.8	335.9
Change in INPV	*(2012$ millions)*	.....	(4.5)	(23.3)	(15.2)
	(%)	.....	−1.3%	−6.6%	−4.3%
Product Conversion Costs	*(2012$ millions)*	.....	7.4	31.4	55.0
Capital Conversion Costs	*(2012$ millions)*	.....	0.0	6.0	54.5
Total Conversion Costs	*(2012$ millions)*	.....	7.4	37.4	109.5

TABLE V.8—MANUFACTURER IMPACT ANALYSIS FOR THE 50 W–400 W EQUIPMENT CLASS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base Case	EL		
			1	2	3
INPV	*(2012$ millions)*	351.0	345.9	300.2	268.9
Change in INPV	*(2012$ millions)*	.....	(5.1)	(50.9)	(82.1)
	(%)	.....	−1.5%	−14.5%	−23.4%
Product Conversion Costs	*(2012$ millions)*	.....	7.4	31.4	55.0
Capital Conversion Costs	*(2012$ millions)*	.....	0.0	6.0	54.5
Total Conversion Costs	*(2012$ millions)*	.....	7.4	37.4	109.5

Table V.9 and Table V.10 present the projected results of the 401 W–1000 W equipment class under the flat and preservation of operating profit markup scenarios.

TABLE V.9—MANUFACTURER IMPACT ANALYSIS FOR THE 401 W–1000 W EQUIPMENT CLASS—FLAT MARKUP SCENARIO

	Units	Base case	EL	
			1	2
INPV	*(2012$ millions)*	55.3	55.0	56.1
Change in INPV	*(2012$ millions)*		(0.3)	0.8
	(%)		−0.6%	1.4%
Product Conversion Costs	*(2012$ millions)*		0.5	4.9
Capital Conversion Costs	*(2012$ millions)*		0.0	0.8
Total Conversion Costs	*(2012$ millions)*		0.5	5.7

TABLE V.10—MANUFACTURER IMPACT ANALYSIS FOR THE 401 W–1000 W EQUIPMENT CLASS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	EL	
			1	2
INPV	*(2012$ millions)*	55.3	55.0	51.5
Change in INPV	*(2012$ millions)*		(0.3)	(3.9)
	(%)		−0.6%	−7.0%
Product Conversion Costs	*(2012$ millions)*		0.5	4.9
Capital Conversion Costs	*(2012$ millions)*		0.0	0.8
Total Conversion Costs	*(2012$ millions)*		0.5	5.7

Table V.11 and Table V.12 present the projected results of the 1001 W–2000 W equipment class under the flat and preservation of operating profit markup scenarios.

TABLE V.11—MANUFACTURER IMPACT ANALYSIS FOR THE 1001 W–2000 W EQUIPMENT CLASS—FLAT MARKUP SCENARIO

	Units	Base case	EL
			1
INPV	*(2012$ millions)*	4.7	4.0
Change in INPV	*(2012$ millions)*		(0.8)
	(%)		−15.9%
Product Conversion Costs	*(2012$ millions)*		0.6
Capital Conversion Costs	*(2012$ millions)*		0.4
Total Conversion Costs	*(2012$ millions)*		0.9

TABLE V.12—MANUFACTURER IMPACT ANALYSIS FOR THE 1001 W–2000 W EQUIPMENT CLASS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	Base case	EL
			1
INPV	*(2012$ millions)*	4.7	4.0
Change in INPV	*(2012$ millions)*		(0.7)
	(%)		−15.4%
Product Conversion Costs	*(2012$ millions)*		0.6
Capital Conversion Costs	*(2012$ millions)*		0.4
Total Conversion Costs	*(2012$ millions)*		0.9

2. Impacts on Employment

DOE quantitatively assessed the impacts of potential energy conservation standards on direct employment. DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the base case and at each EL for the 50 W–400 W equipment class, since the 50 W–400 W equipment class represents over 90 percent of all covered HID lamp shipments in 2017. Furthermore, manufacturers stated that most domestic employment decisions would be based on the standards set for the 50 W–400 W equipment class.

The employment impacts shown in Table V.13 represent the potential production employment that could result following potential energy conservation standards. The upper bound of the results estimates the maximum change in the number of production workers that could occur after compliance with any potential energy conservation standards assuming that manufacturers continue to produce the same scope of covered equipment in the same domestic production facilities. It also assumes that domestic

production does not shift to lower labor-cost countries. Because there is a real risk of manufacturers evaluating sourcing decisions in response to potential energy conservation standards, the lower bound of the employment results includes the estimated total number of U.S. production workers in the industry who could lose their jobs if some or all existing production were moved outside of the United States.

DOE estimates that approximately one third of the HID lamps sold in the United States are manufactured domestically. With this assumption, DOE estimates that in the absence of potential energy conservation standards, there would be approximately 292 domestic production workers involved in manufacturing HID lamps in 2017. The table below shows the range of the impacts of potential standards on U.S. production workers in the HID lamp industry.

TABLE V.13—POTENTIAL CHANGES IN THE TOTAL NUMBER OF DOMESTIC HIGH-INTENSITY DISCHARGE LAMP PRODUCTION WORKERS IN 2017

	Base case	50 W–400 W Equipment class EL		
		1	2	3
Total Number of Domestic Production Workers in 2017 (without changes in production locations)	292	294	317	388
Potential Changes in Domestic Production Workers in 2017*		2–0	25–(146)	96–(292)

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

3. Impacts on Manufacturing Capacity

HID lamp manufacturers stated that they did not anticipate any significant capacity constraints unless all lamps in the 50 W–400 W equipment class had to be converted to CMH technology. Most manufacturers stated that they do not have the equipment to produce the volume of CMH lamps that would be necessary to satisfy demand. Manufacturers would have to expend significant capital resources to obtain additional equipment that is specific to CMH lamp production. Manufacturers also pointed out that thousands of man-hours would be necessary to redesign specific lamps and lamp production lines at ELs requiring CMH. The combination of obtaining new equipment and the engineering effort that manufacturers would have to undergo could cause significant downtime for manufacturers. Most manufacturers agreed that there would not be any significant capacity constraints at any ELs that did not require CMH technology.

4. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE did not identify any adversely impacted subgroups for HID lamps for this NOPD based on the results of the industry characterization. DOE analyzed the impacts on small manufacturers as required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*

5. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing equipment. For these reasons, DOE conducts a cumulative regulatory burden analysis as part of its rulemakings pertaining to lighting efficacy to make sure that this proposed standard does not create a cumulative regulatory burden that is unacceptable to the overall lighting industry.

C. National Impact Analysis

1. Significance of Energy Savings

For each efficacy level, DOE projected energy savings for HID lamps purchased in the 30-year period that begins in the year 2017, ending in the year 2046. The savings are measured over the entire lifetime of equipment purchased in the 30-year period. DOE quantified the energy savings attributable to each efficacy level as the difference in energy consumption between each standards case and the base case. Table V.14 presents the estimated primary energy savings for each efficacy level analyzed. Table V.15 presents the estimated FFC energy savings for each efficacy level. Chapter 11 of the NOPD TSD describes these estimates in more detail.

TABLE V.14—CUMULATIVE NATIONAL PRIMARY ENERGY SAVINGS FOR HID LAMP EFFICACY LEVELS FOR UNITS SOLD IN 2017–2046

Equipment class	Efficacy level	National primary energy savings quads
>2800 K and ≤4500 K and ≥50 W to ≤400 W	1	0.01
	2	0.1
	3	1.55
>2800 K and ≤4500 K and >400 and ≤1000 W	1	0.0001
	2	0.003
>2800 K and ≤4500 K and >1000 W to ≤2000 W	1	0.001

TABLE V.15—CUMULATIVE NATIONAL FULL-FUEL-CYCLE ENERGY SAVINGS FOR HID LAMP EFFICACY LEVELS FOR UNITS SOLD IN 2017–2046

Equipment class	Efficacy level	National primary energy savings quads
>2800 K and ≤4500 K and ≥50 W to ≤400 W	1	0.01
	2	0.17
	3	1.57
>2800 K and ≤4500 K and >400 and ≤1000 W	1	0.0001
	2	0.003
>2800 K and ≤4500 K and >1000 W to ≤2000 W	1	0.001

2. Net Present Value of Customer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for customers that would result from the efficacy levels considered for HID lamps. In accordance with the Office of Management and Budget's (OMB's) guidelines on regulatory analysis,[11] DOE calculated the NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return on private capital in the U.S. economy, and reflects the returns on real estate and small business capital as well as corporate capital. This discount rate approximates the opportunity cost of capital in the private sector (OMB analysis has found the average rate of return on capital to be near this rate). The 3-percent rate reflects the potential effects of standards on private consumption (*e.g.,* through higher prices for products and reduced purchases of energy). This rate represents the rate at which society discounts future consumption flows to their present value. It can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on U.S. Treasury notes), which has averaged about 3 percent for the past 30 years.

Table V.16 shows the customer NPV results for each efficacy level DOE considered for HID lamps, using both 7-percent and 3-percent discount rates. In each case, the impacts cover the lifetime of equipment purchased in 2017 through 2046. See chapter 11 of the NOPD TSD for more detailed NPV results.

TABLE V.16—NET PRESENT VALUE OF CUSTOMER BENEFITS FOR HID LAMP EFFICACY LEVELS FOR UNITS SOLD IN 2017–2046

Equipment class	Efficacy level	Net present value billion 2012$	
		7-Percent discount rate	3-Percent discount rate
>2800 K and ≤4500 K and ≥50 W to ≤400 W	1	−0.06	−0.03
	2	−2.00	−3.42
	3	−4.98	−6.37
>2800 K and ≤4500 K and >400 and ≤1000 W	1	−0.0001	0.0002
	2	−0.49	−0.90
>2800 K and ≤4500 K and >1000 W to ≤2000 W	1	−0.02	−0.03

D. Proposed Determination

As required by EPCA, this NOPD analyzes whether standards for HID lamps would be technological feasible, economically justified, and would result in significant energy savings. (42 U.S.C. 6317(b)(1)) Each of these criteria is discussed below.

1. Technological Feasibility

EPCA mandates that DOE determine whether energy conservation standards for HID lamps would be ''technologically feasible.'' (42 U.S.C. 6317(a)(1)) DOE proposes to determine that standards for HPS lamps would not be technologically feasible due to the lack of technology options discussed in section IV.A.3. DOE proposes to determine that energy conservation standards for other HID lamps (MV and MH lamps) would be technologically feasible because they can be satisfied with HID lighting systems currently available on the market.

2. Significance of Energy Savings

EPCA also mandates that DOE determine whether energy conservation standards for HID lamps would result in ''significant energy savings.'' (42 U.S.C. 6317(a)(1)) The proposed determination estimates that a standard for HID lamps would result in energy savings of up to 1.6 quads over a 30-year analysis period (2017–2046). Therefore, DOE proposes to determine that potential energy conservation standards for HID lamps would result in significant energy savings.

3. Economic Justification

EPCA requires DOE to determine whether energy conservation standards for HID lamps would be economically justified. (42 U.S.C. 6317(b)(1)) Using the methods and data described in section IV.G, DOE conducted an LCC analysis to estimate the net costs/benefits to users from increased efficacy in the considered HID lamps. DOE then

[11] OMB Circular A–4, section E (Sept. 17, 2003). Available at: *www.whitehouse.gov/omb/circulars_a004_a-4.*

aggregated the results from the LCC analysis to estimate national energy savings and national economic impacts in section V.A. DOE also conducted an MIA to estimate the financial impact of potential energy conservation standards on manufacturers.

DOE first considered the most efficacious level, EL 3, which is applicable only to the 50 W–400 W equipment class. As listed in Table V.16, EL3 would have a negative NPV at both a 7-percent and 3-percent discount rate. EL3 could result in HID lamp manufacturers experiencing a loss in INPV. On the basis of the negative NPV and decrease in industry value for HID lamp manufacturers, DOE determined that the EL3 standard was not economically justified.

DOE then considered the next most efficacious level, EL2, which applies to the 50 W–400 W and 401 W–1000 W equipment classes. As listed in Table V.16, EL2 results in a negative NPV for all applicable equipment classes at both a 7-percent and 3-percent discount rate. As listed in section V.A, available designs result in positive mean LCC savings for the 50 W–400 W equipment class and negative mean LCC savings for the 401 W–1000 W equipment class. However, a majority of customers affected by the standard experience a net cost at EL2 in all applicable equipment classes. EL2 could result in HID lamp manufacturers experiencing a loss in INPV for the applicable equipment classes. On the basis of the negative NPV, majority of customers affected by the standard experiencing a net cost, and potential decrease in industry value for HID lamp manufacturers, DOE determined that an EL2 standard was not economically justified.

DOE finally considered EL1, which would apply to all equipment classes. DOE's NPV analysis (results listed in Table V.16) indicates that all equipment classes have a negative or negligible NPV at a 7-percent and 3-percent discount rate for EL1. As listed in section V.A, available designs result in negative mean LCC savings for all three of the representative equipment classes at EL 1, with a majority of customers affected by the standard experiencing a net cost. EL1 could result in HID lamp manufacturers experiencing a loss in INPV for all equipment classes. On the basis of the negative NPV, negative mean LCC savings, majority of customers affected by the standard experiencing a net cost, and decrease in industry value for HID lamp manufacturers, DOE determined that an EL1 standard was not economically justified.

4. Conclusions

DOE tentatively determines that potential standards for HID lamps are either not technologically feasible or not economically justified. DOE will consider all comments received on this proposed determination in issuing any final determination of whether standards for HID lamps would be technologically feasible and economically justified, and would result in significant energy savings. If DOE determines that all of these criteria are met, DOE must prescribe test procedures and energy conservation standards for HID lamps. If DOE determines that one or more of the criteria are not met, DOE will not consider establishing test procedures and standards for these lamps.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This proposed determination is not subject to review under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990 DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed this proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. In the proposed determination, DOE finds that standards for HID lamps would not meet all of the required criteria of technologically feasibility, economic justification, and significant energy savings. If adopted, the determination would not establish any energy conservation standards for HID lamps, and DOE would not consider prescribing test procedures and standards for HID lamps. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This proposed determination, which proposes to determine that energy conservation standards for HID lamps would not meet all of the required criteria of technologically feasibility, economic justification, and significant energy savings, would impose no new information or record keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this NOPD, DOE tentatively determines that energy conservation standards for HID lamps would not meet all of the required criteria of technologically feasibility, economic justification, and significant energy savings. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time because standards are not being proposed. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated.'' Because this final determination concludes only that future standards are unlikely to be warranted, and does not propose or set any standard, DOE has determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit

the policymaking discretion of states and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. As this NOPD determines that standards are not likely to be warranted for HID lamps, there is no impact on the policymaking discretion of the states. Therefore, no action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/gc/office-general-counsel.* This proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these UMRA requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar. 18, 1988), that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Because the NOPD finds that standards for HID lamps are unlikely to be warranted, it is not a significant energy action, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal

Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VII. Public Participation

A. Public Meeting Requests

Interested parties may submit comments requesting that a public meeting discussing this NOPD be held at DOE Headquarters. DOE will accept such requests no later than the date provided in the **DATES** section at the beginning of this notice. As with other comments regarding this determination, interested parties may submit requests using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

B. Submission of Comments

DOE will accept comments, data, and information regarding this NOPD no later than the date provided in the **DATES** section at the beginning of this determination. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this determination.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information [CBI]). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received,

including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

C. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposed determination, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The HID lamps selected for and excluded from analysis of economic justification for standards;
2. The technology options analyzed and in particular the elimination of sapphire arc tubes and starting method as technology option(s);
3. The equipment classes analyzed in this NOPD;
4. The design options identified in the screening analysis;
5. The representative equipment classes analyzed in this NOPD;
6. The baseline lamps selected, including the inclusion of a 150 W MH lamp;
7. The selection of more efficacious substitute lamps analyzed in this NOPD;
8. The decision to analyze equal wattage replacement lamps, as well as the methodology used to select the equal wattage replacement lamps;
9. The methodology used to determine ELs, as well as the resulting ELs analyzed in this NOPD;
10. The factors used in this NOPD to scale to equipment classes not directly analyzed;
11. The decision to include replacement pathways other than full fixture replacement in this NOPD;
12. The results and methodology from the equipment price determination;
13. Methods to improve DOE's energy use analysis, as well as any data supporting alternate operating hour estimates or assumptions regarding dimming of HID lamp-and-ballast systems;
14. The assumptions and methodology for estimating annual operating hours, which were based on data from the 2010 U.S. Lighting Market Characterization;
15. Methods to improve DOE's equipment price projections beyond the assumption of constant real prices, as well as any data supporting alternate methods;
16. The reasonableness of assuming a zero percent rebound effect (the potential tendency for customers to increase HID lamp usage in response to more efficient lamp-and-ballast systems);
17. Whether the shipment scenarios under various policy scenarios are reasonable and likely to occur;
18. The impediments that prevent users of HID lamps from switching to LED lighting to garner further energy savings;
19. The expected impact of potential standards on the rate at which HID lamp customers transition to non-HID technology;
20. The methodology used in the MIA and the results of the MIA;
21. The proposal of a negative determination stating that standards for HID lamps are not justified.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this NOPD.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on October 10, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–24971 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0753; Directorate Identifier 2014–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–19–04, for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2011–19–04 currently requires repetitive inspections of the left-hand and right-hand inboard and outboard elevator servo-control rod eye-ends for cracking, and corrective actions if necessary. Since we issued AD 2011–19–04, we have determined that certain elevator servo-control parts that do not conform to the approved type design have been installed and may have the potential of cracks in the rod eye-end. This proposed AD would also require an inspection to determine if certain elevator servo-control parts are installed, and replacement if necessary. We are proposing this AD to detect and correct rod eye-end cracking, which could result in an uncontrolled elevator surface and consequent reduced control of the airplane.

DATES: We must receive comments on this proposed AD by December 5, 2014.

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

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

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0753; 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 Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA

98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0753; Directorate Identifier 2014–NM–128–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 based on 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

On September 7, 2011, we issued AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011). AD 2011–19–04 requires actions intended to address an unsafe condition on all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2011–19–04 superseded AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009).

Since we issued AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0137, dated May 28, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Model A318, A319, A320, and Model A321 series airplanes. The MCAI states:

> One case of elevator servo-control disconnection was reported on an A320 family aeroplane. Investigation results revealed that the failure occurred at the servo-control rod eye-end. Prompted by this finding, additional inspections revealed cracking at the same location on a number of other servo-control rod eye-ends. In several cases, both actuators of the same elevator surface were affected.
>
> It was determined that the detected rod end cracks are caused by fatigue, induced by a bending effect which is linked to the spherical bearing rotational torque. As the elevator surface is neither actuated nor damped, a dual servo-control disconnection on the same elevator would result in an uncontrolled surface.
>
> This condition, if not corrected, could result in reduced control of the aeroplane.
>
> To address this potential unsafe condition, EASA issued [an airworthiness directive (later revised)] [which corresponds to FAA AD 2009–17–04, Amendment 39–5995 (74 FR 41611, August 18, 2009)] to require a one-time inspection of the elevator servo-control rod eye-ends for aeroplanes which had accumulated more than 10,000 flight cycles (FC) since aeroplane first flight and, in case of findings, accomplishment of corrective actions.
>
> As a result of EASA AD 2008–0149, a significant number of rod eye-ends were found cracked. In addition, some cracks were reported on rod eye-ends that had not yet accumulated the 10,000 FC of the established threshold.
>
> Prompted by these findings, EASA issued [an airworthiness directive (later revised)] [which corresponds to FAA AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)], which partially retained the initial inspection requirement of EASA AD 2008–0149, which was superseded, reduced the compliance time of the initial inspection and introduced a repetitive inspection programme.
>
> After EASA AD 2010–0046R1 (*http://ad.easa.europa.eu/blob/easa_ad_2010_0046_R1_superseded.pdf/AD_2010-0046R1_1*) was issued, a new elevator servo-control rod eye-end was developed, incorporating a re-greasable roller bearing.
>
> Consequently, EASA issued [EASA] AD 2013–0309 (later corrected) (*http://ad.easa.europa.eu/blob/easa_ad_2013_0309_superseded.pdf/AD_2013-0309_1*), retaining the requirements of EASA AD 2010–0046R1, which was superseded, and introduced an optional terminating action for the repetitive inspections by replacing the existing elevator servo-control rod eye-ends with the new elevator servo-control rod eye-end. In addition, that [EASA] AD prohibited, for aeroplanes that incorporate this optional modification, (re)installation of unmodified elevator servo-controls.
>
> At the time that EASA AD 2013–0309 was issued, it was planned that Airbus would proceed with the certification of certain elevator servo-controls, Part Number (P/N) 31075–0xx, P/N 31075–1xx and P/N 31075–3xx (originally certified only for installation on Model A320–111 aeroplanes, which are no longer in service), to allow installation of those parts on other A320 family aeroplane Models.
>
> Since that [EASA] AD was issued, Airbus decided not to progress with certification of the affected elevator servo-controls for installation on other Models.
>
> For the reason described above, and because of evidence that such parts remain available as spares in the field, this [EASA] AD retains the requirements of EASA AD 2013–0309, which is superseded, and adds a prohibition to install the affected elevator servo-controls that were only intended for A320–111 aeroplanes.

This proposed AD would require an inspection to determine whether any elevator control part having P/N 31075–0xx, 31075–1xx, or 31075–3xx is installed and replacement if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0753.

Relevant Service Information

Airbus has issued Service Bulletin A320–27–1223, dated September 3, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI does not include an action for airplanes installed with elevator control parts having part number (P/N) 31075–0xx, 31075–1xx, or 31075–3xx. This proposed AD would require an inspection to determine if those elevator servo-control parts are installed, and replacement if necessary.

Costs of Compliance

We estimate that this proposed AD affects 851 airplanes of U.S. registry.

The actions that are required by AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), and retained in this proposed AD take about 25 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2011–19–04 is $2,125 per product.

We also estimate that it would take about 14 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,012,690, or $1,190 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $4,000, for a cost of $4,170 per product. We have no way of

determining the number of aircraft that might need this action.

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 proposed regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), and adding the following new AD:

Airbus: Docket No. FAA–2014–0753; Directorate Identifier 2014–NM–128–AD.

(a) Comments Due Date

We must receive comments by December 5, 2014.

(b) Affected ADs

This AD replaces AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011).

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a determination that certain elevator servo-control parts that do not conform to the approved type design have been installed and may have the potential of cracks in the rod eye-end. We are issuing this AD to detect and correct rod eye-end cracking, which could result in uncontrolled elevator surface and consequent reduced control of the airplane.

(f) Compliance

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

(g) Retained Inspections

This paragraph restates the requirements of paragraph (g) of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), with no changes.

(1) At the applicable times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD: Inspect both the left-hand and right-hand inboard elevator servo-control rod eye-ends for cracking, in accordance with the instructions of Airbus All Operators Telex (AOT) A320–27A1186, Revision 04, dated April 3, 2009; or the Accomplishment Instructions of Airbus Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011. As of October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)), use Airbus Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011.

(i) For airplanes that have accumulated 10,000 total flight cycles or more as of September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)): At the later of the times specified in paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this AD.

(A) Within 1,500 flight cycles after September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)).

(B) Within 1,500 flight cycles after accumulating 10,000 total flight cycles since first flight of the airplane.

(ii) For airplanes that have accumulated less than 10,000 total flight cycles as of September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)): At the later of the times specified in paragraphs (g)(1)(ii)(A) and (g)(1)(ii)(B) of this AD.

(A) Before the accumulation of 5,000 total flight cycles.

(B) Within 20 months after October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)) but no later than before the accumulation of 11,500 total flight cycles.

(2) At the applicable time specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD: Inspect both the left-hand and right-hand outboard elevator servo-control rod eye-ends for cracking, in accordance with the instructions of Airbus AOT A320–27A1186, Revision 04, dated April 3, 2009; or the Accomplishment Instructions of Airbus Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011. As of October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)), use Airbus Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011.

(i) For airplanes that have accumulated 10,000 total flight cycles or more as of September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)): At the later of the times specified in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this AD.

(A) Within 3,000 flight cycles after September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)).

(B) Within 3,000 flight cycles after accumulating 10,000 total flight cycles since first flight of the airplane.

(ii) For airplanes that have accumulated less than 10,000 total flight cycles as of September 22, 2009 (the effective date of AD 2009–17–04, Amendment 39–15995 (74 FR 41611, August 18, 2009)): At the later of the times specified in paragraphs (g)(2)(ii)(A) and (g)(2)(ii)(B) of this AD.

(A) Before the accumulation of 7,500 total flight cycles.

(B) Within 40 months after October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)) but no later than before the accumulation of 13,000 total flight cycles.

(h) Retained Repetitive Inspections

This paragraph restates the requirements of paragraph (h) of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), with no changes. Repeat the inspections of the left-hand and

right-hand inboard and outboard elevator servo-control rod eye-ends for cracking as required by paragraphs (g)(1) and (g)(2) of this AD at the later of the times specified in paragraph (h)(1) or (h)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 5,000 flight cycles.

(1) Within 5,000 flight cycles after the last inspection required by paragraph (g)(1) or (g)(2) of this AD as applicable.

(2) Within 6 months after October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)).

(i) Retained Corrective Actions

This paragraph restates the requirements of paragraph (i) of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), with no changes. If any cracking is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, accomplish all applicable corrective actions, in accordance with the Accomplishment Instructions and figures of Airbus Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011.

(j) Retained Parts Limitation for Elevator Servo-Control Rod Eye-Ends

This paragraph restates the requirements of paragraph (j) of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), with a new exception. As of October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57360, September 16, 2011)), and except as required by paragraph (p) of this AD, no person may install on any airplane an elevator servo-control rod eye-end unless it is new or has been inspected in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011, with no crack findings.

(k) New Requirement of This AD: Inspection To Determine Part Numbers

As of the effective date of this AD: At the later of the times specified in paragraphs (k)(1) and (k)(2) of this AD, do an inspection to determine whether any elevator control part having part number (P/N) 31075–0xx, 31075–1xx, or 31075–3xx is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part numbers of the elevator control parts can be conclusively determined from that review.

(1) Concurrently with the accomplishment of the next inspection required by paragraph (g) or (h) of this AD.

(2) Within 30 days after the effective date of this AD.

(l) New Requirement of This AD: Replacement of Certain Parts

If the inspection required by paragraph (k) of this AD reveals that any elevator servo-controls having P/Ns 31075–0xx, 31075–1xx, or 31075–3xx are installed: Before further flight, do the actions specified in paragraph (l)(1) or (l)(2) of this AD.

(1) Replace all elevator servo-controls having P/N 31075–0xx, 31075–1xx, or 31075–3xx with parts having P/N 31075–2xx or 31075–4xx, as applicable, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) Replace all elevator servo-controls having P/N 31075–0xx, 31075–1xx, or 31075–3xx with serviceable parts having P/N 31075–6xx or 31075–8xx, as applicable, in accordance with the Accomplishment Instruction of Airbus Service Bulletin A320–27–1223, dated September 3, 2013, or Goodrich Service Bulletin 31075–27–22, dated July 2, 2013. Serviceable parts are those that have been inspected for cracks in the rod eye-ends without any crack findings in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27A1186, Revision 07, dated March 2, 2011.

(m) New Optional Terminating Action for Certain Inspections

Modification of an airplane by replacing all 4 elevator servo-control rod eye-ends with modified (i.e. re-greasable) parts, and re-identification of those elevator servo-controls to P/N 31075–6xx or P/N 31075–8xx, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1223, dated September 3, 2013; constitutes terminating action for the requirements of paragraphs (g), (h), (k), and (l) of this AD.

Note 1 to paragraph (m) of this AD: Maintenance Review Board Report task reference 27.34.00/06 is applicable to elevator servo-controls having P/N 31075–6xx or P/N 31075–8xx.

(n) New Exception to Certain Inspections

Airplanes on which Airbus modification 154554 (installation of servo-controls having P/N 31075–6xx or P/N 31075–8xx, fitted with modified rod eye-end roller bearing) has been embodied in production are not affected by the requirements of paragraphs (g), (h), (k), and (l) of this AD, provided that no elevator servo-control having P/N 31075–0xx, or P/N 31075–1xx, or P/N 31075–2xx, or P/N 31075–3xx, or P/N 31075–4xx, fitted with rod-end assembly P/N 341203-xxx, has been reinstalled since first flight.

(o) Credit for Previous Actions

(1) This paragraph restates the credit specified in paragraph (k) of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011).

(i) This paragraph provides credit for actions required by paragraphs (g)(1) and (g)(2) of this AD, if those actions were performed before October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)), using the service information specified in table 1 to paragraph (o)(1)(i) of this AD.

TABLE 1 TO PARAGRAPH (o)(1)(i) OF THIS AD—CREDIT SERVICE INFORMATION FOR PARAGRAPH (g) OF THIS AD

Airbus AOT—	Revision—	Dated—
A320–27A1186	Original	June 23, 2008.
A320–27A1186	01	August 11, 2008.
A320–27A1186	02	March 30, 2009.
A320–27A1186	03	April 1, 2009.
A320–27A1186	04	April 3, 2009.

(ii) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)), using Airbus Service Bulletin A320–27A1186, Revision 05, dated March 10, 2010; or Airbus Service Bulletin A320–27A1186, Revision 06, dated December 14, 2010.

(2) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before October 21, 2011 (the effective date of AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011)), using Airbus Service Bulletin A320–27A1186, Revision 06, dated December 14, 2010.

(p) New Parts Installation Prohibition

(1) As of the effective date of this AD, no person may install on any airplane an elevator servo-control having P/N 31075–0xx, 31075–1xx, or 31075–3xx.

(2) No person may install on any airplane an elevator servo-control having P/N 31075–2xx or P/N 31075–4xx, or an elevator servo-control rod eye-end having P/N 341203 or P/N 341203–XXX, as required by paragraphs (p)(2)(i) and (p)(2)(ii) of this AD, as applicable.

(i) For airplanes that do not have Airbus Modification 154554 embodied in production: After optional modification of the airplane as specified in paragraph (m) of this AD.

(ii) For airplanes on which Airbus Modification 154554 has been embodied in production: As of the effective date of this AD.

(q) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously for AD 2011–19–04, Amendment 39–16809 (76 FR 57630, September 16, 2011), are approved as AMOCs for the corresponding provisions of this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(r) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0137, dated May 28, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0753.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 13, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–25023 Filed 10–20–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2014–C–1616]

EMD Millipore Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by EMD Millipore Corp., proposing that the color additive regulations be amended to expand the safe use of mica-based pearlescent pigments in alcoholic beverages to include cordials, liqueurs, cocktails, and certain other alcoholic beverages, and non-alcoholic mixers and mixes.

DATES: The color additive petition was filed on August 21, 2014.

FOR FURTHER INFORMATION CONTACT: Ellen Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1309.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 4C0299), submitted by EMD Millipore Corp., c/o Hyman, Phelps & McNamara, P.C., 700 13th Street NW., Suite 1200, Washington, DC 20005. The petition proposes to amend the color additive regulations in 21 CFR 73.350, *Mica-based pearlescent pigments,* to expand the safe use of mica-based pearlescent pigments in alcoholic beverages to include cordials, liqueurs, cocktails, and certain other alcoholic beverages, and non-alcoholic mixers and mixes.

We have determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 16, 2014.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2014–24962 Filed 10–20–14; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0711; FRL–9917–80–Region 9]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the applicable state implementation plan for the State of Nevada submitted by the Nevada Division of Environmental Protection. The revisions include amended State rules related to applications for, and issuance of, permits for stationary sources, but not including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. EPA is taking action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect of the proposed approval is to fix deficiencies in the previously-approved version of the permitting rules and to ensure that new or modified stationary sources do not interfere with attainment or maintenance of the national ambient air quality standards.

DATES: Any comments must arrive by November 20, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0711, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: R9airpermits@epa.gov.*
3. *Mail or deliver:* Laura Yannayon (AIR–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, 75 Hawthorne Street (AIR–3), San Francisco, CA 94105, phone number (415) 972–3534 or by email at *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses revisions to the Nevada State Implementation Plan (SIP) that were submitted by the Nevada Division of Environmental Protection (NDEP) on January 3, 2014 and June 5, 2014. The revisions include the following amended rules that relate to the State of Nevada's minor source NSR program:

TABLE 1—NSR RULES SUBMITTED BY NDEP

Submitted rule	Title	Amended date	Submittal date
NAC 445B.22097	Standards of quality for ambient air	05/02/14	06/05/14
NAC 445B.308	Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan.	12/04/13	01/03/14
NAC 445B.311	Environmental evaluation: Contents; consideration of good engineering practice stack height.	05/02/14	06/05/14

In the Rules and Regulations section of this **Federal Register**, we are approving the amended NSR rules listed above as revisions to the Nevada SIP in a direct final action without prior proposal because we believe the SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 29, 2014.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2014–24468 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0688; FRL–9918–09–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Control of Emissions From Hand-Fired Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri on May 8, 2012, related to a Missouri rule titled ''Control of Emissions from Hand-Fired Equipment.'' This SIP revision provides a rule to allow the burning of discarded clean wood in non-residential (commercial owned and operated) heating devices, with restrictions to ensure environmentally-sound operation, in the St. Louis metropolitan area.

DATES: Comments on this proposed action must be received in writing by November 20, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0688, by mail to Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7041, or by email at *gonzalez.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse

comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Dated: September 24, 2014.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2014–24864 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R07–OAR–2014–0300; FRL 9918–14–Region 7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of approving the 2008, 2009, 2011, 2012, and 2013 updates to the Linn County Air Quality Ordinance. EPA is proposing approval of Iowa's request to include revisions to the Linn County Air Quality Ordinance, Chapter 10, because the revisions improve the stringency of the Iowa SIP.

DATES: Comments on this proposed action must be received in writing by November 20, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0300, by mail to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7942, or by email at *algoe-eakin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2014.

Rebecca Weber,

Acting Regional Administrator, Region 7.

[FR Doc. 2014–24858 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0685; FRL–9918–12–Region 7]

Revision to the Nebraska State Implementation Plan (SIP) Infrastructure Requirements for 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Nebraska to address the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) and the inclusion into the SIP, of Nebraska's conflict of interest provisions. Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated or revised by the EPA. On October 18, 2011, the Nebraska Department of Environemtal Quality (NDEQ) submitted a revision to Nebraska's SIP which describes the State's provisions for implementing, maintaining, and enforcing the standards listed above. In addition, NDEQ submitted on March 11, 2014, a request to include conflict of interest provisions into the Nebraska SIP. These revisions are necessary to properly implement, maintain and enforce the 2008 Pb NAAQS and also recognizes the state's request to include Nebraska's conflict of interest provisions into the SIP.

DATES: Comments on this proposed action must be received in writing by November 20, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0685, by mail to Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Greg Crable, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7391, or by email at *crable.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Dated: September 30, 2014.

Rebecca Weber,

Acting Regional Administrator, Region 7.

[FR Doc. 2014–24895 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0687; FRL–9918–16–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri, Restriction of Emissions of Particulate Matter From Industrial Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two revisions to the State Implementation Plan (SIP) submitted by the State of Missouri on May 8, 2012 and October 17, 2013, related to a Missouri rule titled ''Restriction of Emissions of Particulate Matter from Industrial Processes.'' These SIP revisions are administrative and provide the following: Updates an outdated reference in the current SIP approved rule; provides a hierarchy of compliance measurement approaches requested by EPA; provides a clarification on applicability; and, deletes redundant definitions.

DATES: Comments on this proposed action must be received in writing by November 20, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0687, by mail to Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Larry Gonzalez, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7041, or by email at *gonzalez.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

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

Dated: September 24, 2014.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2014–24761 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 14–125]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Waiver of iTRS Mandatory Minimum Standards

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission issues a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on amending the definition of Telecommunications Relay Services (TRS) in the Commission's rules to conform to changes made to this definition by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which allows compensation for TRS calls between two or more individuals with disabilities. The Commission also seeks comment on eliminating as a mandatory minimum standard the requirement that TRS providers provide voice-carry-over to voice-carry-over (VCO-to-VCO) and hearing-carry-over to hearing-carry-over (HCO-to-HCO), subject to exceptions for Captioned Telephone Service (CTS) and Internet Protocol Captioned Telephone Service (IP CTS), as HCO-to-HCO and VCO-to-VCO calls would not require a communications assistant (CA) to provide functionally equivalent communication. These proposals are made to ensure that the intent of Congress in enacting the CVAA is implemented and that the mandatory minimum standards imposed for TRS are applicable and appropriate for each type of TRS to which they are applied.

DATES: Comments are due on or before November 20, 2014, and reply comments on or before December 22, 2014.

ADDRESSES: You may submit comments, identified by CG Docket No. 03–123, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 03–123.

• *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving 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. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial Mail sent by 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.

▪ In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.*

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: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Waiver of iTRS Mandatory Minimum Standards,* Further Notice of Proposed Rulemaking (*FNPRM*), document FCC 14–125, adopted on August 20, 2014, and released on August 22, 2014, in CG Docket No. 03–123. In document FCC 14–125, the Commission also adopted an accompanying Report and Order and Order, which are summarized in a separate **Federal Register** Publication. The full text of document FCC 14–125 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document FCC 14–125 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/encyclopedia/disability-rights-office-headlines.* 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).

This proceeding 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 presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) of the Commission's rules 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.

Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 14–125 does not contain proposed information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

1. *Telecommunications Relay Services.* Title IV of the Americans with Disabilities Act of 1990 (ADA) requires the Commission to ensure that TRS is available to enable a person with a hearing or speech disability to communicate with other telephone users in a manner that is functionally equivalent to voice communications service to the extent possible and in the most efficient manner. In accordance with this directive, the Commission's rules contain functional requirements, operations procedures and mandatory minimum standards to ensure the provision of functionally equivalent relay service. *See* 47 CFR 64.604. Many of these standards were adopted in the 1990s, at a time when there was only one form of TRS transmitted over the public switched telephone network (PSTN)—TTY-to-voice relay service. A text telephone, or TTY, is a text device that employs graphic communication in the transmission of coded signals through a wire or radio communication system. In a TTY-to-voice relay call, a communications assistant (CA) relays the call between parties by converting everything that the text caller with a hearing or speech disability types into voice for the hearing party and typing everything that the voice user responds back to the person with a disability. From 2000 to 2007, in light of advancing communication technologies and Internet-based innovations, the Commission recognized other forms of TRS as eligible for compensation from the Interstate Telecommunications Relay Service Fund (TRS Fund or Fund), including three forms of Internet-based TRS (iTRS): Video Relay Service (VRS), Internet Protocol Relay Service (IP Relay), and Internet Protocol Captioned Telephone Service (IP CTS). Today iTRS account for more than 90%

of the total relay service minutes reimbursed from the Fund.

2. In this document, the Commission seeks comment on a proposed amendment to the definition of TRS contained in the Commission's rules, to conform to changes made to this definition in the CVAA, which allows compensation for TRS calls between two or more individuals with disabilities. The proposed amendment would allow such calls, including those whose handling may require more than one CA. The Commission's mandatory minimum standards are intended to ensure that the user experience when making TRS calls is comparable to a voice user's experience when making conventional telephone calls. The Commission also seeks comment on eliminating the mandatory minimum standard requiring TRS providers to provide HCO-to-HCO and VCO-to-VCO. With VCO, a deaf or hard of hearing person who is able to speak communicates by voice directly to the other party to the call without intervention by the CA, and the CA relays the other party's voice response as text or in sign language. *See generally* 47 CFR 64.601(a)(42) (defining VCO in the context of TTY-based relay service). With HCO, a person who has a speech disability, but who is able to hear, listens directly to the other party's voice without intervention by the CA, and in reply has the CA convert his or her typed or signed responses into voice *See generally* 47 CFR 64.601(a)(13) (defining HCO in the context of TTY-based relay service).

3. *Proposed amendment to the definition of TRS.* As originally drafted, section 225 of the Communications Act of 1934 (Act), defined TRS as a telecommunication service between a person with a hearing or speech disability and a ''hearing'' individual. This definition, adopted when there was only one type of relay service (TTY-to-voice), generally did not allow compensation for calls between and among two or more persons with a disability when no hearing person was a party to the call.

4. Section 103(a)(3) of the CVAA amended section 225 of the Act to make clear that TRS are intended to enable people who are deaf, hard of hearing, deaf-blind, or who have a speech disability to communicate by telephone (wire or radio) with any individual, removing the specification that such individual be hearing. Specifically, the new definition states:

> The term ''telecommunications relay services'' means telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

47 U.S.C. 225(a)(3).

5. Congressional guidance on the amended definition recognizes that there are many different forms of relay services and that there may be times when two or more individuals using different types of TRS may need to communicate with each other, even when a hearing person is not a party to the call. Specifically, the Senate and House Reports on the CVAA explain that in addition to defining TRS as the ability of a person who is deaf, hard of hearing, deaf-blind or has a speech disability to use TRS to communicate with hearing individuals, these services may be used where individuals with disabilities need to communicate with other relay users with disabilities, where necessary to achieve functionally equivalent communication. This will be the case, for example, when two or more individuals to a call each have disabilities, but use different types of relay services, depending on their communication needs. In order for communication between or among such individuals to be achieved, more than one type of relay service may be needed to complete the call.

6. In accordance with the CVAA and its legislative history, the Commission proposes to amend the definition of TRS in the Commission's rules at 47 CFR 64.601(a)(32) to conform to the definition adopted in the CVAA. Additionally, in accordance with the revised definition, the Commission tentatively concludes that the proposed new rule will allow compensation from the TRS Fund for relay calls involving two or more persons using different forms of relay services, including calls whose handling may require more than one CA. The Commission seeks comment on these proposals.

7. With the exception of CTS and IP CTS, the Commission emphasizes that the proposed changes, if adopted, will not permit compensation from the TRS Fund for relay calls involving two or more persons using the *same* type of relay service, which in effect would be a form of point-to-point communications. In other words, although multiple CA calls may be necessary to facilitate TRS communication between and among individuals using different forms of TRS, compensation is not appropriate for TRS calls in which a CA is not needed to relay service between users. The exceptions to this prohibition are calls between two CTS or two IP CTS users, or a CTS user to IP CTS user, because each CTS user currently must communicate through his or her own CA, who re-voices what the other party says to that user.

8. *HCO-to-HCO and VCO-to-VCO.* The Commission's rules currently require all TRS providers to provide VCO-to-VCO and HCO-to-HCO. The Commission believes that it should not have minimum standards mandating the provision of HCO-to-HCO and VCO-to-VCO calls by TRS providers. Specifically, under the Commission's rules, in order for two individuals to use VCO or HCO on the same call, both people to the call would have to be able to speak and hear what the other party is saying. This means that a CA would not be necessary to provide functionally equivalent communication during either type of call. The exceptions to this are when a CTS or IP CTS user calls another CTS or IP CTS user, which is essentially a way of completing an enhanced VCO-to-VCO call, and for which the use of multiple CAs has been permitted (though not mandated) by the Commission for compensation because of its specific function. Accordingly, the Commission proposes to amend § 64.604(a)(3)(v) of its rules to remove as a mandatory minimum standard the requirement that TRS providers provide VCO-to-VCO and HCO-to-HCO, subject to the exceptions for CTS and IP CTS. The Commission seeks comment on this proposal.

Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 14–125. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in document FCC 14–125. The Commission will send a copy of document FCC 14–125, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

10. In document FCC 14–125, the Commission initiates a further review relating to TRS in response to section 103(a)(3) of the CVAA, which amended the definition of TRS in section 225(a)(3) of the Act. The objective of this proceeding is to amend the Commission's rule defining TRS to conform to the statutory definition of TRS. The Commission also seeks

comment on whether, under the revised definition of TRS, providers may be compensated from the TRS Fund for communication among TRS users using multiple forms of TRS.

11. Document FCC 14–125 seeks comment on (1) whether the Commission should revise the definition of TRS found in § 64.601 of its rules to conform to the amended definition of TRS included in section 225 of the Act; (2) the compensability of calls between two or more individuals with disabilities using TRS, even when a hearing person is not on the call; (3) the compensability of TRS calls that require multiple CAs to provide functionally equivalent communication; and (4) whether the Commission should amend § 64.604(a)(3)(v) of the Commission's rules to remove the mandatory minimum standard requiring TRS providers to provide VCO-to-VCO and HCO-to-HCO.

12. *Legal Basis.* The authority for this proposed rulemaking is contained in sections 1, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 225.

13. 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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

14. *TRS Providers.* These services can be included within the broad economic categories of Wireless Telecommunications Carriers and All Other Telecommunications. Nine providers currently receive compensation from the TRS Fund for providing VRS, IP Relay, IP CTS and CTS: ASL Services Holdings, LLC (ASL Services) (VRS); AT&T Inc. (AT&T) (CTS); CSDVRS, LLC (CSDVRS) (VRS); Convo Communications, LLC (Convo) (VRS); Hamilton Relay, Inc. (Hamilton) (IP CTS and CTS); Hancock, Jahn, Lee and Puckett, LLC d/b/a ''Communications Axess Ability Group'' (CAAG) (VRS); Kansas Relay Service, Inc. (Kansas Relay) (CTS); Purple Communications, Inc. (Purple) (VRS, IP Relay and IP CTS); Sorenson Communications, Inc. (Sorenson) (VRS and IP CTS); and Sprint Corporation (Sprint) (IP Relay, IP CTS and CTS).

15. *Wireless Telecommunications Carriers.* Wireless Telecommunications Carriers is defined as follows: ''This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.'' In analyzing whether a substantial number of small entities would be affected by the requirements proposed in document FCC 14–125, the Commission notes that the SBA has developed the small business size standard for Wireless Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. TRS providers AT&T and Sprint can be included within the broad economic census category of Wireless Telecommunications Carriers. Under this category and the associated small business size standard, AT&T and Sprint cannot be considered small.

16. *All Other Telecommunications.* All Other Telecommunications is defined as follows: ''This U.S. industry comprises establishments primarily engaged in providing specialized telecommunications services . . . . Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' In analyzing whether a substantial number of small entities would be affected by the requirements proposed in document FCC 14–125, the Commission notes that the SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with gross annual receipts of $30 million or less. TRS providers ASL Services, CSDVRS, Convo, Hamilton, CAAG, Kansas Relay, Purple, and Sorenson can be included within the broad economic census category of All Other Telecommunications. Under this category and the associated small business size standard, approximately half of these eight providers can be considered small.

17. Certain rule changes proposed in document FCC 14–125, if adopted by the Commission, would modify rules or add requirements governing reporting, recordkeeping, and other compliance obligations.

18. If the Commission were to revise the definition of TRS found in § 64.601 of its rules to conform to the amended definition of TRS included in section 225 of the Act, such a rule may impose new compliance obligations on TRS providers. If the Commission were to conclude that the revised definition of TRS allowed for compensation from the TRS Fund of calls between two or more individuals with disabilities using TRS, even when a hearing person is not on the call and even when TRS calls require multiple CAs to provide functionally equivalent communication, the Commission notes that all providers potentially affected by the proposed rules, including those deemed to be small entities under the SBA's standard, would benefit because they would be eligible for compensation for additional types of TRS calls. If the Commission were to revise § 64.604(a)(3)(v) of its rules to remove the mandatory minimum standard requiring TRS providers to provide VCO-to-VCO and HCO-to-HCO, the Commission notes that all providers potentially affected by the proposed rule, including those deemed to be small entities under the SBA's standard, would benefit because they would no longer be required to provide VCO-to-VCO and HCO-to-HCO.

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

20. If the Commission were to revise the definition of TRS found in § 64.601 of its rules to conform to the amended definition of TRS included in section 225 of the Act and conclude that the revised definition of TRS allowed for compensation from the TRS Fund of calls between two or more individuals with disabilities using TRS, even when a hearing person is not on the call and even when TRS calls require multiple CAs to provide functionally equivalent communication, such regulations may impose new compliance obligations on TRS providers. However, allowing providers to be compensated for additional types of TRS calls may benefit certain small entities by increasing the types of TRS calls for which they may seek compensation. In determining whether to revise the

definition of TRS in § 64.601 of the Commission's rules and the compensability of additional types of calls, the Commission will consider the costs and benefits of such a revision while keeping in mind the statutory requirements. Additionally, if the Commission were to amend § 64.604(a)(3)(v) of its rules to remove the mandatory minimum standard requiring TRS providers to provide VCO-to-VCO and HCO-to-HCO, such regulations would remove current compliance obligations and would not impose new compliance obligations on TRS providers.

21. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.* None.

Ordering Clauses

Pursuant to sections 1, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 225, document FCC 14–125 *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 14–125 including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.601 by revising paragraph (a)(32) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(32) *Telecommunications relay services (TRS).* Telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.

* * * * *

■ 3. Amend § 64.604 by revising paragraph (a)(3)(v) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) * * *

(3) * * *

(v) TRS providers are required to provide the following types of TRS calls:

(A) Text-to-voice and voice-to-text;

(B) One-line VCO, two-line VCO, and VCO-to-TTY; and

(C) One-line HCO, two-line HCO, and HCO-to-TTY. VRS providers are not required to provide text-to-voice and voice-to-text functionality. IP Relay providers are not required to provide one-line VCO and one-line HCO. IP Relay providers and VRS providers are not required to provide VCO-to-TTY and HCO-to-TTY. Captioned telephone service providers and IP CTS providers are not required to provide:

(*1*) Text-to-voice functionality; and

(*2*) One-line HCO, two-line HCO, and HCO-to-TTY. IP CTS providers are not required to provide one-line VCO.

* * * * *

[FR Doc. 2014–24533 Filed 10–20–14; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 79, No. 203

Tuesday, October 21, 2014

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 COMMERCE

Performance Review Board Membership

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board (PRB) in accordance with the Economics and Statistics Administration's Senior Executive Service and Senior Professional Performance Management Systems:

Kenneth A. Arnold
Lisa M. Blumerman
William G. Bostic, Jr.
Stephen B. Burke
Joanne Buenzli Crane
Austin J. Durrer
William W. Hatcher
Susan R. Helper
Ron S. Jarmin
Enrique Lamas
Brian E. McGrath
Brent R. Moulton
Brian C. Moyer
Carol E. Moylan
Joel D. Platt
Nancy A. Potok
Jeannie L. Shiffer
Sarahelen Thompson
Katherine K. Wallman

The term of each PRB member will expire on December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Latasha Ellis, 301–763–3727

Dated: October 8, 2014.

Kenneth A. Arnold,

Deputy Under Secretary for Economic Affairs, Chair, Performance Review Board.

[FR Doc. 2014–24932 Filed 10–20–14; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–73–2014]

Foreign-Trade Zone 71—Windsor Locks, Connecticut; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Economic and Industrial Development Commission of Windsor Locks, grantee of FTZ 71, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on October 15, 2014.

FTZ 71 was approved by the FTZ Board on July 8, 1981 (Board Order 177, 46 FR 36220, 7/14/81) and expanded on February 29, 2012 (Board Order 1818, 77 FR 15356–15357, 3/15/12). The current zone includes the following sites: *Site 1* (17.5 acres), Crown Industrial Park, 399 Turnpike Road, Windsor Locks; and, *Site 2* (390 acres), New England Tradeport Business Park, intersection of Route 20 and International Drive, East Granby/Windsor Locks.

The grantee's proposed service area under the ASF would be the Counties of Hartford, Middlesex, Windham, Tolland and Litchfield, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Hartford Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No subzones/usage-driven sites are being requested at this time.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is December 22, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 5, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: October 15, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–25000 Filed 10–20–14; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Groundfish Trawl Economic Data Collection

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 December 22, 2014.

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 *J.Jessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Erin Steiner, (206) 860–3202 or *erin.steiner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. This information collection is needed in order to meet the monitoring requirements of the Magnuson-Stevens Act (MSA). In particular, the Northwest Fisheries Science Center (NWFSC) needs economic data on all harvesters, first receivers, shorebased processors, catcher processors, and motherships participating in the West Coast groundfish trawl fishery.

The currently approved collection covers collection of data for the 2011, 2012, and 2013 operating years. The renewed approval will cover years 2014–2016. Data will be collected from all catcher vessels registered to a limited entry trawl endorsed permit, catcher processors registered to catcher processor permits, and motherships registered to mothership permits, first receivers, and shorebased processors that received round or head-and-gutted IFQ groundfish or whiting from a first receiver to provide the necessary information for analyzing the effects of the West Coast Groundfish Trawl Catch Share Program.

As stated in 50 CFR 660.114, the EDC forms due on September 1, 2015 will provide data for the 2014 operating year.

II. Method of Collection

Forms may be submitted via mail or electronically.

III. Data

OMB Control Number: 0648–0618.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 224.

Estimated Time per Response: 8 hours for catcher processors, catcher vessels, and motherships, 20 hours for first receivers and shorebased processors.

Estimated Total Annual Burden Hours: 2,548.

Estimated Total Annual Cost to Public: $0 in recordkeeping/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: October 16, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–24976 Filed 10–20–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD510

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide 2015 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2015 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog individual transferable quota (ITQ) allocation holders that they will be required to purchase their fishing year 2015 (January 1, 2015—December 31, 2015) cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, (978) 281–9165; fax (978) 281–9161.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.77(b) authorize the Regional Administrator of the Greater Atlantic Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the fishing year 2015 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to ITQ allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: October 16, 2014.

Alan D. Risenhoover,

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

[FR Doc. 2014–24960 Filed 10–20–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Applications for Trademark Registration

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the extension of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 22, 2014.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0009 comment'' in the subject line of the message.
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United

States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

• *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8946; or by email to *Catherine.Cain@uspto.gov* with ''Paperwork'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.,* which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application with the USPTO to register their marks. Registered marks remain on the register indefinitely, so long as the owner of the registration files the necessary maintenance documents.The rules implementing the Trademark Act are set forth in 37 CFR part 2.

The Act and rules mandate that each certificate of registration include the mark, the particular goods and/or services for which the mark is registered, the owner's name, dates of use of the mark in commerce, and certain other information. The USPTO also provides similar information to the public concerning pending applications. Individuals or businesses may determine the availability of a mark by accessing the register through the USPTO's Web site. Accessing and reviewing the USPTO's publicly available information may reduce the possibility of initiating use of a mark previously registered or adopted by another. Thus, the Federal trademark registration process reduces unnecessary litigation and its associated costs and burdens. The information in this collection is available to the public.

Trademarks can be registered on either the Principal or Supplemental Register. Registrations on the Principal Register confer all of the benefits of registration provided under the Trademark Act. Certain marks that are not eligible for registration on the Principal Register, but are capable of functioning as a trademark, may be registered on the Supplemental Register. Registrations on the Supplemental Register do not have all of the benefits of marks on the Principal Register. Registrations on the Supplemental Register cannot be transferred to the Principal Register, but owners of registrations on the Supplemental Register may apply for registration of their marks on the Principal Register.

The information in this collection can be submitted in paper format or electronically through the Trademark Electronic Application System (TEAS). Applicants that file applications using the TEAS RF or TEAS Plus forms pay a reduced filing fee if they agree to file certain communications regarding the application through TEAS and to receive communications concerning the application by email. TEAS Plus applicants are also subject to the additional requirement to file a complete application. TEAS Plus applications are only available for trademark/service mark applications. There are no TEAS Plus application forms available for the certification marks, collective marks, collective membership marks, and applications for registration on the Supplemental Register at this time.

II. Method of Collection

Electronically if applicants submit the information using the TEAS forms. By mail or hand delivery if applicants choose to submit the information in paper form.

III. Data

OMB Number: 0651–0009.

Form Number(s): PTO Forms 1478, 1480, 1481, 1482.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 387,981 responses per year.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 23 minutes (0.38 hours) to 30 minutes (0.50 hours) to complete this information, depending on the application. This includes the time to gather the necessary information, prepare the application, and submit the completed request to the USPTO. The time estimates shown for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

Estimated Total Annual Respondent Burden Hours: 149,108.0 hours.

Estimated Total Annual Respondent Cost Burden: $52,589,960.30. The USPTO expects that associate attorneys will complete these applications. The professional hourly rate for attorneys in private firms is $389. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $52,589,960.30 per year.

	Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
1	Use-Based Trademark/Service Mark Application (Paper)	30	1,248	624
2	TEAS Use-Based Trademark/Service Mark Application	25	33,734	14055.83
3	TEAS RF Use-Based Trademark/Service Mark Application	25	48,658	20,274.17
4	TEAS Plus Use-Based Trademark/Service Mark Application	30	67,241	33,620.5
5	Intent to Use Trademark/Service Mark Application (Paper)	23	1,748	670.07
6	TEAS Intent to Use Trademark/Service Mark Application	18	47,228	14,168.4
7	TEAS RF Intent to Use Trademark/Service Mark Application	18	68,122	20,436.6
8	TEAS Plus Intent to Use Trademark/Service Mark Application	23	94,137	36,085.85
9	Application for Registration of Trademark/Service Mark under § 44 (d) and (e)(Paper).	25	214	89.17
10	TEAS Application for Registration of Trademark/Service Mark under § 44 (d) and (e)	19	5,783	1,831.28
11	TEAS RF Application for Registration of Trademark/Service Mark under § 44 (d) and (e).	19	8,341	2,641.32
12	TEAS Plus Application for Registration of Trademark/Service Mark under § 44 (d) and (e).	24	11,527	4,610.8

	Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Totals	.....	.....	387,981	149,108.0

Estimated Total Annual (Non-hour) Respondent Cost Burden: $103,000,866.50. There are no capital start-up, maintenance, or operating fees associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of postage costs, as well as filing and processing fees.

Applicants incur postage costs when submitting the non-electronic information to the USPTO by mail through the United States Postal Service. The USPTO estimates that the overwhelming majority (98%) of the paper forms are submitted to the USPTO via first class mail. Out of 3,210 paper forms, the USPTO estimates that 3,146 forms will be mailed, with a first class postage cost of $0.49 cents. Therefore, the USPTO estimates that the postage costs for this collection will be $1,541.54.

There is also annual (non-hour) cost burden in the way of filing fees associated with this collection. Applicants who choose to file their applications electronically instead of submitting them in paper pay a reduced filing fee. Those who choose to file TEAS RF or TEAS Plus applications pay a further reduced fee. An application must include a filing fee for each class of goods and services. Therefore, the total filing fees associated with this collection can vary depending on the number of classes in each application. The total filing fees of $102,707,775 shown here are based on the minimum fee of one class per application.

	Item	Responses (yr) (a)	Filing fee ($) (b)	Total non-hour cost burden (yr) (a) × (b)(c)
1	Use-Based Trademark/Service Mark Application (Paper)	1,248	$375.00	$468,000.00
2	TEAS Use-Based Trademark/Service Mark Application	33,734	325.00	10,963,550.00
3	TEAS RF Use-Based Trademark/Service Mark Application	48,658	275.00	13,380,950.00
4	TEAS Plus Use-Based Trademark/Service Mark Application	67,241	225.00	15,129,225.00
5	Intent to Use Trademark/Service Mark Application (Paper)	1,748	375.00	655,500.00
6	TEAS Intent to Use Trademark/Service Mark Application	47,228	325.00	15,349,100.00
7	TEAS RF Intent to Use Trademark/Service Mark Application	68,122	275.00	18,733,550.00
8	TEAS Plus Intent to Use Trademark/Service Mark Application	94,137	225.00	21,180,825.00
9	Application for Registration of Trademark/Service Mark under § 44 (d) and (e)(Paper).	214	375.00	80,250.00
10	TEAS Application for Registration of Trademark/Service Mark under § 44 (d) and (e)	5,783	325.00	1,879,475.00
11	TEAS RF Application for Registration of Trademark/Service Mark under § 44 (d) and (e).	8,341	275.00	2,293,775.00
12	TEAS Plus Application for Registration of Trademark/Service Mark under § 44 (d) and (e).	11,527	225.00	2,593,575.00
Total	.....	387,981	.....	102,707,775.00

In addition, the USPTO charges a processing fee of $50 to process applications that were originally filed as TEAS Plus or TEAS RF applications, but which failed to meet the additional filing and prosecution requirements in order to qualify for the reduced fee. The USPTO estimates that out of the 172,905 TEAS Plus use-based, intent to use, and § 44(d) and (e) applications filed, 3,383 will be subject to the processing fee, and that out of the 125,121 TEAS RF use-based, intent-to-use, and § 44(d) and (e) applications filed, 2,448 will be subject to the processing fee. A processing fee is charged for each class of goods and services in the application, so the total processing fee can vary depending on the number of classes. The total processing fees shown here are based on the minimum fee of one class per application. Therefore, the USPTO estimates that at a minimum, the processing fees will add $291,550 to the filing fees estimated above.

The USPTO estimates that the total non-hour cost burden associated with the filing and processing fees for this collection will be $103,000,866.50.

Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection, in the form of postage costs and filing and processing fees is $103,000,866.50 per year.

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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 15, 2014.

Marcie Lovett,

Records Management Division Director, USPTO, Office of the Chief Information Officer.

[FR Doc. 2014–24967 Filed 10–20–14; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Summer Teacher Institute

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 22, 2014.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0077 comment'' in the subject line of the message.
- *Mail:* Marcie Lovett, Director, Records Management Division, Office of Information Management Services, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Joyce Ward, Under Secretary of Commerce for Intellectual Property, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8424; or by email to *Joyce.Ward@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

As part of the Maker Fair Initiative, a program entitled ''National Teachers' Summer Institute'' is sponsored by USPTO. This program accepts applicants for a summer teaching workshop. The program receives applications from individuals, requesting to participate in the Institute, who certify that they are educators with at least 3 years' experience. These applicants are also required to: 1) Have taught in STEM related fields last year, 2) plan to teach in a STEM related field this upcoming year, and 3) to acknowledge their commitment to incorporate the learnings from the Teacher Summer Institute into their curriculum, where applicable, and cooperate with sharing lessons and outcomes with teachers and PTO. This information would come in the form of both applications and surveys.

The USPTO seeks to get committed educators in science fields to learn about innovative strategies to help increase student learning and achievement in these fields and elements of invention and IP. This institute will showcase a collaborative project of the USPTO and the National Science Foundation including an 11 part video series produced by NBC learn with specifically designed lesson plans. The agenda would include scientists, inventors, and fields trips (i.e., to NASA) as well as networking. The USPTO may host various webinars in conjunction with the Summer Institute. USPTO plans to conduct surveys of both the Institute and the webinars in order to gain useful feedback from program participants.

II. Method of Collection

Applications and corresponding surveys will be submitted electronically through the *www.uspto.gov/education* Web site.

III. Data

OMB Number: 0651–0077.

Form Number(s): NSTI 1–3.

Type of Review: New collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 900 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 5 to 30 minutes to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 291.67 hours.

Estimated Total Annual Respondent Cost Burden: $8,052.92. Respondent costs are estimated at one rate: $27.61 per hour: the median rate for secondary school teachers, (source: BLS Web site). The USPTO estimates that Application will require approximately 250 burden hours, the Participant Survey will require approximately 16.67 burden hours, and the Webinar Survey will require approximately 25 burden hours for a total yearly hourly burden of 291.67 hours. Accordingly, the total respondent cost burden for this collection will be $8,052.92.

Item	Time (minutes) (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) × (b)	Rate ($/hr) (d)	Total cost ($/hr) (e) (c) × (d)
Teacher's Summer Institute Application (NSTI 1)	30	500	250	$27.61	$6902.50
Teacher's Summer Institute Participant Survey (NSTI 2)	10	100	16.67	27.61	460.17
Teacher's Summer Institute Webinar Survey (NSTI 3)	5	300	25	27.61	690.25
Total		900	291.67		8052.92

Estimated Total Annual Non-hour Respondent Cost Burden: $0. There are no capital start-up, maintenance, postage, or recordkeeping costs. All applications and surveys will be received electronically.

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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Marcie Lovett,

Director, Records Management Division, Office of Information Management Services, United States Patent and Trademark Office.

[FR Doc. 2014–24965 Filed 10–20–14; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0207]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 20, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION: *Title, Associated Form and OMB Number:* Defense Acquisition University, Student Information System (SIS); OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 7,600.

Responses Per Respondent: 1.

Annual Responses: 7,600.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 633.

Needs and Uses: The information collection requirement is necessary to permit an individual to register for a DAU training course. The information is used to evaluate the individual's eligibility for a course and to notify the individual of approval or disapproval of the request. It is also used to notify the training facility of assignments to classes, for training schedule analysis and forecasts, cost analysis, budget estimates, and financial planning.

Affected Public: Individuals and Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: October 16, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–24959 Filed 10–20–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0144]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 20, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Defense Materiel Disposition Procedures for the Sale of DoD Materiel Sale of Government Property; Sale of Government Property Item Bid Page (SF 114); Statement of Intent (DRMS 1645); Pre-Award Review (DRMS 2006); OMB Control Number 0704–XXXX.

Type of Request: Emergency: New Collection.

Sale of Government Property Item Bid Page (SF 114)

Number of Respondents: 45.

Responses per Respondent: 1.

Annual Responses: 45.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 33.75 hours.

Statement of Intent (DRMS 1645)

Number of Respondents: 72.

Responses per Respondent: 1.

Annual Responses: 72.

Average Burden per Response: 1.5 hours.

Annual Burden Hours: 108 hours.

Pre-Award Review (DRMS 2006)

Number of Respondents: 72.

Responses per Respondent: 1.

Annual Responses: 72.

Average Burden per Response: 1.25 hours.

Annual Burden Hours: 90 hours.

TOTALS

Number of Respondents: 189.

Responses per Respondent: 1.

Annual Responses: 189.

Average Burden per Response: 1.25 hours.

Annual Burden Hours: 232 hours.

Needs and Uses: The use of these forms is necessary to provide property disposition procedures during one of the largest periods of drawdown in recent history. As the war in Afghanistan comes to a close and the Department prepares for reductions in force structure, these procedures will guide the effective and efficient disposition of property to maximize stewardship of taxpayer-funded equipment. The information will be used to facilitate transfers of hazardous and dangerous property to parties outside DoD control. All individuals or businesses that are the attempting to purchase DoD property must submit a DRMS Form 1645 and have a SF114A. The information on the forms serves as a type of bid for DoD property and to ensure recipient's eligibility to conduct business with the government.

Affected Public: Individuals or Households; Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

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.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: October 15, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–24913 Filed 10–20–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0107]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Employment Certification for Public Service Loan Forgiveness

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 20, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0107 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ian Foss, 202–377–3681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Employment Certification for Public Service Loan Forgiveness.

OMB Control Number: 1845–0110.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 122,896.

Total Estimated Number of Annual Burden Hours: 61,448.

Abstract: This form serves as the means by which eligible borrowers in the William D. Ford Federal Direct Loan Program indicate eligible employment for the purpose of final forgiveness under the Public Service Loan Forgiveness Program. The Department and its Direct Loan Program servicers will use the information collected on the Employment Certification for Public Service Loan Forgiveness form to determine whether a borrower has worked for a qualified employer during the certification period and whether payments made against a borrower's outstanding Direct Loan balance were qualifying payments for the purpose of the Public Service Loan Forgiveness (PSLF) program.

Dated: October 15, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–24933 Filed 10–20–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for Grants Under the Student Support Services Program (1894–0001); Extension of Public Comment Period; Correction

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On September 29, 2014, the U.S. Department of Education published a 30-day comment period notice in the **Federal Register** (page 58338, Column 1) seeking public comment for an information collection entitled ''Application for Grants Under the Student Support Services Program (1894–0001), '' ED–2014–ICCD–0137, OMB# 1840–0017. The comment period for this information collection request has been extended to November 20, 2014 due to the public's inability to access the application at the beginning of the comment period. This correction is to include the revised application and we extend the public comment period to offer the opportunity to comment on the application.

The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: October 15, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–24934 Filed 10–20–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review and comment.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Procurement Collection, OMB Control Number 1910–4100. This information collection request covers information necessary to administer and manage DOE's procurement and acquisition programs.

DATES: Comments regarding this collection must be received on or before November 20, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building Room 10102, 735 17th Street NW., Washington, DC 20503.

If you wish access to the collection of information, without charge, contact the person listed below as soon as possible. Sharon Archer, Procurement Analyst, MA–61/L'Enfant Plaza Building, U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024, *Sharon.Archer@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Archer at the above address, or by telephone at (202) 287–1739.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* 1910–4100 (Renewal); (2) *Information Collection Request Title:* Procurement Information Collection; (3) *Type of Request: Renewal* (4) *Purpose:* Under 48 CFR Part 952 and Subpart 970.52, DOE must collect certain types of information from those seeking to do business with the Department or those awarded contracts by the Department. This information collection is necessary for the solicitation, award, administration, and closeout of DOE procurement contracts. (5) *Annual Estimated Number of Respondents:* 7,469; (6) *Annual Estimated Total Burden Hours:* 670,833; (7) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $52,995,807.

Statutory Authority: 42 U.S.C. 2201.

Issued in Washington, DC, on October 10, 2014.

Paul Bosco,

Director, Office of Acquisition and Project Management.

[FR Doc. 2014–24970 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 6, 2014; 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of September Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on October 15, 2014.

Amy Bodette,

Committee Management Officer.

[FR Doc. 2014–24984 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Request for Information (RFI) Re: Photovoltaic Module Recycling

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of request for information.

SUMMARY: The Department of Energy (DOE) today gives notice of a request for information regarding the possible technical areas of research in the area of photovoltaic module recycling. DOE intends to understand the current state of recycling technology and the areas of research that could lead to impactful recycling technologies to support the developing photovoltaic industry. The intent of this RFI is to generate discussion related to planning for the end of life of photovoltaic modules and to create a list of high impact research topics in photovoltaics recycling. Details regarding the RFI and instructions for submitting responses to the RFI can be found at the following

URL address: *https://eere-exchange.energy.gov/.*

DATES: Responses to this RFI must be received by November 14, 2014.

ADDRESSES: The RFI and instructions for submitting responses to the RFI can be found at the following URL address: *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be directed to—*pv-recycling-rfi@ee.doe.gov*.

Issued in Washington, on October 14, 2014.

Marie Mapes,

Program Manager, Solar Energy Technologies Office.

[FR Doc. 2014–24969 Filed 10–20–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–6–000]

PáTu Wind Farm, LLC (Complainants) v. Portland General Electric Company (Respondents); Notice of Complaint

October 14, 2014.

Take notice that on October 10, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824(e), 825(e), and 825(h), PáTu Wind Farm, LLC (PáTu), filed a formal complaint against Portland General Electric Company (PGE), alleging that PGE violated the Federal Power Act, the Commission's open access regulations, and PáTu's rights under the Public Utility Regulatory Policies Act of 1978 (PURPA) in provision of transmission services necessary to effectuate a dynamic scheduling import into PGE's balancing authority area (BAA), and by refusing to agree to accept deliveries on a 15-minute schedule, as more fully explained in the complaint.

PáTu certifies that copies of the complaint were served on the contacts for PGE as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 30, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–24974 Filed 10–20–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee, Members' and Board of Directors' Meetings

October 14, 2014.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC), SPP Members Committee and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at SPP's Corporate Center, 201 Worthen Drive, Little Rock, AR 72223.

SPP RE

October 27, 2014 (8:00 a.m.–12:00 p.m.)

SPP RSC

October 27, 2014 (1:00 p.m.–5:00 p.m.)

SPP Members/Board of Directors

October 28, 2014 (8:00 a.m.–3:00 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. EL05–19, *Southwestern Public Service Company*

Docket No. ER05–168, *Southwestern Public Service Company*

Docket No. ER06–274, *Southwestern Public Service Company*

Docket No. ER09–35, *Tallgrass Transmission, LLC*

Docket No. ER09–36, *Prairie Wind Transmission, LLC*

Docket No. ER09–548, *ITC Great Plains, LLC*

Docket No. EL11–34, *Midcontinent Independent System Operator, Inc.*

Docket No. ER11–4105, *Southwest Power Pool, Inc.*

Docket No. EL12–28, *Xcel Energy Services Inc., et al.*

Docket No. EL12–59, *Golden Spread Electric Cooperative, Inc.*

Docket No. EL12–60, *Southwest Power Pool, Inc., et al.*

Docket No. ER12–480, *Midcontinent Independent System Operator, Inc.*

Docket No. ER12–959, *Southwest Power Pool, Inc.*

Docket No. ER12–1179, *Southwest Power Pool, Inc.*

Docket No. ER12–1586, *Southwest Power Pool, Inc.*

Docket No. ER13–366, *Southwest Power Pool, Inc.*

Docket No. ER13–367, *Southwest Power Pool, Inc.*

Docket No. ER13–1173, *Southwest Power Pool, Inc.*

Docket No. ER13–1748, *Southwest Power Pool, Inc.*

Docket No. ER13–1864, *Southwest Power Pool, Inc.*

Docket No. EL14–21, *Southwest Power Pool, Inc.*

Docket No. EL14–30, *Midcontinent Independent System Operator, Inc.*

Docket No. EL14–49, *Southwest Power Pool, Inc.*

Docket No. EL14–65, *Southwest Power Pool, Inc.*

Docket No. EL14–85, *Southwest Power Pool, Inc.*

Docket No. EL14–93, *Kansas Corporation Commission* v. *Westar Energy, Inc.*

Docket No. ER14–781, *Southwest Power Pool, Inc.*

Docket No. ER14–1174, *Southwest Power Pool, Inc.*

Docket No. ER14–1653, *Southwest Power Pool, Inc.*

Docket No. ER14–1713, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1993, *Southwest Power Pool, Inc.*
Docket No. ER14–2022, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2081, *Southwest Power Pool, Inc.*
Docket No. ER14–2107, *Southwest Power Pool, Inc.*
Docket No. ER14–2363, *Southwestern Public Service Company*
Docket No. ER14–2399, *Southwest Power Pool, Inc.*
Docket No. ER14–2445, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2553, *Southwest Power Pool, Inc.*
Docket No. ER14–2555, *Southwest Power Pool, Inc.*
Docket No. ER14–2570, *Southwest Power Pool, Inc.*
Docket No. ER14–2684, *Southwest Power Pool, Inc.*
Docket No. ER14–2739, *Southwest Power Pool, Inc.*
Docket No. ER14–2753, *Southwest Power Pool, Inc.*
Docket No. ER14–2770, *Southwest Power Pool, Inc.*
Docket No. ER14–2849, *Southwest Power Pool, Inc.*
Docket No. ER14–2850, *Southwest Power Pool, Inc.*
Docket No. ER14–2851, *Southwest Power Pool, Inc.*
Docket No. ER14–2859, *Southwest Power Pool, Inc.*
Docket No. ER14–2870, *Southwest Power Pool, Inc.*
Docket No. ER14–2887, *Southwest Power Pool, Inc.*
Docket No. ER14–2891, *Southwest Power Pool, Inc.*
Docket No. ER14–2910, *Southwest Power Pool, Inc.*
Docket No. ER14–2921, *Southwestern Public Service Company*
Docket No. ER14–2922, *Southwestern Public Service Company*
Docket No. ER14–2923, *Southwestern Public Service Company*
Docket No. ER14–2927, *Southwest Power Pool, Inc.*
Docket No. ER15–10, *Southwest Power Pool, Inc.*
Docket No. ER15–20, *Southwest Power Pool, Inc.*
Docket No. ER15–45, *Southwest Power Pool, Inc.*
Docket No. ER15–47, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,
Secretary.

[FR Doc. 2014–24975 Filed 10–20–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Clean Air Act Advisory Committee; Notice of charter renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, the Clean Air Act Advisory Committee (CAAAC) is a necessary committee that is in the public interest. Accordingly, CAAAC will be renewed for an additional two-year period. The purpose of the CAAAC to provide advice and recommendations to the EPA Administrator on policy issues associated with implementation of the Clean Air Act. Inquiries may be directed to Jeneva Craig, CAAAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue NW., (Mail Code 6103A), Washington, DC 20460, or by email to *craig.jeneva@epa.gov.*

Dated: October 7, 2014.

Jeneva Craig,
Designated Federal Officer, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. 2014–25001 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9918–32–OA]

Notification of a Closed Teleconference of the Science Advisory Board's Scientific and Technological Achievement Awards Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office is announcing a teleconference of the SAB's Scientific and Technological Achievement Awards (STAA) Committee to discuss draft recommendations for the chartered SAB regarding the Agency's 2013 and 2014 STAA recipients. The STAA Committee teleconference will be closed to the public.

DATES: The STAA Committee teleconference date is Friday, November 7, 2014, from 1:00 p.m. to 4:00 p.m. (Eastern Time).

ADDRESSES: The SAB STAA Committee closed teleconference will take place via telephone only. General information about the SAB may be found on the SAB Web site at *http://www.epa.gov/sab.*

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Edward Hanlon, Designated Federal Officer, by telephone: (202) 564–2134 or email at *hanlon.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), the EPA has determined that the STAA Committee teleconference will be closed to the public. The purpose of the teleconference is for the SAB STAA Committee to continue discussion of draft recommendations for the chartered SAB regarding recipients of the Agency's 2013 and 2014 Scientific and Technological Achievement Awards.

The STAA Committee discussion will have two parts. The first part of the discussion will focus on review of additional agency recommendations for the 2013 awards. Although the chartered SAB reviewed the Agency's 2013 STAA nominations and provided advice regarding those nominations in January 2014 (for more information, see *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/2013%20STAA%20Review?OpenDocument*), the Agency later identified additional nominations for SAB review. The second part of the SAB STAA Committee discussion will allow the Committee to continue its review begun on July 28, 2014 (79 FR 38314) of the Agency's 2014 STAA nominations (for more information, see *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/2014%20STAA%20Review?OpenDocument*).

The STAA awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. I have determined that the STAA Committee teleconference will be closed to the public because it is concerned with recommending employees deserving of

awards. In making these draft recommendations, the SAB requires full and frank advice from the STAA Committee. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). Minutes of the STAA Committee teleconference will be kept and certified by the chair.

Dated: October 8, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–25002 Filed 10–20–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0207]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 22, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0207.

Title: Part 11—Emergency Alert System (EAS).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents and Responses: 3,569,028,080 respondents; 3,569,028 responses.

Estimated Time per Response: .0229776 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Voluntary response for business or other for-profit and not-for-respondents. Mandatory response for state, local or tribal government. Statutory authority for this information collection is contained in 47 U.S.C 154(i) and 606 of the Communications Act of 1934, as amended.

Total Annual Burden: 82,008 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission seeking and extension of this information collection in order to obtain the full three year approval from OMB. There are no changes in any of the reporting and/or recordkeeping requirements. There is no change to the Commission's previous burden estimated.

The Commission established a voluntary electronic method of complying with the reporting that EAS participants must complete as part of the national EAS test. This electronic submission system will impose a lesser burden on EAS test participants because they can input electronically (via a web-based interface) the same information into a confidential database that the Commission would use to monitor and assess the test. Test participants would submit the identifying data prior to the test date. On the day of the test, EAS participants would be able to input immediate test results. They would input the remaining data called for by our reporting rules within the 45 day period. Structuring an electronic reporting system in this fashion will allow the participants to populate the database with known information prior to the test, and thus be able to provide the Commission with actual test data, both close to real-time and within a reasonable period in a minimally burdensome fashion

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–24938 Filed 10–20–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0813]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to

further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 22, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0813.

Title: Section 20.18, Enhanced 911 Emergency Calling Services.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other-for-profit and State, local and tribal governments.

Number of Respondents and Responses: 999 Respondents; 2,580 Responses.

Estimated Time per Response: 0.5–1 hours.

Frequency of Response: One-time third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, and 403.

Total Annual Burden: 2,473 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The information collection entailed in a Public Safety Answering Point (PSAP) request is necessary to initiate E911 service, and serves as notice to the CMRS provider. The notification requirement on PSAPs will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. If the carrier challenges the validity of the request, the request will be deemed valid if the PSAP making the request provides the following information:

A. Cost Recovery. The PSAP must demonstrate that a mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements;

B. Necessary Equipment. The PSAP must provide evidence that it has ordered the equipment necessary to receive and utilize the E911 data elements; and

C. Necessary Facilities. The PSAP must demonstrate that it has made a timely request to the appropriate local exchange carrier for the necessary trunking and other facilities to enable E911 data to be transmitted to the PSAP.

In the alternative, the PSAP may demonstrate that a funding mechanism is in place, that it is E911 capable using a Non-Call Associated Signaling technology, and that it has made a timely request to the appropriate LEC for the necessary ALI database upgrade.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2014–24937 Filed 10–20–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology

Announcement of Requirements and Registration for ''Market R&D Pilot Challenge''

Authority: 15 U.S.C. 3719.

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

Award Approving Official: Dr. Karen DeSalvo, National Coordinator for Health Information Technology.

ACTION: Notice.

SUMMARY: Developers and innovators have many great ideas and products that could improve the U.S. health care system and make life better for patients and care providers. However, effecting actual change is extremely difficult due to the high barriers to entry in the health IT space. Once an innovative new product has been developed, it needs to be tested in real-life care settings. But providers can be hesitant to host this testing for a myriad of reasons—they may have had bad experiences in the past, be anxious about deploying new tools that may disrupt their workflows, or be wary of encountering more problems than the solution solves. Without this testing, it cannot be determined how well the product actually works, making it difficult for the developers to identify the changes that need to be made to the product to make it more effective. Furthermore, without evidence of the uses a product can provide it is that much harder to acquire the venture funding that can fuel further advancement and lead to successful entry in the marketplace.

The Market R&D Pilot Challenge is intended to help bridge this gap by bringing together health care organizations (''Hosts'') and innovative companies (''Innovators'') through pilot funding awards and facilitated matchmaking. The Challenge seeks to award pilot proposals in three different domains: Clinical environments (e.g., hospitals, ambulatory care, surgical centers), public health and community environments (community-based personnel such as public health departments, community health workers, mobile medical trucks, school- and jail-based clinics), and consumer health (e.g., self-insured employers, pharmacies, laboratories). Hosts and Innovators will submit joint pilot proposals, with the winners, as determined by an expert panel, proceeding to implement their pilots.

The Challenge's primary goals are to:

- Encourage early collaboration between entrepreneurs, medical and public health personnel, patients, and the research community to link innovation in health IT to innovation in care delivery;
- De-risk early stage health IT and digital health products for future clinical testing and investment;
- Encourage uptake of and ensure the market is aware of ONC standards and functions within certified electronic health record technologies; and
- Explore evidence collection methods and relevant metrics for early stage health IT products that may better match agile software development.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES:

Applicants:

- Challenge launch: October 20, 2014.
- Matchmaking events: Early December, 2014 to mid-January, 2015.
- Submissions due: March 2, 2015.
- Winners announced: April 30, 2015.

Winners:

- Pilot preparation and setup: May–July, 2015.

- Pilots begin: August, 2015.
- Pilots complete: January, 2015.

FOR FURTHER INFORMATION CONTACT: Adam Wong, *adam.wong@hhs.gov* (preferred), 202–720–2866.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The Market R&D Pilot Challenge will have up to six winners, preferably spread across each of the three Host domains: Clinical environments, public health and community environments, and consumer health.

The Challenge is a multi-step process that builds on ONC's previous prize challenges.

1. Learn About the Challenge

The challenge Web site will be the primary source for finding all information about the challenge, and will be updated regularly with the newest information. ONC will hold an informational Webinar to provide details about the program and answer questions; the Webinar will be recorded and made available for those who miss it.

2. Find a Match

The organizers will facilitate matchmaking to help Innovators and Hosts connect to discuss potential pilots through in-person and virtual events. Potential applicants are *not* required to participate in this process in order to submit a proposal. Interested Innovators and Hosts will submit an application form to be considered to participate in the facilitated matchmaking sessions. Hosts make the final selection about which Innovators they will meet with in person; Innovators will be officially notified of these meetings prior to the sessions. We encourage Innovators to reach out independently to health care service organizations and stakeholders for potential partnerships.

3. Submit Joint Proposal

A Host and an Innovator will apply as a pair by submitting a joint pilot proposal. Applications without a Host or Innovator co-applicant will not be accepted. A panel of expert judges will review proposals and select up to 6 winning proposals to each receive a $50,000 award. Winners will be announced on a Webinar where they'll present their pilot proposals.

In addition to a description and budget of the pilot, the joint proposal will require general information about the Host and Innovator; description and demo video of the Innovator's technology; and letters of intent from the Host and Innovator.

4. Winners: Prepare and Implement Pilot Project

Pilot planning and implementation support services will be provided over a series of Webinars. The selected winners will then implement and run their pilot projects over a period of 6–9 months.

5. Issue Deliverable and Promote Results

Upon completion of the pilot, the winners will be required to issue a deliverable that contributes to the public knowledge base, such as a white paper or open data set, or to open technology, such as an API or open source tool. Winners will also have the opportunity to present their pilot projects at a major health event or conference.

Applicants are strongly encouraged to address the following ONC priority areas:

- Standards/Data Formats
- Interoperability & Exchange
- Care Coordination/Transitions of Care
- Patient/PHR Portals
- Medication Management
- Blue Button
- Patient Generated Health Data
- Underserved Communities

Eligibility Rules for Participating in the Competition

Host Eligibility: The Host must be a health care organization operating in a clinical environment, (e.g., hospital, ambulatory care, surgical center), public health and community environment (community-based personnel such as public health department, community health worker, mobile medical truck, school- and jail-based clinic), or consumer health (e.g., self-insured employer, pharmacy, laboratory) and must meet the following eligibility criteria:

- Ability to allocate time and resources to plan and implement the pilot project
- Allocate one business-minded internal lead to shepherd project from the initial application through the pilot's implementation

Innovator Eligibility: The Innovator, an early-stage health care technology company, must have a readily available tech-based product focused on improving health care that can be tested in the Host setting and meet the following criteria:

- Demonstration of financial stability, managerial capacity, and scalability
- Maximum number of 50 employees
- Less than $10,000,000 in venture capital funding raised

To Be Eligible To Win a Prize Under This Challenge, an Individual or Entity

(1) Shall have registered to participate in the competition under the rules promulgated by the Office of the National Coordinator for Health Information Technology.

(2) Shall have complied with all the requirements under this section.

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

(5) Shall not be an HHS employee working on their applications or submissions during assigned duty hours.

(6) Shall not be an employee of the Office of the National Coordinator for Health IT.

(7) Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Entrants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

Entrants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Submission Requirements

In order for an Innovator's application to be eligible to win this Challenge, it must meet the following requirements:

1. *No HHS or ONC logo*—The product must not use HHS' or ONC's logos or

official seals and must not claim endorsement.

2. *Functionality/Accuracy*—A product may be disqualified if it fails to function as expressed in the description provided by the user, or if it provides inaccurate or incomplete information.

3. *Security*—Submissions must be free of malware. Contestant agrees that ONC may conduct testing on the product to determine whether malware or other security threats may be present. ONC may disqualify the product if, in ONC's judgment, the app may damage government or others' equipment or operating environment.

Registration Process for Participants

To register for this Challenge, participants can access *http://www.challenge.gov* and search for ''Market R&D Pilot Challenge.''

Prize

- Up to six Host/Innovator teams will each win $50,000 prizes (50% to be disbursed following award, 50% to be disbursed upon completion of pilot)
- *Total:* up to $300,000 in prizes

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

The review panel will make selections based upon the following criteria:

- Pilot proposal and design
- Pilot budget and scale
- Potential for health impact
- Relevance to ONC priorities
- Potential of Innovator's product
- Team experience and strength of match
- Proposed public deliverable

Additional Information

General Conditions: ONC reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at ONC's sole discretion.

Intellectual Property: Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement. By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty-free, worldwide license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Dated: October 9, 2014.

Dr. Karen DeSalvo,

National Coordinator for Health Information Technology.

[FR Doc. 2014–24918 Filed 10–20–14; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention—Health Disparities Subcommittee (HDS); Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Times and Dates

1:30 p.m.–5:00 p.m. EST, November 12, 2014.

9:00 a.m.–3:00 p.m. EST, November 13, 2014.

Place: CDC, Building 19, Distance Learning Auditorium, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. The public is welcome to participate during the public comment period, tentatively scheduled from 2:45 p.m. to 3:00 p.m. on November 13, 2014. This meeting is also available by teleconference. Please dial (866) 763–0273 and enter code 6158968.

Purpose: The Subcommittee will provide advice to the CDC Director through the ACD on strategic and other health disparities and health equity issues and provide guidance on opportunities for CDC.

Matters for Discussion: The Health Disparities Subcommittee members will discuss progress-to-date in accomplishing the health equity recommendations approved by the CDC ACD; updates on health disparities training for the public health workforce, and collaborations with the State, Tribal, Local, and Territorial Subcommittee to the ACD.

The agenda is subject to change as priorities dictate.

Web Links

Windows Media Connection

http://wm.onlinevideoservice.com/CDC1.

Flash Connection

http://www.onlinevideoservice.com/clients/CDC/?mount=CDC3.

If you are unable to connect using the link, copy and paste the link into your web browser.

Number for Technical Support: (404) 639–3737.

Contact Person for More Information: Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, Health Disparities Subcommittee, ACD, CDC, 1600 Clifton Road NE., M/S K–77, Atlanta, Georgia 30333, Telephone (770) 488–8343, Email: *LEL1@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–24936 Filed 10–20–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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: Environmental Health Sciences Review Committee.

Date: November 12–13, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health

Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 15, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–24911 Filed 10–20–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14X.LLAZA03000.L17110000.DF0000.241A]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Uinkaret Mountains Landscape Restoration Project, Arizona Strip, Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Grand Canyon-Parashant National Monument and Arizona Strip Field Office, St. George, Utah, intend to prepare an Environmental Impact Statement (EIS) for the Uinkaret Mountains Landscape Restoration Project and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until November 20, 2014. Two public open-house meetings will be held—one in St. George, Utah, and one in Mesquite, Nevada. The dates and locations of these meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web sites at: *http://www.blm.gov/az/st/en/fo/grand_canyon-parashant.html,* and *http://www.blm.gov/az/st/en/fo/arizona_strip_field.html.* In order to be considered during preparation of the Draft EIS, all comments must be received prior to the close of the 30 day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues related to the proposed Uinkaret Mountains Landscape Restoration Project by any of the following methods:

- *Email: blm_az_uinkaret_eis@blm.gov.*
- *Fax:* 435–688–3258.
- *Mail:* 345 East Riverside Drive, St. George, UT 84790.
- *In person:* At either open-house meeting.

Documents pertinent to this proposal may be examined at the Grand Canyon-Parashant National Monument and Arizona Strip Field offices.

FOR FURTHER INFORMATION CONTACT: Richard Spotts, Planning and Environmental Coordinator; telephone 435–688–3207; address 345 East Riverside Drive, St. George, UT 84790; email: *blm_az_uinkaret_eis@blm.gov.* 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. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is proposing to conduct the Uinkaret Mountains Landscape Restoration Project located on public lands administered by the Grand Canyon-Parashant National Monument and Arizona Strip Field Office in Mohave County, Arizona. The project area encompasses approximately 128,535 acres. Individual areas ranging from several acres to several thousand acres would be treated using a variety of methods including manual, mechanical, chemical, management of wildfires, use of prescribed fire, and seeding depending on the resource management goals and desired outcomes for the specific treatment area. Grand Canyon-Parashant National Monument and the Arizona Strip Field Office completed interdisciplinary land health evaluations of existing resource conditions throughout the project area. These evaluations identified areas where one or more of the Standards for Rangeland Health were not being met. The information from these land health evaluations will be used in development of the Uinkaret Mountains Landscape Restoration Project. The project will be conducted in conformance with the Grand Canyon-Parashant National Monument and Arizona Strip Field Office Resource Management Plans and Records of Decision approved January 29, 2008.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

- Excessive fuel loadings, including closed-canopy stands and ladder fuels, are contributing to the risk of large high-intensity wildfires, and posing a threat to resources including wildlife habitat, species diversity, wildland urban interface areas, and the ponderosa pine ecosystem in the Mt. Trumbull area which is identified as a biologic resource of scientific interest to be protected in the Monument proclamation.
- Past management practices, such as timber harvest, livestock grazing, and fire suppression have affected vegetation communities; this has altered species composition, structure and function in many portions of the project area including within designated wilderness.
- Pinyon and juniper species are encroaching or expanding into the sagebrush and ponderosa pine communities causing a decline in species diversity, hydrologic function, and a decrease in the quality of important wildlife habitat, as well as habitat fragmentation.
- Accelerated soil erosion in parts of the project area is decreasing nutrient cycling and soil productivity.
- Habitat conditions have declined in areas with sagebrush monoculture and continuous closed canopy stands, resulting in a lack of species diversity and accelerated soil erosion.

The BLM anticipates that potential direct and indirect impacts of the project will be mitigated to an acceptable level onsite. The BLM will consider and analyze potential regional mitigation actions through the NEPA process.

The BLM will use NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed Uinkaret Mountains Landscape Restoration Project will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to

cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Uinkaret Mountains Landscape Restoration Project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

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.

Authority: 40 CFR 1501.7.

Timothy J. Burke,

District Manager, Arizona Strip District.

[FR Doc. 2014–24986 Filed 10–20–14; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X.LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat, in three sheets, representing the survey of a portion of the Ninth Standard Parallel North (south boundary), a portion of the Second Guide Meridian East (west boundary), the east and north boundaries, the subdivisional lines and the subdivision of certain sections, Township 37 North, Range 9 East, accepted June 11, 2014, and officially filed June 13, 2014, for Group 1121, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the survey of a portion of the Second Guide Meridian East (west boundary), the north boundary, the subdivisional lines and the subdivision of certain sections, Township 38 North, Range 9 East, accepted June 11, 2014, and officially filed June 13, 2014, for Group 1122, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat, in two sheets, representing the survey of a portion of the Tenth Standard Parallel North through Township 41 North, Range 10 East (north boundary), the east boundary, the subdivisional lines, the subdivision of certain sections and the segregation of the Glen Canyon National Recreation Area, Township 40 North, Range 10 East, accepted May 14, 2014, and officially filed May 15, 2014, for Group 1118, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat, in two sheets, representing the dependent resurvey of a portion of the Fifth Standard Parallel North (south boundary) and the west boundary, the survey of the east boundary, the subdivisional lines and the metes-and-bounds survey, Township 21 North, Range 12 East, accepted August 7, 2014, and officially filed August 11, 2014, for Group 1129, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the Hopi—Navajo Partition Line, Segment ''D'', and the survey of the Third Guide Meridian East (west boundary), the east and north boundaries, the subdivisional lines and the subdivision of certain sections, Township 34 North, Range 13 East, accepted September 12, 2014, and officially filed September 16, 2014, for Group 1125, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the east boundary of the White Mountain Apache Indian Reservation, from milepost 3 1/2 to milepost 9, partially surveyed Township 5 North, Range 27 East, accepted June 17, 2014, and officially filed June 19, 2014, for Group 1108, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 17 and 20, Township 7 North, Range 27 East, accepted July 30, 2014, and officially filed July 30, 2014, for Group 1108, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the east boundary of the White Mountain Apache Indian Reservation, unsurveyed Township 3 1/2 North, Range 28 East and unsurveyed Township 4 North, Range 27 1/2 East, accepted June 17, 2014, and officially filed June 19, 2014, for Group 1108, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 13, Township 6 North, Range 28 East, accepted July 30, 2014, and officially filed July 31, 2014, for Group 1108, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections, Township 7 North, Range 29 East, accepted July 28, 2014, and officially filed July 30, 2014, for Group 1108, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of Homestead Entry Survey Number 595, unsurveyed Township 4 North, Range 30 East, accepted July 28, 2014, and officially filed July 30, 2014, for Group 1108, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of Homestead Entry Survey Number 597, unsurveyed Township 4 North, Range 30 East, accepted July 28, 2014, and officially filed July 30, 2014, for Group 1108, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat, in two sheets, representing the dependent resurvey of the Yavapai-Prescott Indian Reservation (Whipple Barracks Military Addition) and the Yavapai Indian Reservation, Act of June 7, 1935, Public Law 117, 74th Congress, 49 Stat. 332, the metes-and-bounds survey of the Whipple Veterans Administration Reservation boundary, the survey of lots 7 and 8, block 6 of the Dameron Park Addition and the completion survey of the subdivisional lines within the Yavapai-Prescott Indian Reservation, Township 14 North, Range 2 West, accepted May 16, 2014, and officially filed May 19, 2014, for Group 1116, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 10 and the metes-and-bounds survey of a portion of the North Santa

Teresa Wilderness boundary within the northwest quarter of section 10, Township 6 South, Range 21 East, accepted July 8, 2014, and officially filed July 10, 2014, for Group 1132, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the survey of the subdivision of the southwest quarter of the northeast quarter of the southwest quarter of section 8, Township 7 South, Range 27 East, accepted July 8, 2014, and officially filed July 10, 2014, for Group 1119, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. 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. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Gerald T. Davis,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2014–24997 Filed 10–20–14; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Windshield Wipers and Components Thereof, DN 3036;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3]Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Valeo North America, Inc. and Delmex de Juarez S. de R.L. de C.V. on October 15, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain windshield wipers and components thereof. The complaint names as respondents Trico Products Corporation of Rochester Hills, MI; Trico Products of Brownsville, TX; and Trico Componentes SA de CV of Mexico. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3036'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 16, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–24972 Filed 10–20–14; 8:45 am]

BILLING CODE 7020–02–P

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 13–16]

Michael A. White, M.D.; Decision and Order

On April 16, 2014, Administrative Law Judge (ALJ) Gail A. Randall issued the attached Recommended Decision (R.D.).[1] Respondent filed Exceptions to the Recommended Decision. Having reviewed the entire record including Respondent's Exceptions, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended sanction except as explained below.[2] A discussion of Respondent's Exceptions follows.

Respondent's Exceptions

In his Exceptions, Respondent raises five different contentions. Notably, however, Respondent does not challenge any of the ALJ's factual findings (including her findings that were based on the testimony of the Government's Expert) regarding his prescribing of phentermine to the sixteen patients at issue in this proceeding. *See generally* Exceptions, at 1–4. Nor does he challenge the ALJ's legal conclusion ''that Respondent failed to establish a bona-fide doctor-patient relationship before prescribing [p]hentermine to the sixteen patients at issue here, thus violating 21 CFR 1306.04(a).'' R.D. at 33; *see also* Exceptions, at 1–4.

The ALJ also made extensive findings based on the results of a January 19, 2012 hearing conducted by the Mississippi State Board of Medical Licensure regarding Respondent's prescribing of phentermine to five other persons. GX 5. Following the hearing, at which Respondent was represented by counsel, the Board found him guilty of violating various provisions of both state law and the Board's rules.

More specifically, with respect to each of the five persons, the Board found that Respondent failed to obtain a thorough history or complete a thorough physical examination prior to initiating treatment utilizing a Schedule IV controlled substance.[3] *Id.* at 49 (citing Miss. Code Ann. § 73–25–29(13); 25 Miss. Code R. § 501(2)). The Board further found that Respondent had violated its rule prohibiting the continued prescribing of controlled substances classified as amphetamine like anorectics and/or central nervous system stimulants to a patient who had failed to lose weight after taking the controlled substances over a period of thirty days. *Id.* (citing Miss. Code Ann. § 73–25–29(13)).

Most significantly, with respect to each of the five patients at issue in the proceeding, the Board found Respondent ''guilty of dispensing drugs having addiction-forming or addiction-sustaining liability otherwise than in the course of legitimate professional practice.'' *Id.* at 16 (citing Miss. Code Ann. § 73–25–29(3)). This finding is equivalent to a finding that Respondent violated 21 CFR 1306.04(a), which requires that a controlled-substance prescription ''be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.''

Here again, Respondent did not challenge the ALJ's findings of fact and conclusions of law which were based on the Board's findings. Indeed, nowhere in his Exceptions does he dispute the ALJ's legal conclusions that he violated the Controlled Substance Act's prescription requirement with respect to some twenty-one patients.

Instead, he argues that the denial of his application is unwarranted because there is no evidence that any person he prescribed to has been injured or died as a result of his unlawful prescribing of controlled substances. Exceptions, at 1–2. The short answer to Respondent's contention is that proving injury is not an element of an allegation that a physician violated 21 CFR 1306.04(a). Rather, proof of such a violation is established by showing that in issuing the prescription, the physician acted outside of the usual course of professional practice and lacked a legitimate medical purpose, and such proof establishes that a physician knowingly or intentionally diverted a controlled substance.

Respondent also argues that the ALJ's findings and recommendation are erroneous because he was found not guilty in a criminal proceeding ''after the exact evidence was presented and the same witness testimony[ ] that was presented'' at the DEA hearing. Exceptions, at 2. Putting aside whether the exact same evidence was presented at both his criminal trial and the DEA proceeding (the latter appearing to include evidence of his misconduct in prescribing to far more patients than were at issue in the former), Respondent ignores that the State Board also found him guilty of dispensing controlled substances other than in the course of legitimate professional practice (*i.e.,* without a legitimate medical purpose). *See* GX 5, at 50.

As for his related argument that ''[t]he irony is overwhelming that the public who he could potentially harm did not buy the DEA's assertions while sitting in the jury box,'' Exceptions, at 2–3; Respondent ignores that because of the greater consequences that attach upon a criminal conviction, a higher standard of proof applies in a criminal trial than in an administrative proceeding. Indeed, given that Respondent does not challenge any of the ALJ's findings with respect to whether he violated the CSA's prescription requirement and diverted controlled substances, there is more than ample evidence to support the conclusion that he poses a potential danger to the public. *See Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who

[1] All citations to the Recommended Decision are to the slip opinion as issued by the ALJ.

[2] I decline to publish the ALJ's discussion of the substantial evidence standard. It suffices to say that in reviewing the factual findings of a recommended decision, this Agency adheres to the principles set forth in *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951).

[3] The Board also found that he had ''initiated treatment utilizing a Schedule IV controlled substance without having performed a review of the patient's prior medical and weight-loss program records to determine that the patient had made a substantial good-faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification and exercise, without the utilization of controlled substances, and that said treatment had been ineffective, all in violation of Miss. Code Ann. § 73–25–29(13).'' GX 5, at 49 (citing 25 Miss. Code R. § 501(1)).

crave the drugs for those prohibited uses'') (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)).

As further support for his contention that he ''poses no threat or risk'' to the public, Respondent points to the fact that the State Board has allowed him to continue to practice medicine.[4] Exceptions, at 3. Contrary to Respondent's understanding, the denial of his application for a DEA registration does not prevent him from practicing medicine. It only prevents him from dispensing controlled substances, a remedy which is more than warranted considering the extensiveness of his misconduct and his failure to accept responsibility for it. *See* R.D. at 37 (noting that Respondent's ''acceptance of responsibility was tenuous at best,'' that ''not once during the hearing did Respondent unequivocally admit fault for his improper [p]hentermine prescriptions,'' and that his ''purported admission of guilt was also undermined by his tendency to blame others and make excuses for his misconduct'').

As the Tenth Circuit has recognized:

> The DEA may properly consider whether a physician admits fault in determining if the physician's registration should be revoked. When faced with evidence that a doctor has a history of distributing controlled substances unlawfully, it is reasonable for the [Agency] to consider whether that doctor will change his or her behavior in the future. And that consideration is vital to whether continued registration is in the public interest.

MacKay v. *DEA,* 664 F.3d 808, 820 (10th Cir. 2011) (citing *Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005)); *see also Jayam Krishna-Iyer,* 74 FR 459, 462 (2009) (holding that even where the evidence shows that an applicant or registrant has committed only a few acts of intentional diversion, ''this Agency will not grant or continue the practitioner's registration unless he accepts responsibility for his misconduct'').

As for his contention that this proceeding ''is nothing more than a vindictive act by'' the Agency because he was acquitted in his criminal case, Exceptions at 3, here again, Respondent ignores that two separate bodies have found that he knowingly diverted controlled substances, and the ALJ's findings, which he does not challenge, establish that he diverted controlled substances to more than twenty patients. Because his misconduct is egregious and Respondent has failed to accept responsibility for it, I reject his exceptions and will adopt the ALJ's recommended order that I deny his application.[5]

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) and 0.104, I order that the application of Michael A. White, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This Order is effective immediately.

Dated: October 10, 2014.

Thomas M. Harrigan,

Deputy Administrator.

Michelle F. Gillice, Esq., and Frank W. Mann, Esq., *for the Government*

Rodney A. Ray, Esq., *for the Respondent*

RECOMMENDED RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE ADMINISTRATIVE LAW JUDGE

Gail A. Randal, Administrative Law Judge.

I. *INTRODUCTION*

This proceeding is an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.,* to determine whether the Drug Enforcement Administration (''DEA'' or ''Government'') should deny a physician's application for a DEA Certificate of Registration pursuant to 21 U.S.C. § 823(f) (2006). Without his registration, the physician, Michael A. White, M.D. (''Respondent'' or ''Dr. White''), would be unable to lawfully prescribe, dispense or otherwise handle controlled substances in the course of his medical practice.

II. *PROCEDURAL HISTORY*

The Deputy Assistant Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause (''OTSC'') dated July 2, 2013, proposing to deny the Respondent's application for a DEA Certificate of Registration, as a practitioner, pursuant to 21 U.S.C. §§ 824(a)(4) and 823(f) because the Respondent's registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f). [Administrative Law Judge Exhibit (''ALJ Exh.'') 1 at 1].

Specifically, the OTSC stated that according to a January 19, 2012 order (''Board Order'' or ''Order'') from the Mississippi State Board of Medical Licensure (''Board''), Respondent violated several state laws relating to controlled substances. [*Id.* at 2]. First, the OTSC alleged that, according to the Board Order, Respondent violated title 73, chapter 25, section 29(3) of the Mississippi Code by dispensing drugs having addiction-forming or addiction-sustaining liability outside of the course of legitimate professional practice. [*Id.*]. Second, the OTSC alleged that, according to the Board Order, Respondent violated Chapter 25, Section 501 of the Board's Rules and Regulations by prescribing a Schedule IV controlled substance without first reviewing the patient's records to determine if the patient had made a good-faith effort to lose weight using caloric restriction, nutritional counseling, behavior modification, and exercise. [*Id.*]. Third, the OTSC alleged that, according to the Board Order, Respondent violated Chapter 25, Section 501(2) of the Board's Rules and Regulations by prescribing a Schedule IV controlled substance without first obtaining a thorough history or completing a thorough physical examination of the patient. [*Id.*]. Fourth, the OTSC alleged that, according to the Board Order, Respondent violated Chapter 25, Section 501(5)(a) of the Board's Rules and Regulations by continuing to prescribe a Schedule IV controlled substance to patients who failed to lose weight over a thirty day period. [*Id.*]. Finally, the OTSC alleged that, according to the Board Order, Respondent's improper prescribing of a Schedule IV controlled substance constituted unprofessional conduct under Mississippi Code Ann. 73–24–83(a). Additionally, the Order alleged that Respondent failed to obey the Board Order's requirement that Respondent submit proof that he completed 40 hours of continuing medical education (''CME''). [*Id.* at 2–3]. The OTSC alleged that as a result of these violations, the Board suspended Respondent's medical license for six months and permanently prohibited Respondent from treating patients for

[4] While in exercising its sovereign power to regulate the medical profession within the State, the Mississippi Board may have chosen to allow Respondent to continue to practice medicine, this ''Agency has long held that 'the Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.' '' *David A. Ruben,* 78 FR 38363, 38379 n.35 (2013) (quoting *Mortimer Levin,* 57 FR 8680, 8681 (1992)).

[5] I have also considered his final contention, which takes issue with the ALJ's finding that Respondent took a ''hostile tone'' during the hearing and argues that this finding establishes that the ALJ was not impartial. R.D. at 38; Exceptions, at 3–4. He cites no authority for the contention that a trier of fact cannot consider a witness's tone in assessing his credibility, and because the ALJ was in the best position to observe Respondent's demeanor during the hearing, I reject the contention.

weight loss with controlled substances. [*Id.*at 2].

The OTSC further alleged that Respondent's issuing of prescriptions for Schedule IV controlled substances without a legitimate medical purpose and outside the usual course of business violated 21 C.F.R. § 1306.04(a). [*Id.*].

On July 31, 2013, the Respondent, through counsel, timely filed a request for a hearing. [ALJ Exh. 2].

The hearing in this case took place on January 29, 2014 in Oxford, Mississippi. [ALJ Exh. 7; Transcript (''Tr.'') 1]. Respondent and the Government were each represented by counsel. At the hearing, the Government introduced documentary evidence and called three witnesses and Respondent called one witness, himself. [Tr. 3].

After the hearing, the Government and the Respondent submitted proposed findings of fact, conclusions of law, and argument.

III. *ISSUE*

The issue in this proceeding is whether or not the record as a whole establishes by a preponderance of the evidence that the Drug Enforcement Administration should deny the application for a DEA Certificate of Registration (''COR'') of Dr. Michael A. White, as a practitioner, pursuant to 21 U.S.C. § 823(f), because to grant his application would be inconsistent with the public interest, as that term is defined in 21 U.S.C. § 823(f). [Tr. 6; ALJ Exh. 4 at 1].

IV. *FINDINGS OF FACT*

A. Stipulated Facts

The parties have stipulated to the following facts:

1. Respondent applied for a DEA COR as a practitioner in Schedules II–V at the Pain Clinic LLC, 3499 Bluecutt Road, Suite 1, Columbus, Mississippi, 39701 on March 21, 2012.

2. Respondent was previously registered with DEA as a practitioner in Schedules II–V under DEA COR number BW3923009 at 3499 Bluecutt Road, Suite 1, P.O. Box 7757, Columbus, Mississippi, 39705.

3. On September 22, 2011, DEA issued an Order to Show Cause to Respondent seeking revocation of his DEA COR BW3923009.

4. Phentermine is a Schedule IV controlled substance pursuant to 21 C.F.R. § 1308.14(e)(9).

5. Respondent voluntarily surrendered his COR BW3923009 on March 16, 2012.

6. On June 21, 2011, DEA and other law enforcement officials executed a search warrant at Respondent's medical practice which was also his registered address and seized among other items, Respondent's patient files.

7. Government Exhibit #12 is a true and accurate copy of the Respondent's patient file of patient [C.H.] [6] seized during the execution of a search warrant at Respondent's registered address on June 21, 2011.

8. Government Exhibit #13 is a true and accurate copy of the Respondent's patient file of patient [R.G.] seized during the execution of a search warrant at Respondent's registered address on June 21, 2011.

9. Government Exhibit #14 is a true and accurate copy of the Respondent's patient file of patient [C.B.] seized during the execution of a search warrant at Respondent's registered address on June 21, 2011.

10. Government Exhibit #15 is a true and accurate copy of the Respondent's patient file of patient [A.G.] seized during the execution of a search warrant at Respondent's registered address on June 21, 2011.

11. Government Exhibit #16 is a true and accurate copy of the Respondent's patient file of patient [J.H.] seized during the execution of a search warrant at Respondent's registered address on June 21, 2011.

12. Government Exhibit #17 is a true and accurate copy of the Respondent's patient file of patient [T.H.] seized during the execution of a search warrant at Respondent's registered address on June 21, 2011.

13. Government Exhibit #18 is a true and accurate copy of the Respondent's patient file of patient [K.H.] seized during the execution of a search warrant at Respondent's registered address on June 21, 2011.

[ALJ Exh. 4 at 1–2; ALJ Exh. 5].

B. Respondent's Background

Respondent earned his undergraduate degree in Chemistry and Biology from the University of California, Irvine. [Tr. 186]. Thereafter, he earned his medical degree from the California College of Medicine at Irvine in 1981 and later completed his residency in anesthesiology at Emory University in Atlanta, Georgia. [Tr. 186–87]. He obtained DEA COR BW3923009 on March 4, 1994. [Gov't Exh. 1 at 1]. On March 20, 2012, the Respondent surrendered this registration for cause. [*Id.*].

Respondent practiced anesthesiology in Mississippi until 2008 when, due to his hearing beginning to deteriorate, he felt he could not properly perform his job function and might pose a danger in the surgery room. [Tr. 187]. Drawing on his experience in pain management as an anesthesiologist, Respondent then opened a pain management clinic in Columbus, Mississippi. [Tr. 188]. Respondent started the practice ''from scratch,'' and most of his patients sought relief from neck or back pain and were referred by another physician. [Tr. 188–89].

In the Fall of 2008, Respondent agreed to treat the patients of a weight loss physician, ''Dr. Burtman,'' who, in Respondent's words, ''was shut down by . . . the DEA and the Medical Board.'' [Tr. 189]. Respondent testified that he did not intend his weight loss practice to be permanent, but that he maintained the weight loss patients because it was a financial buoy for his developing pain management practice. [Tr. 190].

C. Law Enforcement's Investigation of Respondent

The DEA investigation into Respondents' weight loss practice began when the Lowndes County Narcotics Task Force notified DEA that Respondent and another doctor may be ''running pill mills'' and that ''there were some concerns about some overdose deaths.'' [7] [Tr. 15–16]. DEA investigators worked together with the Lowndes County Narcotics Task Force, Mississippi Bureau of Narcotics, and the Mississippi State Board of Medical Licensure to conduct the investigation of Respondent's practice. [Tr. 15].

During the course of the investigation, law enforcement officers interviewed Respondent's patients and sent undercover informants to book appointments with Respondent's practice. [Gov't Exh. 5 at 36; Tr. 17]. The informants first attempted to book appointments with Respondent for pain management, but were turned away.[8]

[6] Before the hearing, I issued a Protective Order which protects the identities of third parties in these proceedings. [ALJ Exh. 3]. Thus, in this recommended decision, I will refer to all parties protected by the Protective Order by their initials.

[7] On cross examination, Diversion Investigator Sean Baudier admitted that although the investigation began because of ''initial complaints'' about overdose deaths, no such overdoses were ever substantiated during the investigation. [Tr. 26–27]. In fact, DI Baudier testified that DEA did not even seriously investigate the reported drug overdose deaths because ''a lot of times in overdose deaths, there are—there are poly drugs or alcohol involved.'' [Tr. 26]. Moreover, the president of the Board testified that he is not aware of any injuries or deaths resulting from Respondent's practice. [Tr. 70]. Therefore, because the Government did not establish that any deaths occurred due to misconduct by Respondent, my recommendation to the Administrator does not take into account DI Baudier's mention of deaths by overdose.

[8] There is some dispute as to why Respondent turned away the informants on the pain management side of his practice. On direct

Continued

[Tr. 16–17; 41–42]. When the informants were able to get appointments with Respondent for weight loss, DEA centered its investigation on the weight loss side of Respondent's practice. [Tr. 17, 48]. Diversion Investigator Sean Baudier testified that the informants obtained Phentermine from Respondent ''[e]very time'' they visited Respondent's practice. [Tr. 17]. Phentermine, also called Adipex, is a Schedule IV controlled substance. [Tr. 52; ALJ Exh. 4 at 2]; 21 C.F.R. § 1308.14(e)(9).

DEA executed a warrant to search and seize evidence from Respondent's practice on June 21, 2011 and obtained all patient files kept by Respondent. [Tr. 17–18, 191; ALJ Exh. 5 at 1; Gov't Exhs. 12–27]. Respondent credibly testified, and the Government did not refute, that he ceased treating weight loss patients on the day the warrant was executed. [Tr. 192].

D. The Board Hearings and Board Order

The investigation of Respondent resulted in the Board issuing a Summons and Affidavit in November of 2011, formally charging Respondent with twenty three counts of misconduct. [Gov't Exh. 5 at 1–33]. Respondent, represented by counsel, attended a hearing before the Board on January 19, 2012. [Gov't Exh. 5 at 35; Gov't Exh. 6 at 1–2; Tr. 51, 58–59]. Respondent did not testify at that hearing because criminal charges related to the same facts were pending. [Tr. 66–67]. The Board issued its decision orally and in writing on the day of the hearing. [Gov't Exh. 5 at 35–52; Gov't Exh. 6 at 215–218].

The Board considered Respondent's misconduct with respect to five patients, J.B., A.S., T.S., C.R., and T.S., three of whom were confidential informants employed by law enforcement. [Gov't Exh. 5 at 36–48]. Regarding those patients, the Board made the following factual and legal findings, which are binding on this Court under the principles of collateral estoppel. *See David A. Ruben,* 78 Fed. Reg. 38,363, 38,365 (DEA 2013); *Robert L. Dougherty, M.D.,* 76 Fed. Reg. 16,823, 16,830 (DEA 2011).

1. J.B.

J.B., referred to in the Board Order as ''Patient #1,'' was one of Respondent's patients who was interviewed by law enforcement during the course of its investigation. [Gov't Exh. 5 at 36–37]. At the time she first came to see Respondent for weight loss on February 2, 2009, J.B. was 5′7″ tall and weighed 148 pounds, ''which the Board determine[d] is not obese.'' [Gov't Exh. 5 at 37]. On the initial visit, Respondent issued a prescription for 30 doses of Phentermine and subsequently issued eight more prescriptions for 30 doses of Phentermine between March 9, 2009 and September 27, 2010. [Gov't Exh. 5 at 37]. Additionally, Respondent prescribed to J.B. 90 doses of Sibutramine, a Schedule IV controlled substance. [Gov't Exh. 5 at 37].

Respondent issued these prescriptions without performing a physical examination, properly documenting J.B.'s medical history, recording adiposity measurements such as BMI or waist circumference, conducting an EKG, conducting any laboratory testing, or verifying that J.B. had made good-faith efforts to lose weight without the aid of controlled substances. [Gov't Exh. 5 at 37–38]. Furthermore, Respondent continued to prescribe controlled substances to J.B. despite the patient's failure to lose weight after six months of treatment. [Gov't Exh. 5 at 39]. In fact, after the nineteen month-long treatment, J.B. actually gained twenty pounds. [Gov't Exh. 5 at 39].

2. A.S.

A.S., referred to in the Board Order as ''Patient #2,'' was also one of Respondent's patients who cooperated with the law enforcement investigation. [Gov't Exh. 5 at 39]. A.S. was 5′6″ tall and weighed 180 pounds when she first saw Respondent for weight loss. [Gov't Exh. 5 at 39]. She told Respondent that she had previously received ''diet medication'' from another doctor, Dr. Burtman, but Respondent did not include Dr. Burtman's charts in A.S.'s file. [Gov't Exh. 5 at 40].

Respondent prescribed controlled substances to A.S. without performing an adequate physical examination, properly documenting her medical history, recording adiposity measurements such as BMI or waist circumference, conducting any laboratory testing, or verifying that J.B. had made good-faith efforts to lose weight without the aid of controlled substances. [Gov't Exh. 5 at 39–41]. In total, Respondent prescribed 150 doses of Phentermine to A.S. [Gov't Exh. 5 at 39].

3. T.S.

T.S., referred to in the Board Order as ''Patient #3,'' was a confidential informant employed by law enforcement to gather information about Respondent's practice. [Gov't Exh. 5 at 41]. She was thirty four years old, 5′4″ tall, and weighed 225 pounds at the time of her initial visit to Respondent's practice. [Gov't Exh. 5 at 41–42]. Law enforcement chose her to participate in the investigation because she is not only obese, but has a number of other medical conditions as well. [Gov't Exh. 5 at 41].

As with the other patients, Respondent prescribed controlled substances to T.S. without performing an adequate physical examination, properly documenting her medical history, recording adiposity measurements such as BMI or waist circumference, conducting any laboratory testing, or verifying that T.S had made good faith efforts to lose weight without the aid of controlled substances. [Gov't Exh. 5 at 42–43]. In total, Respondent prescribed 150 doses of Phentermine to T.S. [Gov't Exh. 5 at 41].

4. C.R.

C.R., referred to in the Board Order as ''Patient #4,'' was another confidential law enforcement informant. [Gov't Exh. 5 at 43]. At the time of her initial visit with Respondent, she was twenty two years old, 5′3″ tall, and weighed 139 pounds. [Gov't Exh. 5 at 43–44]. The Board found that although she was not obese, Respondent noted in C.R.'s chart that she was ''overweight.'' [Gov't Exh. 5 at 44].

As with the other patients, Respondent prescribed controlled substances to C.R. without performing an adequate physical examination, properly documenting her medical history, recording adiposity measurements such as BMI or waist circumference, conducting any laboratory testing, or verifying that C.R. had made good faith efforts to lose weight without the aid of controlled substances. [Gov't Exh. 5 at 43–45]. Additionally, Respondent did not document an individualized treatment plan for C.R. Rather, under ''Plan of Care'' in the chart, Respondent merely

examination, DI Baudier testified that the informants were turned away on the pain management side because Respondent was ''not taking any patients.'' [Tr. 16–17]. He clarified this testimony on cross examination, testifying that Respondent turned the informants away because he ''[w]asn't accepting new patients.'' [Tr. 41]. Respondent's counsel suggested while cross examining DI Baudier that the informants were turned away because Respondent only accepted new patients with referrals, not because Respondent was not taking new patients. [Tr. 41–42]. DI Baudier responded that because he did not personally make the phone calls to book the appointments, he could not dispute Respondent's explanation. [Tr. 41, 42]. Respondent himself testified that all of his pain management patients were referred by physicians and that ''[y]ou couldn't walk off the street into my clinic.'' [Tr. 188–89]. To the extent that it is relevant, I find that the Government has failed to establish that Respondent turned the informants away because he was not accepting new pain patients.

wrote ''Weight Loss Program Month #1,'' which apparently included prescriptions for Phentermine and a ''Low carb Diet.'' [Gov't Exh. 5 at 45]. Respondent prescribed C.R. a total of 120 doses of Phentermine. [Gov't Exh. 5 at 43].

5. T.S.1

T.S.1, referred to in the Board Order as ''Patient #5,'' was another confidential informant who visited Respondent for weight loss. [Gov't Exh. 5 at 46]. At the time of her initial visit, she was twenty nine years old, 5′8″ tall, and weighed 125 pounds. [Gov't Exh. 5 at 46]. The Board found that she was not obese. [Gov't Exh. 5 at 46].

As with the other patients, Respondent prescribed controlled substances to T.S.1 without performing an adequate physical examination, properly documenting her medical history, recording adiposity measurements such as BMI or waist circumference, conducting any laboratory testing, or verifying that T.S.1 had made good faith efforts to lose weight without the aid of controlled substances. [Gov't Exh. 5 at 46–47]. Additionally, Respondent continued to prescribe Phentermine to T.S.1 even though she actually gained nine pounds while being on the weight loss program. [Gov't Exh. 5 at 48]. In total, Respondent prescribed 120 doses of Phentermine to T.S.1. [Gov't Exh 5 at 46].

6. The Board's Conclusions of Law

Based on these factual findings, the Board concluded that Respondent violated a number of rules and regulations. First, it found that Respondent's failure to verify that these five patients made a good-faith effort to lose weight without the aid of controlled substances violated Chapter 25, Section 501(1) of the Rules and Regulations of the Board, as well as title 73, Chapter 25, section 29(13) of the Mississippi Code. [Gov't Exh. 5 at 49].

Second, the Board found that Respondent's failure to obtain full medical histories and perform adequate physical examinations of the five patients violated Chapter 25, Section 501(2) of the Rules and Regulations of the Board, as well as title 73, Chapter 25, section 29(13) of the Mississippi Code. [Gov't Exh. 5 at 49].

Third, the Board found that Respondent's continued prescribing of controlled substances to patients who failed to lose weight after thirty days of taking the controlled substances violated Chapter 25, Section 501(5)(a) of the Rules and Regulations of the Board, as well as title 73, Chapter 25, section 29(13) of the Mississippi Code. [Gov't Exh. 5 at 49].

Fourth, the Board found that Respondent dispensed ''drugs having addition-forming or addition-sustaining liability otherwise than in the course of legitimate professional practice, all in violation of Miss. Code Ann. 73–25–29(3).'' [Gov't Exh. 5 at 50].

Finally, the Board found that Respondent's actions constituted ''dishonorable or unethical conduct likely to deceive, defraud, or harm the public in violation of Miss. Code Ann. 73–25–29(8)(d) and 73–24–83(a).'' [Gov't Exh. 5 at 50].

Having made these findings, the Board suspended Respondent's medical license for six months, but stayed the suspension contingent on certain conditions. [Gov't Exh. 5 at 50–51]. Namely, the Board ordered Respondent to complete certain continuing medical education courses within six months of the Board Order and to report such completion to the Board. [Gov't Exh. 5 at 50–51]. The Board also permanently prohibited Respondent from treating patients for weight loss and ordered Respondent to reimburse the Board for its costs in adjudicating the matter. [Gov't Exh. 5 at 51]. Additionally, the Board stated that it would monitor Respondent's compliance with the Board Order by periodically reviewing Respondent's patient charts. [Gov't Exh. 5 at 51].

7. The Second Board Hearing

In November of 2013, the Board held another hearing to determine why Respondent had not complied with the Board Order. [Tr. 60; Gov't Exh. 32]. At that hearing, Respondent testified that he had not taken the CME courses because he could not afford them.[9] [Tr. 60]. The Board found that Respondent ''failed to comply with the . . . conditions as set forth in the January 19, 2012 Determination Order. Specifically, [Respondent] failed to submit proof of successful completion of Continuing Medical Education (CME) hours; failed to communicate with the Board as to the status of same; and failed to reimburse the Board for all costs. . . .'' [Gov't Exh. 32 at 5].

Thereafter, the Board allowed Respondent more time to complete the CME courses and reimburse the Board for its expenses. Specifically, the Board ordered Respondent to complete the courses and pay the Board within six months of this DEA hearing. [Gov't Exh. 32 at 5]. The Board also ordered Respondent to notify the Board ''when the DEA hearing is scheduled and conducted.'' [Gov't Exh. 32 at 5].

At the hearing in these proceedings, the Board's executive director, Dr. Harris Van Craig, testified that Respondent, to date, had not notified the Board of the scheduled date for the DEA hearing. [Tr. 63]. He also testified regarding Respondent's ''demeanor'' in the second Board hearing. [Tr. 60–61]. Specifically, Dr. Van Craig testified that Respondent appeared ''angry with the Board for . . . disciplining him'' and that Respondent thought he had received ''rather harsh treatment from the Board because of what he was doing.'' [Tr. 60, 61; *see also* Tr. 66]. Dr. Van Craig also testified that Respondent felt he was being ''singled out'' by law enforcement because ''other practitioners in his area were doing the same thing as he was.'' [Tr. 60; *see also* Tr. 61].

E. Respondent's Criminal Charges

A month or two[10] after the Board handed down its Order, federal criminal charges were brought against Respondent for ''knowingly and intentionally dispensing and distributing phentermine, which is a Schedule IV controlled substance[,] without a legitimate medical purpose and outside the usual course of medical practice.'' [Gov't Exh. 10 at 6; *see also* Tr. 21, 192]. A jury trial was conducted on October 22 and October 23, 2012, resulting in Respondent being acquitted of all charges. [Gov't Exh. 10 at 1; Gov't Exh. 11 at 1, 224; Tr. 33]. Respondent credibly testified, and the Government did not refute, that he stopped practicing medicine altogether on the day he was indicted. [Tr. 192].

F. The Standard of Care for Prescribing Phentermine

At the hearing in these proceedings, the Government offered, and I certified, Dr. Stephen Sudderth as an expert in weight loss medicine and the medical use of Phentermine for weight loss. [Tr. 77–78]. Dr. Sudderth is a general surgeon, a bariatric surgeon, and a bariatric physician, licensed to practice in Mississippi. [Tr. 72, 73]. His bariatric specialty means he ''specializes in the field of metabolic and obesity disease.'' [*See* Tr. 72–73]. He has been practicing weight-loss medicine for twelve years.

[9] The transcripts for the second Board hearing were not entered into the record, but Dr. Van Craig testified that Respondent told the Board at the hearing that he could not afford the CME courses. [Tr. 60]. This testimony is corroborated by Respondent's own testimony in these proceedings. [Tr. 205–06].

[10] The record is not clear as to exactly when Respondent was indicted. Respondent testified that he was indicted four to six weeks after the Board issued its Order on January 19, 2012, [Tr. 192], but the indictment itself is not in evidence.

[Tr. 73]. He attended medical school at Louisiana State University Medical School, completed his internship at Yale University-affiliated hospitals in New Haven, Connecticut, and completed his general surgery residency at the University of Nevada, Las Vegas. [Tr. 74–75; Gov't Exh. 28]. He is board-certified in bariatric medicine and general surgery. [Tr. 75]. He is a fellow of the American College of Surgeons and a diplomat to the American Board of Bariatric Medicine, which is an honor denoting ''that you are at the top of your field.'' [Tr. 75]. Dr. Sudderth testified that he has treated ''[t]housands'' of patients for weight loss in his career and regularly prescribes Phentermine. [Tr. 76]. In fact, he helped draft the recent changes to the regulations regarding the prescription of Phentermine for weight loss. [Tr. 76]. As such, he is familiar with the regulations and standards both as they are now and as they were when Respondent's misconduct occurred. [Tr. 76–77].

Dr. Sudderth credibly testified regarding the standard of care when prescribing Phentermine. He testified that physicians should document the patient's history of diet, weight, exercise, and controlled substance use ''to determine if they had gone through other programs or used drugs for the purpose of weight loss by a prescription.'' [Tr. 83, 84]. Dr. Sudderth also testified that the patient's medical history should be noted in the chart, including allergies and other medical conditions the patient may have. [Tr. 85]. The physician should also note any medications the patient is taking, the patient's primary care physician, the patient's gynecological history, and the patient's family medical history. [Tr. 85]. This information should all be noted in the patient's chart. [Tr. 84]. According to Dr. Sudderth, documenting this information is necessary for a physician to meet the standard of care when prescribing Phentermine. [Tr. 87].

Dr. Sudderth testified that a physical examination is also necessary to meet the standard of care. [Tr. 87, 103]. This means that before prescribing Phentermine, the physician should measure and document the patient's vital signs, including temperature, pulse, blood pressure, height, and weight. [Tr. 87]. In addition, the physician should measure the patient's body mass index (''BMI''), waist circumferences, or body fat percentage, each of which give ''some indication of the patient's fat content.'' [Tr. 87, 93].

BMI, which is a ''common standard used in most states and certainly in Mississippi'' to measure adiposity, is calculated by dividing the patient's weight by the patient's height squared. [Tr. 88–90]. A BMI of 18 to 24 is considered ''normal weight,'' 25 to 29.9 is considered ''overweight,'' 30 to 39 is considered ''obese,'' 40 to 49 is considered ''morbidly obese,'' and anything over 50 is considered ''super morbid obese.'' [Tr. 90]. To be prescribed Phentermine for weight loss, a patient must have a BMI of 27 or greater and have at least one ''comorbid medical problem,'' which Dr. Sudderth testified is ''[a]nother medical problem that's related directly to the weight.'' [Tr. 91]. Common comorbid conditions include high blood pressure, diabetes, sleep apnea, arthritis, lower back pain, heartburn, urinary incontinence, breast cancer, and prostate cancer. [Tr. 91]. A patient without a comorbid condition must have a BMI of at least 30 to be prescribed Phentermine for weight loss. [Tr. 91]. Dr. Sudderth also testified that although these are the customary standards, a physician has some ''latitude'' to prescribe Phentermine to a patient with a slightly lower BMI if the physician believes the patient's weight is significantly aggravating a medical condition. [Tr. 92–93].

Measuring vital signs and adiposity, however, is not the only important part of the physical exam. Dr. Sudderth testified that various observations made during a routine physical exam might indicate the patient has medical conditions that are contributing to the patient's weight or would make controlled substances unsafe to prescribe. [Tr. 94–98].

Dr. Sudderth also testified that lab work is ''essential'' in determining whether to prescribe Phentermine because it uncovers things that a physical examination typically does not. [Tr. 99]. Specifically, lab work can identify conditions that may hinder weight loss or make prescribing certain controlled substances improper, such as anemia, liver disease, hypothyroidism, and high cholesterol. [Tr. 99–101]. Dr. Sudderth testified that in Mississippi, the standard of care is to perform blood work and to document the results before or at the visit when prescribing Phentermine for weight loss occurs.[11] [Tr. 101–02].

[11] On cross examination, counsel for Respondent suggested that cost sometimes prohibits lab work. [Tr. 170–71]. However, Respondent offered no evidence, expert or otherwise, to contradict Dr. Sudderth's credible testimony that lab work is essential before prescribing Phentermine. Therefore, I find that lab work is required before prescribing Phentermine under the standard of care in Mississippi, regardless of the cost.

G. The Sixteen Additional Patient Files

Dr. Sudderth also testified that he reviewed the patient files of sixteen of Respondent's patients not included in the Board Order and concluded that Respondent did not meet the standard of care when he prescribed Phentermine to all sixteen patients. [Tr. 80; Gov't Exhs. 12–27; Tr. 79–80, 106, 117, 123, 127, 128, 133, 138, 140–41, 145, 146, 150, 151, 152, 153]. The Government questioned Dr. Sudderth on only six of the sixteen patients whose files were entered into evidence: C.H., R.G., A.G., J.G., K.C., and P.H.

1. C.H.

C.H.'s height and weight at the initial visit were recorded in the chart as 5′6″, 150 pounds. [Gov't Exh. 12 at 13; Tr. 107–08]. No BMI was recorded, however, and Dr. Sudderth testified that he calculated C.H.'s BMI to be 24.2 using the patient's recorded height and weight. [Tr. 109, 111; Gov't Exh. 31]. Based on this BMI calculation, Dr. Sudderth testified that C.H. did not qualify for Phentermine prescriptions. [Tr. 111]. Dr. Sudderth further testified that Respondent's ''impression'' that C.H. is ''overweight,'' recorded in the chart, is an incorrect diagnosis, and that there are no co-morbid conditions recorded in C.H.'s chart that would justify prescribing Phentermine. [Tr. 115]. As such, Dr. Sudderth testified that, in his opinion, Respondent did not ''take a thorough history of [C.H.] as contemplated by the State regulations.'' [Tr. 115].

Dr. Sudderth further testified that while Respondent recorded C.H.'s blood pressure and heart rate in the chart, he failed to record C.H.'s weight, diet, and gynecological history. [Tr. 111–12]. Additionally, on the chart, Respondent had drawn ''squiggly lines'' through all of the spaces designed to notate that the various organs were ''normal.'' [Tr. 112–13; Gov't Exh. 12 at 14]. The chart also had no indication that any lab work was conducted on C.H. [Tr. 114]. Thus, Dr. Sudderth testified that Respondent did not conduct a ''thorough physical examination as contemplated under the regulations.'' [Tr. 115–16].

Dr. Sudderth concluded that Respondent did not meet the standard of care when he prescribed C.H. Phentermine on her initial visit. [Tr. 117]. He noted that the chart does not reflect any legitimate medical justification for prescribing Phentermine to C.H. [Tr. 123–24].

Additionally, Dr. Sudderth testified that Respondent failed to meet the standard of care for prescribing Phentermine at each of C.H.'s follow-up

visits. [Tr. at 123]. He reached this conclusion partly because in each of the seven follow-up visits notated in the chart, neither Respondent nor C.H. had any questions or concerns about the weight loss plan. [Tr. 120–23; Gov't Exh. 12 at 11]. Dr. Sudderth testified that this is ''very significant because I haven't seen that in my 12-year career of doing weight loss, that there are no problems at any follow-up visit ever.'' [Tr. 122].

2. R.G.

R.G.'s initial height and weight were recorded in the chart as 5′4″, 141 pounds. [Tr. 125; Gov't Exh. 13 at 13]. R.G.'s body fat and BMI were not measured, however, but Dr. Sudderth calculated R.G.'s BMI to be approximately 24, which is ''normal.'' [Tr. 125; Gov't Exh. 31]. Thus, Dr. Sudderth testified that R.G. did not qualify for weight loss treatment with Phentermine. [Tr. 125].

Dr. Sudderth testified that R.G.'s weight, diet, exercise, and gynecological history were not recorded in the chart, except to note that R.G. is not pregnant.[12] [Tr. 125; Gov't Exh. 13 at 13–14]. Like in C.H.'s chart, the ''Physical Examination'' section of R.G.'s chart contained ''squiggly lines'' through all of the spaces designed to notate that the various organs were ''normal.'' [Tr. 126; Gov't Exh. 13 at 14]. Because the chart contained a line through the part marked ''Laboratory Findings,'' Dr. Sudderth testified that he assumed no labs were conducted. [Tr. 126; Gov't Exh. 13 at 14].

Dr. Sudderth testified that because R.G. has no co-morbid conditions and a BMI of 24, it was not appropriate to prescribe Phentermine to the patient. [Tr. 126, 127]. Also, similar to C.H.'s chart, Dr. Sudderth noted that the follow-up visits uncovered no questions or concerns about the weight loss program. [Tr. 127–28; Gov't Exh 13 at 11]. Thus, Dr. Sudderth concluded that Respondent did not meet the standard of care in prescribing R.G. Phentermine during the seven follow-up visits. [Tr. 128; Gov't Exh. 13 at 4–10]. In sum, Dr. Sudderth testified that ''[t]here is no justification'' for prescribing Phentermine to R.G. [Tr. 128].

3. A.G.

A.G.'s height and weight at the initial visit were 5′1″, 141 pounds. [Tr. 129, Gov't Exh. 15 at 8]. A.G.'s BMI was not in the chart, but Dr. Sudderth calculated it to be 26.6. [Tr. 129; Gov't Exh 31]. Respondent recorded his ''impression'' of A.G. as ''obesity.'' [Tr. 129; Gov't Exh 15 at 9]. Dr. Sudderth testified, however, that A.G. was not ''obese,'' but ''overweight'' according to the standard in Mississippi. [Tr. 129–30].

Dr. Sudderth further testified that A.G.'s diet, weight, exercise, and gynecological history were not noted in the file except that A.G. is not pregnant and that ''she is on a Depo shot for birth control.'' [Tr. 130; Gov't Exh. 15 at 8]. In physical examination section of the chart, there were lines through all of the spaces designed to notate that the various organs were ''normal.'' [Tr. 130–31; Gov't Exh. 15 at 9]. The only organ with a notation other than the line was the abdomen, which had ''obese'' written in the ''normal'' column.[13] [Tr. 130–31; Gov't Exh. 15 at 9]. No lab work or co-morbid conditions were indicated on the chart. [Tr. 131; Gov't Exh. 15 at 9]. Thus, Dr. Sudderth ultimately concluded that Respondent did not meet the standard of care when he prescribed A.G. Phentermine. [Tr. 133; Gov't Exh. 15 at 4–5, 7].

4. J.G.

According to the chart, J.G. weighed 282 pounds and was 5′4″ tall when she first visited Respondent for weight loss. [Tr. 134; Gov't Exh 20 at 12]. Her BMI was not included in the chart, but Dr. Sudderth calculated it to be approximately 48, which is high enough to qualify for a Phentermine prescription. [Tr. 134; Gov't Exh. 31].

Respondent recorded three co-morbid conditions for J.G.: High blood pressure, high cholesterol, and diabetes. [Tr. 134–35; Gov't Exh. 20 at 12]. Dr. Sudderth testified that he would have ''done a thorough history and physical'' and ''gotten labs on this patient and an EKG'' before prescribing Phentermine, which can aggravate the co-morbid conditions reported by J.G. [Tr. 135]. J.G.'s chart had no lab findings recorded. [Tr. 136–37; Gov't Exh. 20 at 13].

No weight, diet, exercise, or gynecological history was recorded on the chart except that J.G. is not pregnant. [Tr. 135–36; Gov't Exh. 20 at 12]. J.G.'s chart included heart rate and blood pressure measurements, but the section for organ examinations, like in the other charts, had a ''squiggly line'' through the ''normal'' boxes. [Tr. 136; Gov't Exh. 20 at 13]. Respondent recorded his ''impression'' of J.G. as ''overweight,'' which Dr. Sudderth testified is an inappropriate diagnosis—Respondent should have diagnosed J.G. as ''morbidly obese.'' [Tr. 137; Gov't Exh. 20 at 13].

Dr. Sudderth testified that Respondent did not meet the standard of care when he prescribed Phentermine to J.G. on her first visit because Respondent did not conduct and record an adequately thorough physical examination and history. [Tr. 138].

Respondent prescribed J.G. Phentermine in each of six follow-up visits. [Tr. 139, 140; Gov't Exh 20 at 4–9, 11]. Dr. Sudderth testified that a visit on August 9, 2010 was particularly troubling, since J.G.'s blood pressure was especially high that day, apparently because J.G. had not taken her blood pressure medication. [Tr. 138–39; Gov't Exh. 20 at 10]. Dr. Sudderth testified that, given J.G.'s unregulated blood pressure, prescribing J.G. Phentermine on that visit fell below the standard of care. [Tr. 139]. Similarly, J.G.'s blood pressure was even higher on her next visit, and Respondent once again prescribed Phentermine. [Tr. 139–40]. Dr. Sudderth thus concluded that Respondent fell below the standard of care by prescribing Phentermine to J.G. at each follow-up visit because he failed to perform adequate histories and physicals, he ignored contraindications such as high blood pressure, and ''he has no follow-up visit that is of any substance, whatsoever.'' [Tr. 141].

5. K.C.

K.C. was sixteen years old, weighed 142 pounds, and was 5′4″ tall when she first visited Respondent for weight loss. [Tr. 141–42; Gov't Exh 21 at 9]. Her BMI was not recorded in her file, but Dr. Sudderth calculated it to be approximately 24, which classifies her weight as ''normal.''[14] [Tr. 142, 144; Gov't Exh. 31]. The patient chart included no weight, diet, or gynecological history recorded except that K.C. is not pregnant. [Tr. 143–44; Gov't Exh. 21 at 9]. Notably, K.C.'s chart did not include any physical examination; in fact, the patient file did not even include the form Respondent normally used to record physical examinations. [Tr. 144; Gov't Exh. 21].

Dr. Sudderth testified that Respondent fell below the standard of care by prescribing Phentermine on the

[12] Dr. Sudderth testified that simply noting the pregnancy status of a female patient does not constitute an adequate gynecological history report. [Tr. 136].

[13] Dr. Sudderth noted that describing an abdomen as ''obese'' is inaccurate. ''You may characterize it as protuberant, large. It may be described in many different ways, but you wouldn't describe an abdomen as obese. You may describe a person as obese but not an abdomen.'' [Tr. 131].

[14] Dr. Sudderth explained that there is a slightly different standard for determining whether Phentermine is appropriate to prescribe to pediatric patients such as K.C. Specifically, children must be ''in the 99th percentile or greater'' in relation to ''other kids their age'' to qualify for a Phentermine prescription. [Tr. 144]. He testified that K.C. is a ''normal 16-year-old girl who falls in the normal percentile of girls.'' [Tr. 143–44].

initial visit. [Tr. 144–45; Gov't Exh. 21 at 8]. He also testified that Respondent fell below the standard of care by prescribing Phentermine to K.C. during three follow-up visits, where no problems or concerns were reported or discussed. [Tr. 145–46]. Dr. Sudderth testified that nowhere in the file was a legitimate medical reason or justification for prescribing K.C. Phentermine recorded. [Tr. 146; Gov't Exh. 21].

6. P.H

P.H. weighed 162 pounds and was 5′5″ tall on her initial visit to Respondent. [Gov't Exh. 27 at 22]. No body fat or BMI were recorded, but Dr. Sudderth calculated it to be 26.9, which is classified as ''overweight.'' [Tr. 147; Gov't Exh. 31]. No weight, diet, or gynecological history were recorded except that P.H. is not pregnant. [Tr. 147–48; Gov't Exh. 27 at 22]. P.H.'s heart rate and blood pressure were recorded in the chart, and Dr. Sudderth testified that P.H. had high blood pressure. [Tr. 148; Gov't Exh. 27 at 23]. Dr. Sudderth also testified that P.H.'s high blood pressure is probably ''controlled'' because ''it's high, but it's not excessively high.'' [Tr. 149]. No lab work was recorded in the file. [Tr. 148]. Respondent recorded his ''impression'' of P.H. as ''desires weight loss,'' which Dr. Sudderth testified was an inappropriate diagnosis. [Tr. 149].

Dr. Sudderth noted that P.H.'s BMI, combined with her co-morbid condition of high blood pressure, qualified her for Phentermine. [Tr. 150]. Dr. Sudderth concluded, however, that the physical examination and history of P.H. fell below the standard of care for prescribing Phentermine on the initial visit. [Tr. 150].

Respondent treated P.H. for about three years, prescribing Phentermine at each of fifteen follow-up visits. [Tr. 150–51, 152; Gov't Exh. 27 at 4–23]. As with the other patients, Respondent noted no problems at any of the follow-up visits. [Tr. 151; Gov't Exh 27 at 19–20]. Dr. Sudderth testified that P.H.'s blood pressure was high at every follow-up visit, and ''was worsening by the time she finished with Dr. White.'' [Tr. 151; Gov't Exh. 27 at 19–20]. Notably, Respondent did not diagnose or record P.H's blood pressure as being high at any time during her treatment. [Tr. 151; Gov't Exh. 27]. Dr. Sudderth concluded that Respondent fell below the standard of care each time he prescribed P.H. Phentermine at a follow-up visit. [Tr. 152].

7. The Sixteen Patient Files Generally

Outside the six patient files about which he specifically testified, Dr. Sudderth also testified generally that he reviewed all of the sixteen patient files the Government entered into evidence and that none of them included adequate histories, physicals, or lab work. [Tr. 106–07, 120, 152]. He thus concluded that Respondent fell below the standard of care in prescribing Phentermine to ''[a]ll sixteen'' of those patients'' both in their initial visits, and in all follow-up visits. [Tr. 153]. He additionally testified that seven of the sixteen patients did not qualify for Phentermine based on their BMIs, which Dr. Sudderth calculated himself since they were not documented in the charts. [Tr. 110–11; Gov't Exh. 31]. Dr. Sudderth also testified that in the sixteen patient files he reviewed, ''there was no follow-up visit to speak of, of any substance that would qualify these patients to receive more Phentermine.'' [Tr. 106–07].

H. Letters from Respondent's Patients

At the hearing, the Government offered into evidence hundreds of letters written by Respondent's patients, vouching for the quality of care Respondent provided them. [Gov't Exh. 30; Tr. 54]. To the extent that Respondent relies on these letters to prove that denying his registration would impose a burden on his patients, I find the letters irrelevant. The Agency has consistently held that so-called ''community impact evidence'' is not relevant in these proceedings. *See Linda Sue Cheek, M.D.*, 76 Fed. Reg. 66,972, 66,973 (DEA 2011); *Steven M. Abbadessa, D.O.*, 74 Fed. Reg. 10,077, 10,078 (DEA 2009); *Mark De La Lama, P.A.*, 76 Fed. Reg. 20,011, 20,020 n.20 (DEA 2011); *Bienvenido Tan, M.D.*, 76 Fed. Reg. 17,673, 17,694 n.58 (DEA 2011); *Gregory D. Owens, D.D.S*, 74 Fed. Reg. 36,751, 36,757 & n.22 (DEA 2009); *Kwan Bo Jin, M.D.*, 77 Fed. Reg. 35,021, 35,021 (DEA 2012).

V. *STATEMENT OF LAW AND DISCUSSION*

A. Positions of the Parties

1. Government's Position

The Government timely filed Government's Proposed Findings of Fact and Conclusions of Law (''Government's Brief'') with this Court on April 2, 2014. The bulk of the Government's argument is that Respondent deviated from the standard of care by performing ''woefully inadequate'' physical examinations, failing to obtain patient's medical histories, and failing to measure patients' BMI before prescribing Phentermine to the sixteen patients at issue in these proceedings and to the five patients at issue in the Board Order. [Gov't Br. at 36–39]. In addition, the Government argues that Respondent violated the Board's order to complete certain CME courses within six months of the Order. [Gov't Br. at 39]. According to the Government, these facts, which are largely undisputed, prove that Respondent's registration would be inconsistent with the public interest. [Gov't Br. at 39–40].

The Government also argues that Respondent failed to prove that he has taken responsibility for his actions and therefore failed to rebut the Government's prima facie case. [Gov't Br. at 42]. The Government points out various portions of Respondents' testimony where Respondent attempted to minimize his misconduct and criticized the laws, standards, rules, and regulations concerning the prescription of Phentermine. [Gov't Br. at 42–45]. This testimony, the Government argues, shows that Respondent has failed to take responsibility for his actions. [Gov't Br. at 44]. Moreover, the Government argues that Respondent failed to take responsibility for his actions in the criminal trial, where he testified that he had done nothing improper. [Gov't Br. at 44]. Accordingly, the Government argues that Respondent has failed to rebut the Government's prima facie case because any acceptance of responsibility—which is minimal—is not credible. [Gov't Br. at 44–45].

2. Respondent's Position

Respondent timely filed Respondent's Proposed Findings of Fact and Conclusions of Law (''Respondent's Brief'') on April 2, 2014. Therein, Respondent makes three arguments. First, Respondent argues that his registration would be consistent with the public interest because he has never harmed any of his patients and has never been the subject of any medical malpractice complaint. [Resp't Br. at 7]. In Respondent's view, the fact that law enforcement investigated Respondent for months before taking any action supports the conclusion that Respondent's misconduct was not seriously harmful or egregious. [Resp't Br. at 8–9].

Second, Respondent argues that he has taken responsibility for his actions, as evidenced by his voluntary relinquishment of his DEA registration and his agreement to forego treating patients for weight loss. [Resp't Br. at 7].

Lastly, Respondent argues that his registration is consistent with the public interest because, after a criminal trial

and two hearings before the Board, the Board still saw fit to permit Respondent to practice medicine. [Resp't Br. at 9–10].

B. Statement of Law and Analysis

Pursuant to 21 U.S.C. § 823(f), the Deputy Administrator may deny an application for a DEA COR if he determines that such registration would be inconsistent with the public interest.[15] In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. § 823(f).

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See Robert A. Leslie, M.D.*, 68 Fed. Reg. 15,227, 15,230 (DEA 2003) (citing *Henry J. Schwartz, Jr. M.D.*, 54 Fed. Reg. 16,422, 16,424 (DEA 1989)). Moreover, the Deputy Administrator is ''not required to make findings as to all of the factors.'' *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall v. DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Thus, ''this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor'' each party. *Jayam Krishna-Iyer, M.D.*, 74 Fed. Reg. 459, 462 (DEA 2009). ''Rather, it is an inquiry which focuses on protecting the public interest. . . .'' *Id.*

The Government bears the ultimate burden of proving that the requirements for registration are not satisfied. 21 C.F.R. § 1301.44(d) (2014). Specifically, the Government must show that Respondent has committed acts that are inconsistent with the public interest. 21 U.S.C. § 823(f); *Jeri Hassman, M.D.*, 75 Fed. Reg. 8,194, 8,227 (DEA 2010). However, where the Government has made out a *prima facie* case that Respondent's application would be ''inconsistent with the public interest,'' the burden of production shifts to the applicant to ''present[ ] sufficient mitigating evidence'' to show why he can be trusted with a new registration. *See Medicine Shoppe—Jonesborough*, 73 Fed. Reg. 364, 387 (DEA 2008). To this point, the Agency has repeatedly held that the ''registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Id.; see also Samuel S. Jackson, D.D.S.*, 72 Fed. Reg. 23,848, 23,853 (DEA 2007). The Respondent must produce sufficient evidence that he can be trusted with the authority that a registration provides by demonstrating that he accepts responsibility for his misconduct and that the misconduct will not reoccur. *See id.; see also Samuel S. Jackson, D.D.S.*, 72 Fed. Reg. at 23,853. The DEA has consistently held the view that ''past performance is the best predictor of future performance.'' *Alra Laboratories*, 59 Fed. Reg. 50,620 (DEA 1994), *aff'd, Alra Laboratories, Inc. v. DEA*, 54 F.3d 450, 451 (7th Cir 1995).

Factor One: Recommendation of Appropriate State Licensing Board

Recommendations of state licensing boards are relevant, but not dispositive, in determining whether a respondent should be permitted to maintain a registration. *See Gregory D. Owens, D.D.S.*, 74 Fed. Reg. 36,751, 36,755 (DEA 2009); *see also Martha Hernandez, M.D.*, 62 Fed. Reg. 61,145, 61,147 (DEA 1997). According to clear agency precedent, a ''state license is a necessary, but not a sufficient condition for registration.'' *Robert A. Leslie, M.D.*, 68 Fed. Reg. at 15,230; *John H. Kennedy, M.D.*, 71 Fed. Reg. 35,705, 35,708 (DEA 2006).

DEA possesses ''a separate oversight responsibility with respect to the handling of controlled substances,'' which requires the Agency to make an ''independent determination as to whether the granting of [a registration] would be in the public interest.'' *Mortimer B. Levin D.O.*, 55 Fed. Reg. 8,209, 8,210 (DEA 1990); *see also Jayam Krishna-Iyer*, 74 Fed. Reg. at 461. Even the reinstatement of a state medical license does not affect this Agency's independent responsibility to determine whether a DEA registration is in the public interest. *Levin*, 55 Fed. Reg. at 8,210. The ultimate responsibility to determine whether a registration is consistent with the public interest has been delegated exclusively to the DEA, not to entities within state government. *Edmund Chein, M.D.*, 72 Fed. Reg. 6,580, 6,590 (DEA 2007), *aff'd Chein v. DEA*, 533 F.3d 828 (D.C. Cir. 2008). Thus, Agency precedent holds that even where a respondent is licensed to practice medicine by a state licensing agency, factor one weighs neither for nor against registration unless the state licensing agency makes a direct recommendation regarding the respondent's DEA registration. *Mark G. Medinnus, D.D.S.*, 78 Fed. Reg. 62,683, 62,692–93 (DEA 2013); *George R. Smith, M.D.*, 78 Fed. Reg. 44,972, 44,979 (DEA 2013); *Robert M. Brodkin, D.P.M.*, 77 Fed. Reg. 73,678, 73,681 n.5 (DEA 2012); *Jeffrey J. Becker, D.D.S.*, 77 Fed. Reg. 72,387, 72,403 (DEA 2012); *Scott D. Fedosky, M.D.*, 76 Fed. Reg. 71,375, 71,377 (DEA 2011); *Paul W. Battershell*, 76 Fed. Reg. 44,359, 44,365 (DEA 2011); *Robert L. Dougherty*, 76 Fed. Reg. 16,823, 16,833 n.13 (DEA 2011); *Gilbert Eugene Johnson*, 75 Fed. Reg. 65,663, 65,666 n.3 (DEA 2010).

Although it is undisputed in this case that Respondent's state license is valid, [ALJ Exh. 4 at 4], the Board has not given a recommendation on whether Respondent's application for a DEA registration should be granted. Therefore, factor one weighs neither for nor against Respondent's registration.[16]

[15] The Deputy Administrator has the authority to make such a determination pursuant to 28 C.F.R. §§ 0.100(b), 0.104 (2013).

[16] The Government argues that because Mississippi law prohibits physicians who have been the subject of a disciplinary action for improper prescribing practices from operating pain management clinics, the Board's prohibition against Respondent operating a weight loss clinic ''is the equivalent to a Board recommendation against Respondent handling controlled substances for pain management.'' [Gov't Br. at 31]. This argument, however, does not square with the Board Order, which allowed Respondent to practice medicine with full knowledge that Respondent owned a pain management clinic. Had the Board wished to restrict Respondent's ability to practice pain management, it could have done so. Moreover, Agency precedent strongly suggests that anything less than a specific, direct recommendation from a state board to DEA regarding respondent's suitability for DEA registration does not constitute a ''recommendation'' under factor one of the public interest analysis. *See Mark G. Medinnus, D.D.S.*, 78 Fed. Reg. 62,683, 62,692–93 (DEA 2013) (holding that factor one weighed neither for nor against granting a registration because the state board ''has not made a specific recommendation concerning the granting of a DEA registration to the Respondent''); *George R. Smith, M.D.*, 78 Fed. Reg. 44,972, 44,979 (DEA 2013) (holding that factor one weighed neither for nor against granting a registration because the state board ''did not directly recommend that the Respondent's DEA application for registration should be granted''). I therefore decline to construe the Board's findings as a recommendation by the Board that Respondent's registration should be denied.

Factors Two and Four: Applicant's Experience with Controlled Substances and Applicant's Compliance with Applicable State, Federal, or Local Laws Relating to Controlled Substances

Respondent's experiences with handling controlled substances, as well as his compliance with laws related to controlled substances, are relevant considerations under the public interest analysis. Pursuant to the Controlled Substances Act, ''[p]ersons registered by the Attorney General under this subchapter to . . . dispense controlled substances . . . are authorized to possess . . . or dispense such substances . . . to the extent authorized by their registration and in conformity with the other provisions of this subchapter.'' 21 U.S.C. § 822(b); *Leonard E. Reaves, III, M.D.,* 63 Fed. Reg. 44,471, 44,473 (DEA 1998); *see also* 21 C.F.R. § 1301.13(a) (providing that ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person.''). As such, the DEA properly considers practitioners' past compliance with CSA requirements and DEA regulations in determining whether registering such a practitioner would be in the public interest.

The first regulation applicable here is DEA's long-standing requirement that a prescription be issued for ''a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 C.F.R. § 1306.04(a). DEA precedent establishes that ''a practitioner must establish and maintain a bona-fide doctor-patient relationship in order to be acting 'in the usual course of . . . professional practice' and to issue a prescription for a 'legitimate medical purpose.' '' *Paul H. Volkman,* 73 Fed. Reg. 30,630, 30,642 (DEA 2008). Whether a valid doctor-patient relationship was established is determined by looking to state law. *Id.*

Here, Dr. Sudderth credibly testified regarding the steps physicians must take to create a doctor-patient relationship before legitimately prescribing Phentermine. Specifically, he testified that in Mississippi, before prescribing Phentermine, a physician must (1) document the patient's history of diet, weight, exercise, and use of controlled substances for weight loss [Tr. 83–84]; (2) document the patient's medical and family history [Tr. 85]; (3) perform and document a physical examination of the patient, including vital signs and some form or adiposity measurement (BMI, waist circumference, or body fat) [Tr. 87–98]; and (4) perform lab work such as blood tests and an EKG [Tr. 99–102]. Dr. Sudderth further testified that to be prescribed Phentermine for weight loss, a patient must either (1) have a BMI of at least 30; or (2) have a BMI of at least 27 and have at least one comorbid condition. [Tr. 91, 105]. Some of these standards, including the requirement to perform physicals, document histories, and investigate prior weight loss efforts, are found in Chapter 25, Section 501(1) and (2) of the Rules and Regulations of the Board.[17] [Gov't Exh. 29].

Dr. Sudderth testified that Respondent fell below this standard of care for each of the sixteen patient files he reviewed. [Tr. 80, 106]. Specifically, Dr. Sudderth testified that Respondent failed to document the patients' histories, conduct or document adequate physical exams, measure patients' BMI, or do any lab work on the patients. [Tr. 114, 115–16, 120, 125, 126, 129, 130, 131, 137, 138, 142, 147, 148]. Additionally, Dr. Sudderth testified that seven of the sixteen patients had BMIs too low to justify prescribing Phentermine. [Tr. 110–11; *see also* Gov't Exh. 31]. Further, Dr. Sudderth testified that Respondent failed to conduct any follow-up visit ''of substance'' that would justify the continued prescription of Phentermine to the patients. [Tr. 106–07].

I find Dr. Sudderth's testimony credible because his credentials are impeccable, his testimony was internally and externally consistent, and the testimony itself was largely unrebutted by Respondent. Indeed, when asked at the hearing if he disputes Dr. Sudderth's testimony, Respondent replied, ''Why would I dispute his testimony? He's an expert.'' [Tr. 219]. Accordingly, I find that Respondent failed to establish a bona-fide doctor-patient relationship before prescribing Phentermine to the sixteen patients at issue here, thus violating 21 C.F.R. § 1306.04(a).[18]

I also find that Respondent's improper prescriptions of Phentermine to the sixteen patients at issue in these proceedings violated Chapter 25, Section 501(1) and (2) of the Rules and Regulations of the Board, which requires documentation of a thorough physical examination, medical history, and a good-faith effort by the patient to lose weight without controlled substances before prescribing anorectics. [Gov't Exh. 29 at 1–2].

Moreover, as noted *supra,* the Board found that Respondent violated multiple rules, regulations, and statutes by improperly prescribing Phentermine to five additional patients. Specifically, the Board found that Respondent violated Chapter 25, Section 501 of the Rules and Regulations of the Board by (1) failing to verify that the five patients made a good-faith effort to lose weight without the aid of controlled substances; (2) failing to obtain full medical histories and perform adequate physical examinations of the five patients; and (3) continuing to prescribe controlled substances to patients who failed to lose weight after thirty days of taking the controlled substances. [Gov't Exh. 5 at 49–50]. Additionally, the Board found that Respondent violated title 73, chapter 25, section 29(3) of the Mississippi Code by dispensing ''drugs having addiction-forming or addiction-sustaining liability otherwise than in the course of legitimate professional practice.'' [Gov't Exh. 5 at 50]. Finally, the Board found that Respondent's actions constituted ''dishonorable or unethical conduct likely to deceive, defraud, or harm the public, in violation of *Miss. Code Ann.* 73–25–29(8)(d) and 73–24–83(a).'' [Gov't Exh. 5 at 50]. These findings of fact and law are binding on the Agency. *David A. Ruben, M.D.,* 78 Fed. Reg. at 38,365–66; *Dougherty,* 76 Fed. Reg. at16,830–31.

Respondent also failed to attend the CME courses required by the Board Order. Although Respondent offered an explanation for this failure—that he could not afford the courses [19]—such explanations do not alter the fact that failing to attend the courses within six month of the Board Order constituted a violation of the Order.

Therefore, because Respondent violated multiple rules, regulations, and statutes by prescribing Phentermine to twenty-one patients without a legitimate medical purpose and outside the usual course of professional practice, and because Respondent violated the Board Order by failing to attend the required CME courses, I find that factors two and four clearly weigh against Respondent's registration.

[17] The standards set forth in the Rules and Regulations of the Board for prescribing anorectics were revised in 2012. [Tr. 76]. The Government entered into evidence the version of the regulations that was in place during the time in question. [Tr. 81–82; Gov't Exh. 29].

[18] 21 C.F.R. § 1306.04(a) provides, in relevant part, ''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.''

[19] I find this reason incredible, since the Respondent also testified that he has a monthly income of $15,000. [Tr. 207].

Factor Three: Applicant's Conviction Record Relating to Controlled Substances

Pursuant to 21 U.S.C. § 823(f)(3), the Deputy Administrator may deny a pending application for a certificate of registration upon a finding that the applicant has been convicted [20] of a felony related to controlled substances under state or federal law. *See Thomas G. Easter II, M.D.,* 69 Fed. Reg. 5,579, 5,580 (DEA 2004); *Barry H. Brooks, M.D.,* 66 Fed. Reg. 18,305, 18,307 (DEA 2001); *John S. Noell, M.D.,* 56 Fed. Reg. 12,038, 12,039 (DEA 1991).

Here, it is undisputed that Respondent has not been convicted of any crimes relating to controlled substances. However, DEA precedent clearly holds that because there are ''a number of reasons why a person may never be convicted of an offense falling under this factor, let alone be prosecuted for one, the absence of such a conviction is of considerably less consequence in the public interest inquiry.'' *Ruben,* 78 Fed. Reg. at 38,379 n.35 (quoting *Dewey C. MacKay, M.D.,* 75 Fed. Reg. 49,956, 49,973 (DEA 2010), *pet. for rev. denied, MacKay v. DEA,* 664 F.3d 808 (10th Cir. 2011)). I therefore find that factor three weighs neither for nor against Respondent's registration.

Factor Five: Such Other Conduct Which May Threaten the Public Health and Safety

Under the fifth public interest factor, the Agency considers ''[s]uch other conduct which may threaten the public health and safety.'' 21 U.S.C. § 823(f)(5). Because the facts of this case do not implicate this factor,[21] I find that factor five weighs neither for nor against Respondent's registration.

Therefore, because the Government proved by a preponderance of the evidence that Respondent violated multiple statutes, rules, and regulations relating to dispensing controlled substances, I find that the Government met its burden to prove its prima facie case that Respondent's registration would be inconsistent with the public interest.

Sanction

Where the Government has made out a *prima facie* case that Respondent's registration would be inconsistent with the public interest, the burden of production shifts to the applicant to ''present[] sufficient mitigating evidence'' to show why he can be trusted with a new registration. *See Medicine Shoppe—Jonesborough,* 73 Fed. Reg. at 387. To this point, the Agency has repeatedly held that the registrant must ''accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct. *Id.; see also Samuel S. Jackson, D.D.S.,* 72 Fed. Reg. 23,848, 23,853 (DEA 2007). Specifically, to rebut the Government's prima facie case, the respondent is required ''to accept responsibility for [the established] misconduct, [and] also to demonstrate what corrective measures [have been] undertaken to prevent the re-occurrence of similar acts.'' *Jeri Hassman, M.D.,* 75 Fed. Reg. 8,194, 8,236 (DEA 2010) (citing *Jayam Krishna-Iyer, M.D.,* 74 Fed. Reg. 459, 464 n.8 (DEA 2009)).

In determining whether a respondent has accepted responsibility and whether misconduct will reoccur, the Agency has historically looked to a number of considerations, including genuine remorse and admission of wrongdoing, *Lawrence C. Hill, M.D.,* 64 Fed. Reg. 30,060, 30,062 (DEA 1999), lapse of time since the wrongdoing, *Norman Alpert, M.D.,* 58 Fed. Reg. 67,420, 67,421 (DEA 1993), candor with the court and DEA investigators, *Jeri Hassman, M.D.,* 75 Fed. Reg. 8,194, 8,236 (DEA 2010), and attempts to minimize misconduct, *Ronald Lynch, M.D.,* 75 Fed. Reg. 78,745, 78,754 (DEA 2010).

The Agency has placed special emphasis on the need to deter intentional diversion of controlled substances, which includes issuing prescriptions ''outside of the usual course of professional practice and [without] a legitimate medical purpose.'' *David A. Ruben, M.D.,* 78 Fed. Reg. at 38,386–87; *see also Joseph Gaudio, M.D.,* 74 Fed. Reg. 10,083, 10,094–95 (DEA 2009). ''Indeed, this Agency has revoked a practitioner's registration upon proof of as few as two acts of intentional diversion and has further explained that proof of a single act of intentional diversion is sufficient to support the revocation of a registration.'' *David A. Ruben, M.D.,* 78 Fed. Reg. at 38,386 (citing *Dewey C. MacKay, M.D.,* 75 Fed. Reg. 49,956, 49,977 (DEA 2010)).

Here, Respondent's improper prescribing methods clearly constituted intentional diversion. *See David A. Ruben, M.D.,* 78 Fed. Reg. at 38,386–87 (defining intentional diversion as prescribing controlled substances ''outside of the usual course of professional practice and [without] a legitimate medical purpose''). The Agency thus has an interest in deterring Respondent and others from engaging in similar egregious behavior. That no one was injured as a result of Respondent's misconduct is irrelevant; Agency precedent is clear that in light of the prescription drug abuse epidemic, even a single act of intentional diversion justifies revocation. *David A. Ruben, M.D.,* 78 Fed. Reg. at 38,386.

Moreover, Respondent's purported acceptance of responsibility was tenuous at best. When asked on direct examination whether his weight loss prescribing practices were improper, he responded equivocally: ''When I got busted, I realized it, yeah. I didn't know—I had no idea that there was a strict rule on BMI.'' [Tr. 193]. When asked on cross-examination whether he admits to prescribing controlled substances without medical justification, Respondent responded that he had ''never given anything to somebody without a medical justification, in my opinion.'' [Tr. 214]. But when pressed on the same question, Respondent quickly changed his tune and answered, ''According to the rules, I guess, yes.'' [Tr. 214]. Similarly, when asked whether his weight-loss practice was ''improperly run,'' Respondent replied, ''I said I broke some rules and regulations. I didn't say it was anything improper.'' [Tr. 221–22]. Indeed, not once during the hearing did Respondent unequivocally admit fault for his improper Phentermine prescriptions.

Respondent's purported admission of guilt was also undermined by his tendency to blame others and make excuses for his misconduct. For example, he testified several times that in his weight loss practice he was ''just doing the same practice that I know other physicians do.'' [Tr. 217; *see also* Tr. 190 (''. . . there were a lot of doctors doing it in town, and I followed what they did.'')]. Indeed, when Respondent was asked on cross examination whether he believed he was ''picked on by the DEA,'' he responded, ''I don't believe it. I know it.'' [Tr. 222]. In addition, Respondent admitted that his practices were ''less than desirable,'' and then, practically in the same breath, blamed the undesirable practices on his staff: ''I didn't know that [my histories and physicals] were that less than desirable because they were all done by

[20] The Administrator interprets the term ''conviction'' by affording it the ''broadest possible meaning.'' *Donald Patsy Rocco, D.D.S.,* 50 Fed. Reg. 34,210, 34,211 (DEA 1985). Thus, evidence of a guilty plea is probative under the third factor of the public interest analysis. *See, e.g., Farmacia Ortiz,* 61 Fed. Reg. 726, 728 (DEA 1996); *Roger Pharmacy,* 61 Fed. Reg. 65,079, 65,080 (DEA 1996).

[21] Under the heading of factor five, the Government's Brief makes a host of arguments about Respondent's credibility and his failure to accept responsibility. [Gov't Br. at 40–45]. These arguments, however, are more properly asserted in the context of Respondent's rebuttal case. *See, e.g., Jeri Hassman, M.D.,* 75 Fed. Reg. 8,194, 8,235–36 (DEA 2010). I therefore address these arguments *infra* in the ''Sanction'' discussion.

my nurse practitioners.'' [22] [Tr. 197]. In short, Respondent blamed other physicians, the DEA, and his own staff for his current predicament rather than take the responsibility himself.

Respondent also minimized the severity of his misconduct by suggesting that he thinks the requirements for prescribing Phentermine are too strict. For example, Respondent testified in these proceedings and at his criminal trial, ''I mean, you can get a tummy tuck, a facelift, whatever you want, but you can't get a—you can't get a diet pill. Come on.'' [Tr. 193; *see also* Tr. 198–99; Gov't Exh. 11 at 115]. In his criminal trial, Respondent testified, ''You can get phentermine over the internet from Canada. Nurses can write for it. It's a Schedule IV drug like cough syrup. I mean, it's so safe. The addiction potential is so low.'' [Gov't Exh. 11 at 119]. Additionally, Respondent testified in his criminal trial that BMI measurements are ''worthless.'' [Tr. 216; Gov't Exh. 11 at 117]. In other words, rather than acknowledging his faults, Respondent opted to criticize the standards put in place by the medical community, the Board, and the DEA.

I also find it significant that Dr. Van Craig, the executive director of the Board, remembered Respondent as being ''angry with the Board for disciplining him'' and felt that Respondent believed he had received ''rather harsh treatment from the Board because of what he was doing.'' [Tr. 60, 61; *see also* Tr. 66]. Indeed, Respondent's demeanor described by Dr. Van Craig is consistent with the hostile tone Respondent took during the hearings in these proceedings.[23]

The above-noted examples do not reflect someone who feels remorse for his misconduct or understands the gravity of his mistakes. Rather, they illustrate that Respondent takes no responsibility for his actions, blames others for his improper prescribing methods, and disagrees with the rules regarding the dispensing of Phentermine. Additionally, other than a promise to comply with the Board's order to refrain from treating weight loss patients, Respondent has offered no evidence of remedial measures he has taken to ensure that future violations will not occur. As such, I find that Respondent has not taken responsibility for his misconduct and therefore has failed to rebut the Government's prima facie case.

VI. *CONCLUSION AND RECOMMENDATION*

Because the Government met its burden to prove that Respondent's registration would be inconsistent with the public interest, and because Respondent failed to rebut the Government's case, I recommend that the Deputy Administrator deny Respondent's application.

Dated: April 16, 2014

s/Gail A. Randall,
Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that the undersigned, on _____, 2013, caused a copy of the foregoing to be faxed and placed in the interoffice mail addressed to DEA Headquarters, Attn: Office of Chief Counsel/Michelle Gillice, Esq., 8701 Morrissette Drive, Springfield, VA 22152, Fax: (202) 307–4946, and a copy to be faxed and mailed to Respondent's Counsel, Rodney A. Ray, Esq., P. O. Box 1018, Columbus, MS 39703, Fax: (662) 329–3522.

Carlene R. Thomas,
Secretary to The Honorable Gail A. Randall

[FR Doc. 2014–25025 Filed 10–20–14; 8:45 am]

BILLING CODE 4410–09–P

[22] I note that immediately following this remark, Respondent purported to take responsibility by saying, ''Although, I'm responsible, so I take the cold blame for them myself.'' [Tr. 197]. In context, however, I find this acceptance of responsibility to be disingenuous; he made this statement only after clearly placing blame on someone else.

[23] Respondent's counsel, at the hearing, suggested that Respondent's ''loud and obnoxious'' tone is a result of his hearing impairment rather than his lack of remorse or hostility toward the Board or the DEA. [Tr. 66]. During the hearing in these proceedings, I certainly noticed that Respondent's hearing disability affected him. [*E.g.,* Tr. 225, 226]. But Respondent's hearing did not appear to be what motivated his tone or his statements, discussed *supra,* which gave cause for concern regarding his remorse and acceptance of responsibility.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The FBI CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Next Generation Identification, Interstate Identification Index, Law Enforcement Enterprise Portal, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, National Data Exchange, and Uniform Crime Reporting.

This meeting is open to the public. All attendees will be required to check-in at the meeting registration desk. Registrations will be accepted on a space available basis. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO). Any member of the public may file a written statement with the Board. Written comments shall be focused on the APB's current issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. R. Scott Trent, DFO, at least seven (7) days in advance of the meeting so that the comments may be made available to the APB for their consideration prior to the meeting.

Anyone requiring special accommodations should notify Mr. Trent at least seven (7) days in advance of the meeting.

DATES AND TIMES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 3–4, 2014.

ADDRESSES: The meeting will take place at Hyatt Regency Jacksonville, 225 E. Coastline Drive, Jacksonville, Florida, 32202, telephone (904) 588–1234.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Skeeter J. Murray; Management and Program Analyst; CJIS Training and Advisory Process Unit, Resources Management Section; FBI CJIS Division, Module C2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149; telephone (304) 625–3518, facsimile (304) 625–5090.

Dated: October 14, 2014.

R. Scott Trent,

CJIS Designated Federal Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2014–24966 Filed 10–20–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Agreement and Undertaking

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Agreement and Undertaking,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 20, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201407-1240-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

For Further Information: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Agreement and Undertaking information collection. A coal mine operator who has been approved to be a self-insurer completes Form OWCP–1 to provide the Secretary of Labor with authorization to sell securities or to bring suit under indemnity bonds deposited by the self-insured employers in the event there is a default in the payment of benefits. The Black Lung Benefits Act authorizes this information collection. *See* 30 U.S.C. 933.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0039.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 16, 2014 (79 FR 41597).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Agreement and Undertaking.

OMB Control Number: 1240–0039.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 20.

Total Estimated Number of Responses: 20.

Total Estimated Annual Time Burden: 5 hours.

Total Estimated Annual Other Costs Burden: $10.

Dated: October 14, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–24980 Filed 10–20–14; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Payment of Compensation Without Award

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Payment of Compensation Without Award,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 20, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?*

ref_nbr=201406-1240-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Payment of Compensation Without Award information collection. Insurance carriers and self-insurers use Form LS–206 to report the initial payment of compensation benefits to injured claimants, as required by the Longshore and Harbor Workers' Compensation Act, to the OWCP. This information collection has been classified as a revision, because the OWCP is launching the Secure Electronic Access Portal, which will allow the user to upload all forms directly into the case file. In addition, the form has been slightly modified to include the date that claimants' payments began and to clarify Privacy Act information. The Longshore and Harbor Workers' Compensation Act authorizes this information collection. *See* 33 U.S.C. 914(b), (c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0043. The current approval is scheduled to expire on November 30, 2014; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 9, 2014 (79 FR 33004).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0043. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Payment of Compensation Without Award.

OMB Control Number: 1240–0043.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 600.

Total Estimated Number of Responses: 16,800.

Total Estimated Annual Time Burden: 4,200 hours.

Total Estimated Annual Other Costs Burden: $8,736.

Dated: October 14, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–24979 Filed 10–20–14; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before November 20, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201404-1205-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301,

200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines (Reporting Form ETA–8623A, *Employment and Training Handbook 336, 18th Edition*) information collection. The State Quality Service Plan (SQSP) represents an approach to the unemployment insurance (UI) performance management and planning process that allows for an exchange of information between Federal and State partners to enhance the ability of the program to reflect a joint commitment to performance excellence and client-centered services. As part of UI Performs, a comprehensive performance management system for the UI program, the SQSP is the principal vehicle that a State UI program uses to plan, record, and manage improvement efforts. Social Security Act section 302 authorizes this information collection. *See* 42 U.S.C. 502.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0132.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 29, 2014 (79 FR 24011).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0132. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–DOL.

Title of Collection: Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines.

OMB Control Number: 1205–0132.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 535.

Total Estimated Annual Time Burden: 1,530 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 14, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–24977 Filed 10–20–14; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade 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 (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 22, 2014 through September 26, 2014.*

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. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for

secondarily affected 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(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

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.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade 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) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,404, Allegheny Ludlum, Wallingford, Connecticut. June 28, 2013.

85,454, Fusion Paperboard Connecticut, LLC,. Versailles, Connecticut. July 30, 2013.

85,482, Interfor US Inc., Beaver, Washington. August 12, 2013.

85,482A, Interfor US Inc., Forks, Washington. August 12, 2013.

85,482B, Interfor US Inc., Port Angeles, Washington. August 12, 2013.

85,483, SMC Electrical Products, Inc., Barboursville, West Virginia. August 13, 2013.

85,486, Remy USA Industries, LLC., Bay Shore, New York, August 15, 2013.

85,486A, Remy USA Industries, LLC., Bay Shore, New York, August 15, 2013.

85,486B, Remy USA Industries, LLC., Bay Shore, New York, August 15, 2013.

85,486C, Remy USA Industries, LLC., Bay Shore, New York, August 15, 2013.

85,503, Bayne Premium Lift System, Greensville, South Carolina, August 23, 2013.

85,515, ITW Switches, Buffalo Grove, Illinois. September 3, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade 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.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,387, John Deere Harvester Works, East Moline, Illinois.

85,495, Sumitomo Electric Device Innovations USA, Inc., Albuquerque, New Mexico.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,468, Comcast Cable, Alpharetta, Georgia.

85,477, AT&T Mobility Services LLC., Atwater, California.

85,505, Red Shield Acquisition, Old Town, Maine.

85,538, Centurylink, Inc., Seattle, Washington.

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 USC 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,498, Hamilton Scientific LLC, DePere, Wisconsin.

85,511, LexisNexis/Matthew Bender, Albany, New York.

I hereby certify that the aforementioned determinations were issued during the period of *September 22, 2014 through September 26, 2014.* These determinations are available on the Department's Web site *www.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.

Signed at Washington, DC, this 2nd day of October 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–24935 Filed 10–20–14; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold sixteen meetings of the Humanities Panel, a federal advisory committee, during November, 2014. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at Constitution Center, 400 7th Street SW., Washington, DC 20506. See Supplementary Information section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. DATE: November 03, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subject of American Studies for Media Projects: Production Grants, submitted to the Division of Public Programs.

2. DATE: November 03, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: Conference Call.
This meeting will discuss applications for Enduring Questions, submitted to the Division of Education Programs.

3. DATE: November 04, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: Conference Call.
This meeting will discuss applications for Enduring Questions, submitted to the Division of Education Programs.

4. DATE: November 04, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subject of Cultural History for Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to Division of Public Programs.

5. DATE: November 05, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: Conference Call.
This meeting will discuss applications for Enduring Questions, submitted to the Division of Education Programs.

6. DATE: November 06, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subject of History for Media Projects: Production Grants, submitted to the Division of Public Programs.

7. DATE: November 06, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of American Studies for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

8. DATE: November 12, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4084.
This meeting will discuss applications on the subject of New Media for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities.

9. DATE: November 17, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4089.
This meeting will discuss applications on the subject of Scholarly Communication for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities.

10. DATE: November 18, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4084.
This meeting will discuss applications on the subject of Education for Digital Humanities Start-Up Grants program, submitted to the Office of Digital Humanities.

11. DATE: November 18, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subject of History for Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to Public Programs.

12. DATE: November 18, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of Art History for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

13. DATE: November 19, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subject of History for Media Projects: Production Grants, submitted to the Division of Public Programs.

14. DATE: November 20, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: P002.
This meeting will discuss applications on the subject of Historical Geography for the Humanities Collections and Reference Resources grant program, submitted to Preservation and Access.

15. DATE: November 20, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4002.
This meeting will discuss applications on the subject of American Studies for Museums, Libraries, and Cultural Organizations: Implementation Grants, submitted to the Division of Public Programs.

16. DATE: November 20, 2014.
TIME: 8:30 a.m. to 5:00 p.m.
ROOM: 4089.
This meeting will discuss applications on the subject of Research for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: October 16, 2014.

Lisette Voyatzis,
Committee Management Officer.

[FR Doc. 2014–24991 Filed 10–20–14; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Endowment for the Arts.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, The National Endowment for the Arts (NEA) has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.).

DATES: Consideration will be given to all comments received by November 20, 2014.

ADDRESSES: Submit comments by one of the following methods:

- *Web site: www.regulations.gov.* Direct comments to Docket ID OMB–2010–0021.
- *Email: research@arts.gov.*
- *Fax:* 202–682–5577.

Comments submitted in response to this notice may be made available to the public through posting on a government Web site. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Sunil Iyengar, National Endowment for the Arts, 400 7th Street SW., Washington, DC 20506–0001, telephone (202) 682–5424 (this is not a toll-free number), fax (202) 682–5677.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Extension of approval for a collection of information.

Type of Review: Extension.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents Across All Three Years: 15,000.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of activities: 3.

Average number of Respondents per Activity: 1,667.

Annual responses: 5,000.

Frequency of Response: Once per request.

Average minutes per response: 15.

Average Expected Annual Burden hours: 1,167.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and

maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection at Regulations.gov.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: October 16, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, Guidelines and Panel Operations.

[FR Doc. 2014–24958 Filed 10–20–14; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Wednesday, November 5, 2014.

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:

8602 Aircraft Accident Report—Crash Following Encounter with Instrument Meteorological Conditions After Departure from Remote Landing Site, State of Alaska, Department of Public Safety, Eurocopter AS350 B3, N911AA, Talkeetna, Alaska, March 30, 2013.

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 specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Wednesday, October 29, 2014.

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 MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Eric Weiss, (202) 314–6100 or by email at *eric.weiss@ntsb.gov.*

Dated: October 17, 2014.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2014–25111 Filed 10–17–14; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0174]

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 July 30, 2014.

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Generic Communications Program.

3. *Current OMB approval number:* 3150–XXXX.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Nuclear power reactor licensees, non-power reactors and materials applicants and licensees.

7. *An estimate of the number of annual responses:* 2,200.

8. *The estimated number of annual respondents:* 500.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 160,000.

10. *Abstract:* The NRC is requesting approval of a generic clearance to collect information concerning possible non-routine generic problems which would require prompt action from the NRC to preclude potential threats to public health and safety.

The public may examine and have copied for a fee publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 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 November 20, 2014. 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.

Vlad Dorjets, 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 *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 15th day of October, 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–24921 Filed 10–20–14; 8:45 am]

BILLING CODE 7590–01–P

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice–PCLOB–2014–05; Docket No. 2014–0001; Sequence 5]

Notice of Meeting

AGENCY: Privacy and Civil Liberties Oversight Board.

ACTION: Notice of meeting; request for public comment.

SUMMARY: The Privacy and Civil Liberties Oversight Board will conduct a public meeting with industry representatives, academics, technologists, government personnel, and members of the advocacy community, on the topic: ''Defining Privacy.'' While the Board will address the definition of privacy in the context of government counterterrorism programs, it is also interested in what

conceptual interests are involved in the protection of privacy, how the impact of technology has affected privacy, what privacy interests have been identified by government privacy officials, what lessons have been learned in the private sector, and what the best way is for government to address privacy concerns. Interested parties are encouraged to attend and to submit comments. The meeting and comments will inform the Privacy and Civil Liberties Oversight Board's approach to privacy issues within its statutory purview. Visit *www.pclob.gov* for a list of panelists closer to the meeting date.

DATES: The meeting will be held Wednesday, November 12, 2014 from 8:00 a.m. through 4:30 p.m. (Eastern Standard Time). Written comments must be received on or before December 31, 2014.

ADDRESSES: Washington Marriott Georgetown Hotel, 1221 22nd Street NW., Washington, DC 20037. Any change in location will be announced on *www.pclob.gov.*

FOR FURTHER INFORMATION CONTACT: Sharon Bradford Franklin, Executive Director, 202–331–1986, or send your inquiry to: *info@pclob.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Doors open at 8:00 a.m. (Eastern Standard Time). The meeting will begin promptly at 8:30 a.m. and will be divided into the following panels:

- Panel 1: Defining Privacy Interests.
- Panel 2: Privacy Interests in the Counterterrorism Context and the Impact of Technology.
- Panel 3: Privacy Interests Identified and Addressed by Government Privacy Officials.
- Panel 4: Applying Lessons Learned from the Private Sector.

A formal agenda will be available at *www.pclob.gov* closer to the meeting date.

Procedures for Public Observation

The meeting is open to the public. Pre-registration is not required. Individuals who plan to attend and require special assistance should contact Sharon Bradford Franklin, Executive Director, 202–331–1986, at least 72 hours prior to the meeting date.

Public Comments

The Privacy and Civil Liberties Oversight Board invites written comments of interested persons regarding privacy in the counterterrorism context. You may submit comments with the docket number PCLOB–2014–05 by the following method:

Submit comments identified by Notice PCLOB 2014–05, Notice of a Meeting by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching ''PCLOB 2014–05''. Select the link ''Comment Now'' that corresponds with ''Notice PCLOB 2014–05, Notice of a Meeting''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Notice PCLOB 2014–05, Notice of a Meeting'', on your attached document.
- *Instructions:* Please submit comments only and cite Notice PCLOB 2014–05, Notice of a Meeting, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.
- Written comments may be submitted at any time prior to the closing of the docket at 11:59 p.m. Eastern Standard Time on December 31, 2014.

Dated: October 16, 2014.

Peter Winn,

Acting General Counsel, Privacy and Civil Liberties Oversight Board.

[FR Doc. 2014–24994 Filed 10–20–14; 8:45 am]

BILLING CODE 6820–B3–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 15c2–7. SEC File No. 270–420, OMB Control No. 3235–0479.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–7 (17 CFR 240.15c2–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c2–7 places disclosure requirements on broker-dealers who have correspondent relationships, or agreements identified in the rule, with other broker-dealers. Whenever any such broker-dealer enters a quotation for a security through an inter-dealer quotation system, Rule 15c2–7 requires the broker-dealer to disclose these relationships and agreements in the manner required by the rule. The inter-dealer quotation system must also be able to make these disclosures public in association with the quotation the broker-dealer is making.

When Rule 15c2–7 was adopted in 1964, the information it requires was necessary for execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative and deceptive acts by broker-dealers. In the absence of the information collection required under Rule 15c2–7, investors and broker-dealers would have been unable to accurately determine the market depth of, and demand for, securities in an inter-dealer quotation system.

There are approximately 4,342 broker-dealers registered with the Commission. Any of these broker-dealers could be potential respondents for Rule 15c2–7, so the Commission is using that figure to represent the number of respondents. Rule 15c2–7 applies only to quotations entered into an inter-dealer quotation system, such as the OTC Bulletin Board (''OTCBB''), or OTC Link (formerly, ''Pink Sheets''), operated by OTC Markets Group Inc. (''OTC Link''). According to representatives of both OTC Link and the OTCBB, neither entity has recently received, or anticipates receiving any Rule 15c2–7 notices. However, because such notices could be made, the Commission estimates that one filing is made annually pursuant to Rule 15c2–7.

Based on prior industry reports, the Commission estimates that the average time required to enter a disclosure pursuant to the rule is .75 minutes, or 45 seconds. The Commission sees no reason to change this estimate. We estimate that impacted respondents spend a total of .0125 hours per year to comply with the requirements of Rule 15c2–7 (1 notice (×) 45 seconds/notice). Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity

of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 15, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24955 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 23, 2014 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution settlement of administrative proceedings;

Adjudicatory matter;

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 16, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25084 Filed 10–17–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73358; File No. SR–NSCC–2014–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 52 (Mutual Fund Services) and Addendum A (Fee Structure) With Respect to the DTCC Payment aXis Service, and To Make Certain Technical Changes

October 15, 2014.

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 October 2, 2014, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b-4(f)(2) [4] and (4) [5] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 52 (Mutual Fund Services) and Addendum A (Fee Structure) of NSCC's Rules & Procedures with respect to the DTCC Payment aXis service, and certain technical changes in connection therewith, as more fully described below. The text of the proposed rule change is available on NSCC's Web site at *http://www.dtcc.com/legal/sec-rule-filings.aspx,* at the principal office of NSCC, and at the Commission's Public Reference Room.

II. Clearing Agency'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 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) Statement of Purpose

Background. NSCC's DTCC Payment aXis service (''Service'') [6] was initially approved by the Commission on December 9, 1992 (''1992 Rule Filing'').[7] In the 1992 Rule Filing, NSCC described that the new service would provide for the automation of payments of commissions owed in respect of mutual fund transactions between fund companies (''Funds'') and their retail broker-dealers (''Distributors'') and that NSCC's role in this new commission service would be to transmit data between the Funds (i.e., the commission payers) and the Distributors (i.e., the commission receivers). In 2005, NSCC expanded the scope of the Service to permit Distributors to transmit fee data through NSCC to other Distributors, and to settle the fee payments in respect thereof, expanding the Service to allow for more than the exchange of commission-related information from Funds to Distributors.[8]

On October 22, 2012, NSCC filed a proposed rule change (''2012 Rule Filing''),[9] which, in particular and relevant to the current proposed rule change, introduced a unique data processing flow to the Service.[10] In the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 240.19b–4(f)(4).

[6] The Service was formerly known as ''Mutual Fund Commission Settlement''.

[7] Securities Exchange Act Release No. 31579 (December 9, 1992), 57 FR 60017 (December 17, 1992) (SR–NSCC–1992–13).

[8] *See* Securities Exchange Act Release No. 52458 (September 16, 2005), 70 FR 56200 (September 26, 2005) (SR–NSCC–2005–10).

[9] Securities Exchange Act Release No. 68159 (November 5, 2012), 77 FR 67410 (November 9, 2012) (SR–NSCC–2012–08).

[10] The 2012 Rule Filing also (i) renamed the Service from ''Mutual Fund Commission Settlement'' to the current ''DTCC Payment aXis'',

Continued

2012 Rule Filing, NSCC explained that unlike the processing flow applicable to all other commission and fee payment types processed through the Service, instructions for the payment of 12b–1 fees to a Distributor with regard to investor accounts held on an omnibus account basis at the Fund (''12b–1 Omnibus Fees'') must in all events be initiated by the Distributor seeking payment. Having received the payment instruction in proper form from the Distributor, NSCC would then transmit such payment instruction to the contra-side Fund. The contra-side Fund could then either (i) confirm or reject the payment instruction, or (ii) release payment (either with or without confirmation).

Currently, NSCC is preparing to add three additional fee types to the list of commission and fee payments that may be processed through DTCC Payment aXis. The three fee types are known in the Funds industry as Sub-Accounting Service Fees, Retirement/Bank Trust Service Fees and Networking Service Fees. All three fee types will be subject to the same processing flow as 12b-1 Omnibus Fees, where the party seeking payment must initiate the transaction (''Payee Initiated Processing Flow'').[11]

The Proposed Rule Change

Commission and Other Fee Payments between DTCC Payment aXis Users. Because the 2012 Rule Filing described the newly introduced Payee Initiated Processing Flow as having applicability only with regard to 12b-1 Omnibus Fees, NSCC proposes to amend Rule 52 to remove the 12b-1 Omnibus Fee limitation. In connection with this amendment, NSCC will also specify that the Payee Initiated Processing Flow may also apply to fee types where any party, including a Fund, is the recipient of the payment. Upon effectiveness of this proposed rule change, going forward NSCC will issue an Important Notice to its DTCC Payment aXis users regarding which commission and other fee types will be subject to the Payee Initiated Processing Flow. These rule changes will be effective immediately, with implementation for the processing of the three additional fee types named above to begin November 24, 2014, or otherwise, at such later date thereafter as NSCC may announce through Important Notice.

NSCC Charges. NSCC is also amending Addendum A (NSCC's Fee Structure) with regard to DTCC Payment aXis. Addendum A will be amended as follows: the DTCC Payment aXis fee category currently entitled ''Non-Omnibus'' will be renamed ''Commission & Fee Settlement'', and the DTCC Payment aXis fee category currently entitled ''Omnibus'' will be renamed ''Invoicing & Fee Settlement'', to better conform to the industry naming convention.

In addition, ''detail records'' transaction charges, currently charged within the ''Omnibus'' fee category (being renamed ''Invoicing & Fee Settlement''), are being reduced by NSCC and will be charged under a separate fee structure to match the fee structure applicable to ''Commission & Fee Settlement'' (currently named, ''Non-Omnibus''), except that there will be no minimum charge applicable to detail records transactions.[12] These rule changes will be effective immediately, with NSCC's implementation of the new detail records transaction fee structure to begin November 24, 2014, or at such later date thereafter as NSCC may announce through Important Notice.

Technical Changes. In connection with the above changes to NSCC's Rules & Procedures, NSCC is also making four technical changes as follows: First, in Rule 52, to remove the footnote in the heading explaining that the ''Mutual Fund Services'' were formerly known as the ''Mutual Fund Settlement, Entry and Registration Verification Service'' (the name change occurred several years ago, and NSCC does not believe that the explanation is required any longer); second, in Rule 52, to revise the phrasing for the term ''Omnibus'' for purposes of clarity; third, in Rule 52, to merge Subsections 3 and 4 of Section C (DTCC Payment aXis) into one Subsection as the two Subsections are substantially related; and four, in Addendum A, to add the subheading ''Transaction Fees'' under the current ''Non-Omnibus'' heading (being renamed ''Commission & Fee Settlement), which subheading was inadvertently omitted in the 2012 Rule Filing. There are no new NSCC charges associated with this technical change to Addendum A. These rule changes will be effective immediately.

(2) Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to NSCC. In particular, the proposed rule change is consistent with (i) Section 17A(b)(3)(F)[13] of the Act because it provides a mechanism for members to communicate commission and fee payment instructions and to settle payments between themselves in a standardized and automated form, fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and (ii) Section 17A(b)(3)(D)[14] of the Act because it amends the service fees NSCC charges in connection with use of the Service, which helps to provide for the equitable allocation of reasonable dues, fees and other charges among members in connection with use of the Service. In addition, the proposed rule change will be implemented consistently with the safeguarding of securities and funds in NSCC's custody or control or for which NSCC is responsible because the proposed rule change applies solely to non-guaranteed services and also solely with respect commission and fee payments between or among Funds and their distribution partners. Accordingly, the proposed rule change does not affect the safeguarding of securities or funds in NSCC's custody or control or for which NSCC is responsible.

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 yet 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 rule change has become effective pursuant to Section 19(b)(3)(A)

(ii) specified that the Service permits for the flow of commission and other fee data, and the settlement of payments thereof, among users of the Service without regard to whether the flow of funds is from the Fund to the Distributor, from the Distributor to the Fund, from a Distributor to another Distributor, or otherwise, (iii) specified that transmission of commission and other fee data with regard to investor accounts held on an omnibus account basis was included within the suite of functionalities offered by the Service and (iv) amended the fee structure with respect to the fees charged by NSCC with regard to the Service.

[11] Networking Service Fees may also be processed using the traditional process flow, at the paying Fund's discretion.

[12] For DTCC Payment aXis Non-Omnibus transactions, NSCC charges its members $.30 per hundred records for the first 500,000 records submitted each month, with a minimum charge of $50. This $50 minimum charge will not apply to detail records transactions.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1(b)(3)(D).

of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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–NSCC–2014–09 on the subject line.

Paper Comments

- Send in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSCC–2014–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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/legal/sec-rule-filings.aspx*).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NSCC–2014–09 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24946 Filed 10–20–14; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73357; File No. SR–BYX–2014–027]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.16 of BATS Y-Exchange, Inc.

October 15, 2014.

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 October 7, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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 filed a proposed rule change to amend paragraph (f) of Rule 11.16 to provide Members [3] with additional time within which to submit a written claim for compensation for ''losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming or the negligent acts or omissions of its employees'' (''Exchange Systems Issues''). In addition, the Exchange proposes to add a new paragraph (g) to Rule 11.16 to permit the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through its affiliated routing broker-dealer, BATS Trading, Inc. (''BATS Trading''), to Trading Centers [4] where such losses are claimed by the Member to have resulted directly from a malfunction of the physical equipment, devices and/or programming, or the negligent acts or omissions of the employees, of such Trading Centers (''Trading Center Systems Issue'').

The proposed rule change is substantially similar to the existing functionality on EDGX Exchange, Inc. (''EDGX'') and EDGA Exchange, Inc. (''EDGA'').[5] The Exchange has designated the proposed rule change as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.'' *See* Exchange Rule 1.5(n).

[4] Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), defines a ''Trading Center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See also* Exchange Rule 2.11(a).

[5] *See* EDGA Rules 11.12(d)(3) and (e); EDGX Rules 11.12(d)(3) and (e). *See also* Securities Exchange Act Release Nos. 71061 (December 12, 2013), 78 FR 76685 (December 18, 2013) (SR–EDGA–2013–36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12, Limitations of Liability); and 71062 (December 12, 2013), 78 FR 76693 (December 18, 2013) (SR–EDGX–2013–45) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12, Limitations of Liability). The Exchange notes that proposed Rule 11.16(g)(4) refers the liability limits under BATS Rule 11.16(d)(1)–(3), which differ from the existing EDGA and EDGX monthly liability limit of $500,00 referenced under EDGA and EDGX Rules 11.12(e)(4) and set forth under EDGA and EDGX Rules 11.12(d)(1). The Exchange understands that both EDGA and EDGX intend to submit a proposed rule change to harmonize its liability limits with those of BATS and BYX.

[6] 17 CFR 240.19b–4(f)(6)(iii).

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.16 to: (i) Amend paragraph (f) to provide Members with additional time within which to submit a written claim for compensation for Exchange Systems Issues; and (ii) add a new paragraph (g) permitting the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through BATS Trading to Trading Centers where such losses are claimed by the Member to have resulted directly from a *Trading Center Systems Issue.*

Earlier this year, the Exchange and its affiliate BATS Exchange, Inc. (''BZX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX, EDGA and EDGX, the ''BGM Affiliated Exchanges'').[7] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to align the requirements for Member reimbursements with that of EDGX and EDGA in order to provide consistent requirement for users of the BGM Affiliated Exchanges.[8]

Extension of Deadline To Submit Claims

Rule 11.16 currently states that, except as provided in subsection (d) of the Rule, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Exchange or its use. Exchange Rule 11.16(d) provides a limited exception to its general limitation of liability that allows for the payment of compensation to Members for Exchange Systems Issues, subject to certain conditions. Subsection (d)(1) thru (3) of Rule 11.16 sets forth the aggregate limits of all claims made by market participants related to the use of the Exchange.

Currently, Rule 11.16(f) requires Members to submit claims for compensation to the Exchange by the opening of trading on the business day following the day on which the Member's use of the Exchange gave rise to the claim. To be consistent with EDGX and EDGA, the Exchange proposes to extend the deadline to submit a claim to no later than 4:00 p.m. Eastern Time, or 1 p.m. in the event of an early market close,[9] on the second business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.16(f). The expansion of time to submit compensation claims should, therefore, increase the likelihood that Members will be able to submit claims to the Exchange in a timely manner. In addition, the proposed extended deadline is identical to that contained in EDGX Rule 11.12(d)(3) and EDGA Rule 11.12(d)(3).[10]

Reimbursement for Losses Sustained at Trading Centers

The Exchange also proposes to amend Exchange Rule 11.16 to add a new paragraph (g) that would authorize the Exchange, subject to express conditions and limitations, to compensate Members for losses relating to orders routed by the Exchange through BATS Trading to Trading Centers that the Member claims resulted directly from a Trading Center Systems Issue. Proposed Rule 11.16(g) is substantially similar to EDGX Rule 11.12(e) and EDGA Rule 11.12(e).[11]

The Exchange believes that the proposed rule change will provide a remedy, not currently available under Rule 11.16, to Members that experience losses due to Trading Center Systems Issues after BATS Trading routed the Members' orders to a Trading Center that experienced such issues. The Exchange's authority to compensate Members for losses under Rule 11.16(d) only covers losses incurred as a result of Exchange Systems Issues, and does not currently extend to Trading Center Systems Issues. Even if the Exchange, via BATS Trading, were to seek and receive compensation on behalf of a Member from a Trading Center relating to a Trading Center Systems Issue, it does not currently have the authority to, in turn, pass such compensation along to the affected Member. The Exchange, therefore, proposes to add a new paragraph (g) to Rule 11.16 as an accommodation to Members, whereby the Exchange, via BATS Trading, would employ reasonable efforts to submit Members' claims for compensation on such Members' behalf to a Trading Center, and pass along to such Members the full amount of compensation, if any, obtained by BATS Trading from such Trading Center.[12]

Under proposed Rule 11.16(g), the Exchange would undertake to accept claims for losses submitted by Members, which claims must contain representations from such Members as to the accuracy of the information contained therein and that any losses incurred were the direct result of a Trading Center Systems Issue.[13] The Exchange would employ reasonable efforts to submit such claims, via BATS Trading, to the Trading Center in question. If and to the extent that BATS Trading were to receive compensation from a Trading Center in response to a claim submitted on behalf of a Member, the full amount of such compensation would be passed through to the Member.

Proposed Rule 11.16(g)(1) would require that a Member seeking compensation for a loss due to a Trading Center Systems Issue must submit its claim to the Exchange in writing. The proposed rule would not include a specific deadline by which Members must submit claims for compensation. The Exchange notes that Trading Centers that are national securities exchanges impose different deadlines by which their Members must submit claims for compensation,[14] and that

[7] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[8] The Exchange understands that BZX is to file a proposed rule change with the Commission to adopt similar requirements.

[9] Regular trading hours for days when the markets close early are typically 9:30 a.m. to 1 p.m. Eastern Time on the day after Thanksgiving and on Christmas Eve, unless Christmas Eve happens to fall on a weekend. *See, e.g.,* BATS Exchange Trading Hours *available at http://batstrading.com/support/hours/.*

[10] *See supra* note 5.

[11] *See supra* note 5.

[12] BATS Trading is considered a facility of the Exchange, and, therefore, claims for compensation due to an Exchange Systems Issue experienced by BATS Trading must be submitted in accordance with Exchange Rule 11.16(d).

[13] Members receive reports from the Exchange shortly after a trade is consummated indicating whether their order, or a portion thereof, was executed at a Trading Center. The report will indicate the size and price of the execution on the Trading Center.

[14] *See* Nasdaq Stock Market LLC Rule 4626 (requiring claims for compensation to be submitted

many Trading Centers that are not national securities exchanges either do not impose any deadline or otherwise handle requests for compensation on a case-by-case basis. It is, therefore, incumbent on, and the sole responsibility of, the Member to submit claims to the Exchange in a timely manner so that the Exchange may then forward such claim, via BATS Trading, in advance of any deadline required by that Trading Center. Upon receipt of a Member's claim, the Exchange would only verify that a valid order was submitted by the Member and accepted and acknowledged by the Exchange, that the Member's order or a portion of the order was routed by the Exchange via BATS Trading to a Trading Center, and that the Member represented that it incurred a loss as a result of a Trading Center Systems Issue. The Exchange would then use reasonable efforts to forward the claim, via BATS Trading, to such Trading Center.

Proposed Rule 11.16(g)(2) would state that the Exchange would pass along to the Member the full amount of any compensation that the Exchange, via BATS Trading, received from a Trading Center as a result of a claim submitted on behalf of the Member. Any compensation paid to the Member would be paid solely from the compensation, if any, recovered from that Trading Center and not from any other source.

Proposed Rule 11.16(g)(3) would account for the circumstance where more than one Member submitted a claim for loss resulting from the same Trading Center Systems Issue and the total amount of compensation received from the Trading Center is insufficient to fully satisfy the claims of all such Members. In such case, the Exchange would proportionally allocate the total amount received from the Trading Center, if any, among all such Members' claims based on the proportion that each such claim bears to the sum of all such claims. The Exchange believes that this provision will provide for equitable compensation among all Members that submit a valid claim related to a Trading Center Systems Issue by ensuring that Members are compensated on a pro rata basis.

The payment of claims submitted in response to an Exchange Systems Issue would be separate and apart from any pass-through of compensation paid due to a Trading Center Systems Issue. Proposed Rule 11.16(g)(4) would state that any pass-through of compensation to a Member in accordance with Rule 11.16(g) would be unrelated to any other claims for compensation that are made due to an Exchange Systems Issues under Exchange Rule 11.16(d). Accordingly, proposed Rule 11.16(g)(4) would state that any compensation paid to Members from reimbursement recovered from a Trading Center would not count against the Exchange's liability limits set forth in Rule 11.16(d), nor any applicable insurance maintained by the Exchange.

Notwithstanding the foregoing, the Exchange is not proposing to undertake or assume any responsibility to: (1) Independently validate information submitted by a Member in connection with a claim for compensation for loss arising out of a Trading Center Systems Issue, other than the ticker, size and side of the affected orders and the Trading Center to which the affected orders were routed and alleged to have experienced a Trading Center Systems Issue; (2) ascertain or comply with any mandatory deadlines within which to submit claims for compensation to a Trading Center; (3) guarantee that any compensation will be procured from a Trading Center; (4) negotiate agreements with any Trading Centers to require compensation under any circumstances; or (5) take any additional steps with respect to a Trading Center Systems Issue if such Trading Center denies or fails to respond to any claim for compensation, in whole or in part. In other words, the Exchange will, upon receipt of a claim for compensation from a Member for loss resulting from a Trading Center Systems Issue, reasonably endeavor to submit such claim, via BATS Trading, to the applicable Trading Center as soon as reasonably practicable, and if BATS Trading in turns receives an accommodation from such Trading Center, such accommodation will be passed along to the Member via the Exchange. Neither the Exchange nor BATS Trading will be under any obligation to know any Trading Center's rules, procedures and/or customs, to the extent any exist, for the submission of claims for compensation, nor to dispute a Trading Center's denial of a claim, whether in whole or in part, nor to take any further actions with respect to such claim in the event that the Trading Center does not respond at all to the claim. Accordingly, with this proposed rule change, the Exchange is not assuming any additional liability to Members for losses claimed to have resulted from Trading Center Systems Issues; rather, it proposes to serve a purely ministerial role, given the contractual privity that exists between BATS Trading and Trading Centers, in the submission of Members' claims for compensation to such Trading Centers on their behalf. To that end, proposed Rule 11.16(g)(5) would make clear that under no circumstances will the Exchanges' inability to procure compensation from a Trading Center, in whole or in part, for whatever reason, give rise to a claim for compensation from the Exchange pursuant to paragraph (d) of Rule 11.16 as a ''negligent act or omission of an Exchange employee.'' Proposed Rule 11.16(g)(5) would further state that the Exchange would not be liable should the Trading Center deny such claim made pursuant to proposed Rule 11.16(g), in whole or in part, for any reason.

The Exchange believes that the provisions outlined in the above paragraph are equitable because any claim submitted under the proposed Rule 11.16(g) would be subject to the rules, procedures, and discretion of the Trading Center in question. It is the Trading Center, and not the Exchange or BATS Trading, that ultimately decides whether to approve or deny a Member's claim, or even whether to act on such request at all. For example, the Exchange has no discretion over or responsibility for the information provided by the Member in its claim, and no discretion over or responsibility for whether such information is sufficient for the Trading Center to provide compensation. In addition, any claim submitted under the proposal would be subject to compensation only to the extent that the Trading Center provided such compensation to BATS Trading. Accordingly, because it is the Trading Center, and not the Exchange or BATS Trading, that ultimately decides whether a claim for compensation would be granted, the Exchange believes the proposal is fair and just in limiting the Exchange's liability in the event a Trading Center determines, for any reason, to deny a claim, in whole or in part, or even not to respond to such claim.

Implementation Date

The Exchange intends to implement the proposed rule changes as soon as practicable and will announce its availability via a trading notice to be posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

by 12:00 p.m. Eastern Time on T+1). *See also* NYSE Arca, Inc. Options Rule 14.2, NYSE MKT LLC Rule 905NY, Chicago Board Options Exchange, Incorporated Rule 6.7 (requiring claims for compensation to be submitted by the open of regular trading hours on T+1).

Section 6(b) of the Act [15] and furthers the objectives of Section 6(b)(5) of the Act,[16] in that it is designed 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, protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The proposed rule change is substantially similar to the existing rules of EDGX and EDGA.[17] The proposed rule change is intended to add certain requirements for Member reimbursements currently offered by EDGA and EDGX in order to provide consistent rules across the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA and EDGX. The proposed rule change would provide greater harmonization between Exchange and EDGX and EDGA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Extension of Deadline To Submit Claims

Extending the deadline by which claims for compensation are submitted to the Exchange is designed to increase the likelihood that Members will be able to submit claims in a timely manner. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.16(f). Therefore, the Exchange believes the proposed rule change is equitable and will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue.

Reimbursement for Losses Sustained at Other Trading Centers

Like EDGX Rule 11.12(e) and EDGA Rule 11.12(e),[18] proposed Rule 11.16(g) would enable the Exchange to pass through to Members any compensation that the Exchange is able to procure, via BATS Trading, from a Trading Center for losses claimed by Members to have resulted from a Trading Center Systems Issue. The proposal specifies a standardized method for Members to submit claims for compensation from a Trading Center, and for the Exchange to pass through to its Members any such compensation obtained, if and to the extent the Exchange, via BATS Trading, is able to obtain such compensation from the Trading Center. Furthermore, any compensation obtained by the Exchange from a Trading Center would be passed on to the Member who requested such reimbursement. If the amount received by the Exchange from the Trading Center was insufficient to satisfy all claims, it would be allocated among the claimants proportionally based on the percentage that each claimant's claim in relation to the sum of all claims received by the Exchange. In addition, the proposed pro-rata allocation methodology that the Exchange would employ would provide for equitable compensation among all Members who submit a claim related to a Trading Center Systems Issue and deter the risk of preferential treatment of certain Members by the Exchange. Therefore, the Exchange believes that the proposed rule change would protect investors and the public interest by potentially providing Members with a remedy not currently available to them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change would not impose any burden on competition. The proposed rule change is designed to promote fairness in the marketplace by increasing the time within which a Member is to submit claims for Exchange System Issues and to be compensated for losses that result from Trading Center Systems Issues. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same deadline to submit a claim for Exchange Systems Issues and be able to submit claims for reimbursement for certain losses incurred due to Trading Center System Issues. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and EDGA and EDGX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the BGM Affiliated Exchanges.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 proposal 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–BYX–2014–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See supra* note 5.

[18] *See supra* note 5.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BYX–2014–027. 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 a.m. and 3 p.m. Copies of such filing will also 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–BYX–2014–027 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24944 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73362; File No. SR–NYSEArca–2014–117]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Modifying Its Quote Mitigation Plan and Amending Rule 6.86

October 15, 2014.

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 October 2, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposes to modify its quote mitigation plan and to amend Rule 6.86 (Firm Quotes). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify its quote mitigation plan and to amend Rule 6.86 (Firm Quotes). As discussed below, the Exchange believes the modified quote mitigation plan will adequately accommodate the number of quotations sent to the Exchange and the message traffic that the Exchange sends to the Options Price Reporting Authority (''OPRA'').

Rule 6.86

In connection with the adoption of the Penny Pilot Program, the Exchange adopted a quote mitigation plan designed to reduce the number of quotations generated by the Exchange for all options traded on the Exchange, not just issues included in the Penny Pilot Program.[4] The current plan reduces the number of messages the Exchange sends to OPRA by only submitting quote messages for ''active'' series. Commentary .03 to Rule 6.86 defines active series as: (i) The series has traded on any options exchange in the previous 14 calendar days; or, (ii) the series is solely listed on the Exchange; or (iii) the series has been trading ten days or less, or; (iv) the Exchange has an order in the series. Alternatively, the Exchange may define a series as active on an intraday basis if: (i) The series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for quote from a Customer in that series.

The Exchange believes it no longer needs the quote mitigation provided by Commentary .03 to Rule 6.86 because rules adopted since Commentary .03 to Rule 6.86 provide sufficient quote mitigation.

Current Market Structure and Controls on the Exchange

In 2010, the Exchange incorporated select provisions of the Options Listing Procedures Plan (''OLPP'') in Rule 6.4A as a quote mitigation strategy.[5]

The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. From the OLPP, the Exchange incorporated in Rule 6.4A, ''applied uniform standards to the range of options series exercise (or strike) prices available for trading on the [Exchange] as a quote mitigation strategy.''[6] In approving the OLPP provisions subsequently incorporated in Rule 6.4A, the Commission indicated that ''adopting uniform standards to the range of options series exercise (or strike) prices available for trading on the [Exchange] should reduce the number of option series available for trading, and thus should reduce increases in the options quote message traffic because market participants will not be submitting quotes in those series.''[7]

One year after adopting select provisions of the OLPP, the Exchange refined the quoting obligations

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities and Exchange Release No. 55156 (January 23, 2007), 72 FR 4759 (January 23, 2007) (SR–NYSEArca–2006–73).

[5] *See* Securities and Exchange Release No. 61977 (April 23, 2010), 75 FR 22884 (April 30, 2010) (SR–NYSEArca–2010–30). *See also* OLPP, *available at, http://www.theocc.com/clearing/industry-services/olpp.jsp.*

[6] Rule 6.4A codified Amendment No. 3 to the OLPP. *See* Securities and Exchange Release No. 60531 (August 19, 2009) 74 FR 43173 (File No. 4–443). *See also* Rule 6.4A.

[7] *Id.,* 74 FR at 43174.

applicable to Market Makers as a quote mitigation strategy.[8] Specifically, the Exchange adopted Commentary .01 to Rule 6.37B, which states that Lead Market Makers' and Market Makers' continuous quoting obligations ''shall not apply to Market Makers with respect to adjusted option series, and series with a time to expiration of nine months or greater, for options on equities and Exchange Traded Fund Shares, and series with a time to expiration of twelve months or greater for Index options.'' [9] Because there are no Market Maker quoting obligations associated with adjusted options series, there is a reduction in quote traffic that is sent to OPRA. Indeed, in approving Commentary .01 to Rule 6.37B, the Commission noted, ''. . . the Exchange's proposal would reduce the burden on market makers to submit continuous quotes that the Exchange may not submit to OPRA.'' [10]

The Exchange believes that reliance on the OLPP, via Rule 6.4A, together with the refined Market Maker quoting obligations, pursuant to Commentary .01 to Rule 6.37B, is sufficient as a quote mitigation strategy and obviates the need for Rule 6.86. The Exchange believes that limiting the number of series listed on the Exchange is preferable to suppressing quotes of inactive series, as required under current Rule 6.86, because all quotes sent by Market Makers are actionable even if not displayed.

The Exchange believes that both its own systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the deletion of Rule 6.86. The Exchange has already successfully conducted testing to ensure that its internal systems are equipped to handle any increase in quote traffic as a result of the proposed rule change. Further, the Exchange continually assesses its capacity needs and ensures that the capacity that it requests from OPRA is not only sufficient but also compliant with the requirements established in the OPRA Capacity Guidelines.[11] In submitting its capacity requests, the Exchange has factored in the impact on capacity if all series currently subject to Rule 6.86 were to become active and therefore sent to OPRA.[12]

In addition, the Exchange has in place the following measures that it believes serve as additional safeguards against excessive quoting:

—Monitoring: The Exchange actively monitors the quotation activity of its Market Makers. When the Exchange detects that a Market Maker is disseminating an unusual number of quotes, the Exchange contacts that Market Maker and alerts it to such activity. Such monitoring may reveal that the Market Maker may have internal system issues or has incorrectly set system parameters that were not immediately apparent. Alerting a Market Maker to the heightened levels of activity will usually result in a change that reduces the number of quotes sent to the Exchange by the Market Maker.

—New Listings: The Exchange has a business plan with respect to the listing of options on new underlying securities that is designed to help ensure that any new listings are sufficiently active to avoid listing options on underlying securities that generate quote volume without the offsetting benefit of trading volume.[13]

—Ratio Threshold Fees: The Exchange imposes a ratio fee that is designed to encourage the efficient use of orders.[14]

In connection with the foregoing, the Exchange proposes to amend paragraphs (b)(1) and (b)(2) of Rule 6.86 to delete references to the ''Quote Mitigation Plan,'' which refer to the plan set forth in Commentary .03 to Rule 6.86. In addition, the Exchange proposes to delete Commentary .03 to Rule 6.86 in its entirety, as it contains a discussion of the current quote mitigation plan.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update to be published no later than 60 days following the effective date of this filing. The implementation date will be no later than 60 days following the issuance of the Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [15] in general and furthers the objectives of Section 6(b)(5) of the Act [16] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that the proposed modifications to the quote mitigation plan, including the continued reliance on Rule 6.4A and Commentary .01 to Rule 6.37B, together with the other safeguards mentioned above, would promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market as it would increase transparency and enhance price discovery as all Market Maker quotes would be reflected in the market. Specifically, the Exchange believes that deleting Commentary .03 to Rule 6.86 will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will enable all actionable Market Maker quotes to be displayed, including in inactive series. The Exchange believes this would also protect investors and the public interest because available Market Maker liquidity in all series would be publicly displayed, thereby putting investors on notice of such liquidity. The Exchange further believes that the market structure initiatives adopted in recent years serve to reduce the potential for excessive quoting because the OLPP limits the number of series eligible to be listed, which reduces the number of series for which a Market Maker would be obligated to quote, and therefore reduces quote traffic.

As discussed above, the Exchange believes that both its own systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in

[8] *See* Securities and Exchange Release No. 65573 (October 14, 2011), 76 FR 65305 (October 20, 2011) (SR–NYSEArca–2011–59).

[9] An ''adjusted series'' is ''an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.'' *See* Commentary .01 to Rule 6.37B.

[10] *See supra* n. 8, 76 FR at 65306.

[11] *See* the OPRA Capacity Guidelines, *available here, http://www.opradata.com/pdf/capacity_guidelines.pdf.*

[12] OPRA has delegated certain functions pertaining to planning the capacity of the OPRA System to an Independent System Capacity Advisor (''ISCA'') that ''may provide less than all of the capacity that has been requested if it determines (a) that the capacity requests of one or more of the parties are unreasonable, or (b) that it is not reasonable to develop or maintain a System that has capacity sufficient to satisfy the requests of the parties.'' *See id.* The Exchange has never been informed by the ISCA that the capacity it has requested cannot be met for any reason, including because the ISCA had deemed the request to be unreasonable. Thus, the Exchange believes that any increase in quote traffic that might be sent to OPRA as a result of the current proposal should not impact any other exchange's capacity at OPRA.

[13] *See* NYSE Arca Options Listing Policy Statement, *available at, http://www.nyse.com/pdfs/TraderNoticeArcaLOPSChanges092713.pdf.*

[14] *See* NYSE Arca Options Fee Schedule, *available at, https://www.theice.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

quote traffic that might be sent to OPRA as a result of the proposed rule change.

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. Specifically, as discussed above, the Exchange believes that any increase in quote traffic that might be sent to OPRA as a result of the proposed rule change should not impact any other exchange's capacity at OPRA.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–117. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–117, and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24948 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* n. 12.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73359; File No. SR–BATS–2014–047]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes Related to Fees for Use of BATS Exchange, Inc.

October 15, 2014.

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 October 6, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[3] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the ''Options Pricing'' section of its fee schedule effective immediately, in order to modify pricing charged by the Exchange's options platform (''BATS Options'') for orders routed away from the Exchange and executed at various away options exchanges.

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). To address different fees at various other options exchanges, the Exchange in most instances differentiates between either securities subject to the options penny pilot program (''Penny Pilot Securities'') and non-Penny Pilot Securities or between ''Make/Take issues'' and ''Classic issues.'' As set forth on the Exchange's fee schedule, pricing in Make/Take issues is for executions at the identified exchange under which rebates to post liquidity (*i.e.,* ''Make'') are credited by that exchange and fees to take liquidity (*i.e.,* ''Take'') are charged by that exchange; pricing in Classic issues applies to all other executions at such exchanges. Routing charges are also differentiated depending on whether they are for Customer [4] orders or for Professional,[5] Firm, and Market Maker [6] orders (collectively, ''non-Customer orders'').

As noted previously and as set forth above, the Exchange's current approach to routing fees is to set forth in a simple manner certain flat fees that approximate the cost of routing to other options exchanges. The Exchange then monitors the fees charged as compared to the costs of its routing services, as well as monitoring for specific fee changes by other options exchanges, and adjusts its flat routing fees and/or groupings to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. Over the last several months, due to various increases in fees assessed by other options exchanges as well as increases experienced by the Exchange with respect to fees charged for clearing services and fees charged by the OCC, the Exchange's overall Routing Costs have increased. As a result, and in order to avoid subsidizing routing to away options exchanges and to continue providing quality routing services, the Exchange proposes relatively modest increases and adjustments to the charges assessed for most orders routed to most options exchanges, as set forth below.

The Exchange currently charges $0.10 per contract for all orders (*i.e.,* Customer and non-Customer) to buy or sell option contracts overlying 10 shares of a security (''Mini Options'') that are routed to and executed at an away options exchange. Due to the recent increases in Routing Costs, the Exchange proposes to increase the fee for Mini Options routed to and executed at an away options exchange to $0.12 per contract.

The Exchange currently charges $0.57 per contract for non-Customer orders routed to and executed at the BOX Options Exchange LLC (''BOX''). Due to the recent increases in Routing Costs, the Exchange proposes to increase this fee to $0.65 per contract. This proposed increase will also align such fee with the fee charged for most non-Customer orders routed to and executed at other options exchanges, as described below.

The Exchange currently charges $0.11 per contract for Customer orders and $0.60 per contract for non-Customer orders routed to and executed at: (i) NYSE MKT LLC (''AMEX''); (ii) Chicago Board Options Exchange, Incorporated (''CBOE''); (iii) the Miami International Securities Exchange, LLC (''MIAX''); (iv) NASDAQ OMX BX, Inc. (''BX Options'') in Penny Pilot Securities; and (v) the International Securities Exchange, LLC (''ISE'') in non-Penny Pilot Securities. Due to the recent increases in Routing Costs, the Exchange proposes to increase the fee charged for orders routed to and executed at these options exchanges to $0.12 per contract for Customer orders and $0.65 per contract for non-Customer orders.

The Exchange currently charges $0.45 per contract for Customer orders and $0.65 per contract for non-Customer orders routed to and executed at NASDAQ OMX PHLX LLC (''PHLX'').[7] In addition, the Exchange currently charges $0.52 per contract for Customer orders and $0.57 per contract for non-Customer orders routed to and executed at: (i) NYSE Arca, Inc. (''ARCA'') in Penny Pilot Securities; (ii) the NASDAQ Options Market (''NOM'') in Penny Pilot Securities; (iii) ISE in Penny Pilot Securities; and (iv) Topaz Exchange, LLC (''ISE Gemini'') in Penny Pilot Securities. The Exchange believes it is appropriate based on a general similarity in Routing Costs for orders routed to and executed at PHLX and these venues to add PHLX to this grouping. The Exchange also proposes to increase the fee charged for non-Customer orders from $0.57 per contract to $0.65 per contract. Thus, for Customer orders routed to and executed at PHLX there will be an increase from $0.45 per contract to $0.52 but no increase for non-Customer orders, which are currently charged $0.65 per contract. Similarly, there will be no fee increase for Customer orders to all other options exchanges in the group, which are already charged $0.52 per contract, but non-Customer orders will be charged a fee of $0.65 per contract, which is an increase from the current fee of $0.57 per contract.

Finally, the Exchange currently charges a standard fee of $0.60 per contract for directed intermarket sweep orders (''Directed ISOs'') executed at most Member directed destinations when bypassing the BATS Options order book. The Exchange proposes to increase its standard fee for Directed ISOs to $0.65 per contract for reasons consistent with those set forth above related to increasing Routing Costs incurred by the Exchange. The Exchange also notes that, without adjustment, the Routing Costs incurred by the Exchange for Directed ISOs in certain securities sent on behalf of Professional, Firm, and Market Maker participants would exceed the fee charged by the Exchange for Directed ISOs. The Exchange notes that it is not proposing to modify fees for Directed ISOs other than the proposed increase to the standard fee. Thus, the Exchange is not proposing any changes to the lower than standard charge per contract for Directed ISOs sent in Mini Options or the higher than standard charge per contract for certain Directed ISOs sent to certain away options exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or

[4] As defined on the Exchange's fee schedule, a ''Customer'' order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), except for those designated as ''Professional''.

[5] The term ''Professional'' is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[6] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (''OCC'').

[7] As it has done before, despite identical fees, the Exchange is maintaining separate references to Make/Take and Classic pricing for orders routed to and executed PHLX because it believes that participants that are accustomed to this distinction will be less confused if it continues to separately list each category.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges, and the proposal is in response to various increases in fees assessed by other options exchanges as well as increases experienced by the Exchange with respect to fees charged for clearing services and fees charged by the OCC. Accordingly, the Exchange believes that the proposed increases are fair, equitable and reasonable because they will help the Exchange to avoid subsidizing routing to away options exchanges and to continue providing quality routing services. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or slight loss for orders routed to and executed at away options exchanges. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange has also proposed an increased fee for most Directed ISOs routed to and executed at away options exchanges. This increase is proposed because, without adjustment, the Routing Costs incurred by the Exchange for Directed ISOs in certain securities sent on behalf of Professional, Firm, and Market Maker participants would exceed the fee charged by the Exchange for Directed ISOs. The Exchange believes that the proposed fee structure for Directed ISOs is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing such orders and will allow the Exchange to recoup and cover the costs of providing routing services. The Exchange also believes that the proposed fee structure for Directed ISOs is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit or loss from routing to away options exchanges.

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 proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place and that reflects pricing changes by various options exchanges as well as increases to other Routing Costs incurred by the Exchange. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[10] As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 thereunder.[12] 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–BATS–2014–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–047. 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 at 100 F Street NE.,

[10] *See* BATS Rule 21.1(d)(8) (describing ''BATS Only'' orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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–BATS–2014–047, and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24947 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73364; File No. SR–NYSEArca–2014–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Shares of Eight PIMCO Exchange-Traded Funds

October 15, 2014.

On August 15, 2014, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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 list and trade shares of the following eight PIMCO exchange-traded funds, pursuant to NYSE Arca Equities Rule 8.600: PIMCO StocksPLUS® Absolute Return Exchange-Traded Fund, PIMCO Small Cap StocksPLUS® AR Strategy Exchange-Traded Fund, PIMCO Fundamental IndexPLUS® AR Exchange-Traded Fund, PIMCO Small Company Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund, PIMCO EM Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund, PIMCO International Fundamental IndexPLUS® AR Strategy Exchange-Traded Fund, PIMCO EM StocksPLUS® AR Strategy Exchange-Traded Fund, and PIMCO International StocksPLUS® AR Strategy Exchange-Traded Fund (Unhedged). The proposed rule change was published for comment in the **Federal Register** on September 3, 2014.[3] The Commission received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is October 18, 2014. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates December 2, 2014, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2014–89).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24950 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72937 (August 27, 2014), 79 FR 52385.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73354; File No. SR–CBOE–2014–075]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Order Routing Subsidy Program and the Complex Order Routing Subsidy Program

October 15, 2014.

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 October 1, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission'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

The Exchange proposes to make a number of amendments to its Order Routing Subsidy (ORS) and Complex Order Routing Subsidy (CORS) Programs (collectively ''Programs''). By way of background, the ORS and CORS Programs allow CBOE to enter into subsidy arrangements with any CBOE Trading Permit Holder (''TPH'') (each, a ''Participating TPH'') or Non-CBOE TPH broker-dealer (each a ''Participating Non-CBOE TPH'') that meet certain criteria and provide certain order routing functionalities to other CBOE TPHs, Non-CBOE TPHs and/or use such functionalities themselves.[3] (The term ''Participant'' as used in this filing refers

[3] *See* CBOE Fees Schedule, ''Order Router Subsidy Program'' and ''Complex Order Router Subsidy Program'' tables for more details on the ORS and CORS Programs.

to either a Participating TPH or a Participating Non-CBOE TPH). Participants in the ORS Program receive a payment from CBOE for every executed contract for simple orders routed to CBOE through their system. CBOE does not make payments under the ORS Program with respect to executed contracts in single-listed options classes traded on CBOE, or with respect to complex orders or spread orders. Participants in the CORS Program receive a payment from CBOE for every executed contract for complex orders routed to CBOE through their system. CBOE does not make payments under the CORS Program with respect to executed contracts in single-listed options classes traded on CBOE or with respect to simple orders. The Exchange currently pays a subsidy of $0.04 per contract for regular orders and a subsidy of $0.004 per contract for mini-options orders under both the ORS and CORS programs in order to subsidize Participants' costs associated with providing order routing functionalities.

The Exchange first proposes to eliminate the $0.04 per contract subsidy in both Programs and establish instead different subsidies for customer and non-customer orders. Specifically, the Exchange proposes to introduce a separate subsidy per contract for customer (C origin code) orders and increase the current subsidy per contract for all non-customer orders. The Exchange proposes to pay a subsidy of $0.02 per contract for all customer (C) orders and a subsidy of $0.06 per contract for all non-customer orders. The proposed change is applicable to both Programs. Additionally, the Exchange proposes to cease making payments under both Programs with respect to executed contracts in mini-option classes. The Exchange no longer believes it is competitively necessary to incentivize the sending of mini-options to the Exchange and accordingly does not wish to offer a subsidy for mini-options under the ORS and CORS Programs. The Exchange notes that a similar subsidy program offered by NYSE Amex Options (''Amex'') also excludes mini-options.[4]

The Exchange next proposes to eliminate from the ORS and CORS Programs payment of subsidies for contracts executed via the Automated Improvement Mechanism (''AIM''). Contracts that execute via AIM already have an opportunity to earn various rebates and discounts and thus the Exchange believes it is appropriate to exclude AIM executions from the Programs.[5] The Exchange notes that the subsidy program offered by Amex excludes contracts executed via Amex's auction mechanism.[6]

Next, the Exchange seeks to eliminate Marketing and Billing Services Elections from the ORS Program. By way of background, a Participant of the ORS Program may elect to have CBOE perform certain additional marketing services on its behalf. If a Participant elected to have CBOE perform these services, the amount that CBOE would pay the Participant for orders routed to CBOE through the Participant's system would be reduced from $0.04 per executed contract to $0.03 per executed contract. A Participant of the ORS Program can also elect to have CBOE perform the service of billing other CBOE TPHs with respect to the use of the Participant's router. A Participant that elects to have CBOE perform this service would pay CBOE a service fee of one percent of the fees collected by CBOE for that TPH. The Exchange notes that currently there are no Participants that are using either election. The Exchange no longer wishes to offer either election and as such seeks to eliminate them from the ORS Program and Fees Schedule. The Exchange also notes that the CORS Program does not offer these optional services.

Finally, the Exchange proposes to explicitly clarify in Footnote 30 that CBOE does not make payments under the CORS program with respect to executed contracts in single-listed option classes traded on CBOE. Such a statement is already included in Footnote 29, which governs the ORS Program, but was inadvertently not included in Footnote 30 when the CORS Program was adopted. The Exchange believes the proposed change will reduce potential confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed amendments to the ORS and CORS Programs are reasonable because the proposed changes still afford Participants an opportunity to receive payments to subsidize the costs associated with providing certain order routing functionalities that would otherwise go unsubsidized. Additionally, the Exchange believes the increased $0.06 per contract subsidy for non-customer orders is reasonable because it is within the range of subsidies paid by another exchange under a similar subsidy program.[11]

The Exchange believes that limiting the subsidy payments to those that provide order routing functionalities is equitable and not unfairly discriminatory because the Participants of the Programs have devoted resources to provide the order routing functionalities. The Programs further encourages CBOE TPHs and broker-dealers that are not CBOE TPHs to provide order routing functionalities.

In addition, the Exchange believes that the proposed changes are equitable and not unfairly discriminatory because the changes are applicable to all Participants and any CBOE TPH or broker-dealer that is not a CBOE TPH may continue to avail itself of the arrangements under the Programs, provided that their routing functionality incorporates the respective requirements of each Program.

[4] *See* NYSE Amex Options Fee Schedule (''Fee Schedule''), Market Access and Connectivity (''MAC'') Subsidy.

[5] *See e.g.,* CBOE Fees Schedule, Volume Incentive Program. Additionally, the Exchange notes Facilitation orders executed via AIM are not assessed transaction fees.

[6] *See* NYSE Amex Options Fee Schedule (''Fee Schedule''), Market Access and Connectivity (''MAC'') Subsidy.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78f(b)(4).

[11] *See* NYSE Amex Options Fee Schedule, Market Access and Connectivity (''MAC'') Subsidy.

The Exchange also believes it is equitable and not unfairly discriminatory to establish separate subsidies for customer and non-customer orders under the Programs. Particularly, the Exchange notes that customer orders already have the opportunity to earn various rebates, discounts or fee caps.[12] As such, the Exchange believes it is fair and equitable to provide a lesser subsidy for customer orders as compared to non-customer orders. The Exchange also notes that Amex does not provide a subsidy for any Customer volume under its MAC Subsidy Program.[13]

The Exchange believes the elimination of subsidies for mini-options under the Programs is reasonable, equitable and not unfairly discriminatory because the Exchange believes it is no longer competitively necessary to encourage the sending of mini-options to the Exchange and thus does not believe it's necessary to provide a subsidy for mini-option orders. Additionally, as noted in the purpose section, Amex's MAC Program also excludes mini-options. The Exchange believes it is equitable and not unfairly discriminatory to exclude AIM contracts from both Programs because, like customer orders, orders executed via AIM already have an opportunity to earn various rebates or discounts.[14]

The Exchange believes the clarification that the CORS Program excludes single-listed options will alleviate potential confusion. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Finally, the Exchange believes the elimination of the Marketing and Billing Services Elections from the ORS Program is reasonable, equitable and not unfairly discriminatory because it merely eliminates optional services, which currently are not being used by any Participant.

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 changes will impose an unnecessary burden on intramarket competition because they will apply equally to all participating parties. Although the subsidy for orders routed to CBOE through a Participant's system only applies to Participants of the Programs, the subsidies are designed to encourage the sending of more orders to the Exchange, which should provide greater liquidity and trading opportunities for all market participants. Further, the Exchange does not believe that such changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that, should the proposed changes make CBOE more attractive for trading, market participants trading on other exchanges can always elect to provide order routing functionality to CBOE. Additionally, to the extent that the proposed changes to the ORS and CORS Programs result in increased trading volume on CBOE and lessened volume on other exchanges, the Exchange notes that market participants trading on other exchanges can always elect to become TPHs on CBOE to take advantage of the trading opportunities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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–CBOE–2014–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–075. 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–2014–075 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24942 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[12] *See e.g.,* CBOE Fees Schedule, Customer Large Trade Discount and Volume Incentive Program.

[13] *See* Securities Exchange Act Release No. 71532 (February 12, 2014), 79 FR 9563 (February 19, 2014) (SR–NYSEAmex–2014–12).

[14] *See supra* note 5.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73351; File No. SR–NYSEMKT–2014–77]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 15—Equities To Specify That Exchange Systems Can Publish Pre-Opening Indications and To Extend the Time Order Imbalance Information is Disseminated When an Opening Is Delayed

October 15, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 6, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 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 15—Equities to specify that Exchange systems can publish pre-opening indications and to extend the time order imbalance information is disseminated when an opening is delayed. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 15—Equities (''Rule 15'') to specify that Exchange systems can automatically publish pre-opening indications utilizing the same guidelines set forth in Rule 15 for manual publications by Designated Market Makers (''DMM''). The Exchange also proposes to amend Rule 15 to extend the time order imbalance information is disseminated when an opening is delayed from the current 9:35 a.m. to the time the security opens for trading. Finally, the Exchange proposes to correct a typographical error in subsection (b)(2) of the Rule.

Rule 15 currently provides that an Exchange DMM, in arranging an opening transaction on the Exchange in any security, shall issue a pre-opening indication whenever the DMM anticipates that the opening transaction will be at a price that represents a change of more than the ''applicable price change'' specified in the Rule from either:

- The security's last reported sale price on the Exchange; [4] or
- the security's offering price in the case of an initial public offering (''IPO''); or
- the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange (a ''transferred security'').[5]

The ''applicable price changes'' governing pre-opening indications represent a numerical or percentage change from the security's closing price per share, as follows:

Exchange *closing price*	Applicable price change (more than)
Under $20.00	$0.50
$20–$49.99	$1.00
$50.00–$99.99	$2.00
$100–$500	$5.00
Above $500	1.5%

Pre-opening indications pursuant to this rule are published on the Exchange's proprietary data feeds.

[4] Except for American Depositary Receipts (''ADR''), where the DMM shall use the closing price of the primary foreign market to determine whether the price of such opening transaction represents a change of more than the ''applicable price change.'' *See* Rule 15(b).

[5] A pre-opening indication includes the security and the price range within which the DMM anticipates the opening transaction will occur.

The Exchange proposes to amend Rule 15 to add that either the DMM or the Exchange shall issue a pre-opening indication, but not change any of the applicable parameters for publishing a pre-opening indication. To reflect that the Exchange may be publishing these pre-opening indications, the Exchange proposes to delete the following phrase at the beginning of section (a) of the rule, ''Whenever an Exchange DMM, in arranging an opening transaction on the Exchange in any security anticipates that,'' and state instead that ''If the opening transaction on the Exchange is anticipated to be at a price that represents a change from. . . .'' The Exchange further proposes to add that the DMM or the Exchange shall issue the pre-opening indication, and specify that such pre-opening indication shall include the security and the price range within which the opening transaction is anticipated to occur.

The Exchange would publish automatic indications when the Opening Imbalance Information in Exchange systems indicates an opening price that would be more than the applicable price range away from the defined reference price. Because Exchange systems would not have access to orally-represented interest in the trading crowd, the Exchange believes that a pre-opening indication entered by a DMM would likely be based on information not available to Exchange systems, and therefore a DMM-entered pre-opening indication should have priority over an Exchange-generated pre-opening indication. Accordingly, the Exchange further proposes that if a DMM issues a pre-opening indication or a mandatory indication pursuant to Rule 123D(1)—Equities,[6] the Exchange would not publish a pre-opening indication in that security.

The Exchange also proposes to amend Rule 15 to permit opening order imbalance publications to continue until a security is opened. Currently, Rule 15 provides that order imbalance information disseminated prior to the opening of a security will be disseminated approximately every five minutes between 8:30 a.m. Eastern Time (''E.T.'') and 9 a.m. E.T.; approximately

[6] Rule 123D(1)—Equities provides that an indication is mandatory for an opening which will result in a ''significant'' price change from the previous close. For securities priced under $10, such indications are mandatory if the price change is one dollar of more; for securities between $10 and $99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over $100, indications are required for price movements of five dollars or more. These guidelines are applicable to IPOs based on the offering price.

every minute between 9 a.m. E.T. and 9:20 a.m. E.T.; and approximately every 15 seconds between 9:20 a.m. E.T. and the opening. If the opening is delayed, Rule 15 provides that order imbalance information will be published until 9:35 a.m. E.T. Under the proposed rule change, order imbalance information would continuously disseminate until the opening of trading in that security and not cease at 9:35 a.m. E.T.

Finally, the Exchange proposes to correct a typographical error in the published text of Rule 15(b)(2), which currently contains the word ''underling'' that should be ''underlying.''

Because of the technology changes associated with the proposed rule change, the Exchange proposes to announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, because 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 protect investors and the public interest. The Exchange believes that permitting the Exchange to automatically publish pre-opening indications and extending opening order imbalance publications until a security is opened removes impediments to and perfects the mechanism of a free and open market and a national market system by continuing to advance the efficiency and transparency of the opening process and fostering price discovery at the open of trading, thereby minimizing information imbalances in the marketplace. Similarly, the proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by providing customers and the investing public with continuous, automated information for securities where there will likely be a significant price change from the previous day's closing price or for which there is a significant published imbalance. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

[7] 15 U.S.C. 78f(b).

[8] 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather technologically augment the current process of providing pre-market information to customers and the investing public.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

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) [11] 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–NYSEMKT–2014–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–77. 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 a.m. and 3 p.m. Copies of the filing will also be available for Web site viewing and printing 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–2014–77 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24940 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). 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.

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73366; File No. SR–BYX–2014–019]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Rules 11.9 of BATS Y-Exchange, Inc. To Add Price Adjust Functionality

October 15, 2014.

I. Introduction

On August 26, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 amend Exchange Rules 11.9 to add Price Adjust functionality to the Exchange. The proposed rule change was published for comment in the **Federal Register** on September 4, 2014.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend BYX Rule (''Rule'') 11.9 to add a new, optional Price Adjust functionality.[4] The Price Adjust functionality would have to be elected by a User [5] in order to be applied by the Exchange.

Currently, the Exchange offers price sliding to ensure compliance with Regulation NMS and Regulation SHO. With respect to price sliding offered to ensure compliance with Regulation NMS (''display-price sliding''), under the Exchange's current rules, if, at the time of entry, a non-routable order would lock or cross a Protected Quotation [6] displayed by another trading center, the Exchange ranks (and in the case of a cross, re-prices) such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers.[7] The Exchange currently offers display-price sliding functionality to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book (''BATS Book''). Specifically, when the Exchange receives an incoming order that could execute against resting displayed liquidity but an execution does not occur because such incoming order is designated as an order that will not remove liquidity (*e.g.,* a BATS Post Only Order), then the Exchange will cancel the incoming order unless it is permitted to remove liquidity upon entry.[8]

Under the proposed Price Adjust process, by contrast, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market or the Exchange will be ranked and displayed at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).[9] Thus, the proposed Price Adjust process differs from the Exchange's current display-price sliding process in two main ways. First, the Price Adjust process would both rank and display such an order at one minimum price variation below the current NBO or above the current NBB (rather than ranking the order at the locking price). Second, Price Adjust would be based on Protected Quotations at external markets and at the Exchange (rather than just Protected Quotations at external markets).

Because the Exchange will route orders to external markets with locking or crossing quotations, the Exchange notes that the Price Adjust process would only be applicable to non-routable orders, including BATS Only Orders, BATS Post Only Orders and Partial Post Only at Limit Orders. In turn, because BATS Only Orders will execute against locking or crossing interest on the Exchange (including both Protected Quotations as well as any non-displayed interest), the fact that Price Adjust would be based on Protected Quotations at the Exchange is only relevant for BATS Post Only Orders and Partial Post Only at Limit Orders. The Price Adjust process would adjust, as described above, the price of a display-eligible BATS Post Only Order or Partial Post Only at Limit Order that would lock or cross a Protected Quotation displayed by the Exchange unless such order is permitted to remove liquidity as described in Rules 11.9(c)(6) and (c)(7), respectively,[10] whereas the display-price sliding process would cancel such order back to the User unless it is permitted to remove liquidity under Rules 11.9(c)(6) or (c)(7).

In addition, the Exchange has proposed that, in the event the NBBO changes such that an order subject to Price Adjust would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the price that originally locked the NBO (for bids) or NBB (for offers) on entry.[11] All orders that are re-ranked and re-displayed pursuant to Price Adjust would retain their priority as compared to other orders subject to Price Adjust based upon the time such orders were initially received by the Exchange.[12] Further, as proposed, following the initial ranking and display of an order subject to Price Adjust, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price.[13] In order to offer multiple-price sliding to Exchange Users that select Price Adjust, the Exchange also has proposed that the ranked and displayed prices of an order subject to Price Adjust may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.[14] Multiple-price sliding pursuant to Price Adjust would be optional and would have to be explicitly selected by a User before it will be applied (the same is true for display-price sliding). Orders subject to multiple price sliding for Price Adjust would be permitted to move all the way back to their most aggressive price, whereas orders subject to Price Adjust without an explicit selection of multiple price sliding may not be adjusted to their most aggressive price, depending upon market conditions and the limit price of the order upon entry.

Further, the Exchange has proposed that in the event the NBBO changes such that display-eligible orders subject to display-price sliding and Price Adjust

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72946 (August 28, 2014), 79 FR 52780 (''Notice'').

[4] *See* proposed Rule 11.9(g).

[5] As defined in Rule 1.5(cc), a User is ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

[6] As defined in Rule 1.5(t), a ''Protected Quotation'' is ''a quotation that is a Protected Bid or Protected Offer.'' In turn, the term ''Protected Bid'' or ''Protected Offer'' means ''a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.''

[7] *See* Rule 11.9(g)(1).

[8] The Exchange notes that BATS Post Only Orders are permitted to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. *See* Rule 11.9(c)(6). Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. *See* Rule 11.9(c)(7).

[9] *See* proposed Rule 11.9(g)(2)(A).

[10] *See* proposed Rule 11.9(g)(2)(D).

[11] *See* proposed Rule 11.9(g)(2)(B).

[12] *Id.*

[13] *Id.*

[14] *See* proposed Rule 11.9(g)(2)(C).

would not lock or cross a Protected Quotation and are eligible to be displayed at a more aggressive price, the System will first display all orders subject to display-price sliding at their ranked price followed by orders subject to Price Adjust, which will be re-ranked and re-displayed as set forth in proposed Rule 11.9(g)(2).[15] The Exchange believes it is reasonable to un-slide orders subject to display-price sliding before it un-slides orders subject to Price Adjust because Price Adjust is a less aggressive form of price sliding than display-price sliding, in that an order submitted by a User that elects Price Adjust will be displayed and ranked at the same price rather than ranked at the locking price and displayed at a less aggressive price.

The Exchange currently applies display-price sliding to Non-Displayed Orders that cross Protected Quotations of external markets. The Exchange is not proposing to change its handling of Non-Displayed Orders other than by updating the language of its rule to reflect that it will handle Non-Displayed Orders for which a User has selected Price Adjust in the same way as it currently handles Non-Displayed Orders for which a User has selected display-price sliding.[16] As such, Non-Displayed Orders that are subject to Price Adjust (or display-price sliding) would be ranked at the locking price on entry.[17] The proposed rule also would state that price sliding for Non-Displayed Orders is functionally equivalent to the handling of displayable orders except that such orders will not have a displayed price and will not be re-priced again unless such orders cross a Protected Quotation of an external market (*i.e.,* such orders are not un-slid).[18]

Lastly, the Exchange does not propose to modify its current short sale price sliding functionality, which is designed to ensure compliance with Regulation SHO, and proposes to apply that functionality to orders for which Price Adjust is chosen. As a result, orders for which a User selects either display-price sliding or Price Adjust will be subject to the Exchange's existing short sale price sliding functionality.[19]

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of an exchange be designed 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.

The Exchange believes that its proposal to offer Price Adjust functionality is consistent with Section 6(b)(5) of the Act,[22] as well as Rule 610 of Regulation NMS[23] and Rule 201 of Regulation SHO.[24] The Exchange notes that it is not modifying the overall functionality of price sliding, which, to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions, displays orders at permissible prices while retaining a price at which the User is willing to buy or sell, in the event display at such price or an execution at such price becomes possible.[25] Instead, the Exchange is making changes to adopt an optional form of price sliding, Price Adjust, which will rank orders at their displayed price rather than, as with the current display-price sliding process, at the locking price. The exchange notes that, as a result, while subject to Price Adjust sliding, an order is ranked at a less aggressive price than it would be under the display-price sliding process, which may be preferable to certain Users that wish to provide liquidity but do not wish to cross the spread (*i.e.,* if buying, do not wish to trade at the NBO or if selling, do not wish to trade at the NBB).[26]

In addition, as noted above, in contrast to display-price sliding, which is based solely on Protected Quotations at equities markets and options exchanges other than the Exchange, the proposed Price Adjust process would be based on Protected Quotations at external markets and at the Exchange. According to the Exchange, applying the Price Adjust process to orders that, upon entry, cannot be executed or displayed at their limit price should contribute to more displayed liquidity on the Exchange than if such orders were cancelled back to the User.[27] Therefore, the Exchange believes the proposal to apply the Price Adjust process to orders that cannot be displayed because they would lock or cross displayed contra-side interest on the Exchange (and not just external markets) will 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.[28] The Exchange also states that the proposed Price Adjust process will enable the System to avoid displaying a locking or crossing quotation in order to ensure compliance with Rule 610(d) of Regulation NMS.[29]

Further, the Exchange believes it is reasonable to un-slide display-price sliding orders before it un-slides Price Adjust orders because Price Adjust is a less aggressive form of price sliding than display-price sliding, in that an order submitted by a User would be displayed and ranked at the same price rather than ranked at the locking price and displayed at a less aggressive price.[30] Because orders subject to display-price sliding are ranked at and subject to execution at higher prices when buying and lower prices when selling, the Exchange believes that such orders should be re-displayed before orders subject to Price Adjust orders in response to changes to the NBBO.[31]

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.''[32] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit . . . members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.''[33] The Exchange believes that the proposed Price Adjust functionality will assist Users by displaying orders at permissible prices.[34] Similarly, Rule 201 of Regulation SHO[35] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to

[15] *See* proposed Rule 11.9(g)(3).

[16] *See* proposed Rule 11.9(g)(4).

[17] *Id.*

[18] *Id.*

[19] *See* proposed Rule 11.9(g)(6).

[20] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 17 CFR 242.610.

[24] 17 CFR 242.201.

[25] *See* Notice, *supra,* note 3 at 52782.

[26] *Id.*

[27] *See id.* at 52783.

[28] *Id.*

[29] *Id.*

[30] *See id.* at 52782.

[31] *Id.*

[32] 17 CFR 242.610(d).

[33] *Id.*

[34] *See* Notice, *supra,* note 3 at 52783.

[35] 17 CFR 242.201.

prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange represents that its short sale price sliding will continue to operate the same for Users that select Price Adjust as it does for Users that select the display-price sliding process currently offered by the Exchange.[36]

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act, including Section 6(b)(5) of the Act,[37] which requires, among other things, that the rules of an exchange be designed to 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, protect investors and the public.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change, SR–BYX–2014–019, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24952 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[36] *See* Notice, *supra,* note 3 at 52783.

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73355; File No. SR–CBOE–2014–073]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Margin Treatment of Over-the-Counter Options Contracts Cleared by The Options Clearing Corporation

October 15, 2014.

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 October 1, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the margin treatment of over-the-counter (''OTC'') options cleared by The Options Clearing Corporation (''OCC''). The text of the proposed rule change is provided below. (additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 1.1. When used in these Rules, unless the context otherwise requires:

(a)–(l) No change.

Option Contract

(m) *Except as otherwise provided,* [T]*t*he term ''option contract'' means a put or call issued, or subject to issuance, by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

(n)–(ooo) No change.

OCC Cleared OTC Option Contract

(ppp) The term ''OCC cleared OTC option contract'' means an over-the-counter option contract that is issued and guaranteed by the Clearing Corporation. Except as otherwise provided, an OCC cleared OTC option contract is not an ''options contract'' as defined in the Rules.

. . . *Interpretations and Policies:*

.01–.05 No change.

* * * * *

Rule 12.3. Margin Requirements

(a) Definitions. For purposes of this Rule, the following terms shall have the meanings specified below.

(1)–(8) No change.

(9) The term ''listed'' for purposes of this Chapter 12 means a security traded on a registered national securities exchange or automated facility of a registered national securities association *or issued and guaranteed by the Clearing Corporation and shall include OCC cleared OTC options contracts.*

(10)–(13) No change.

(14) The term ''OTC *option*'' as used with reference to a call or a put option contract *in this Chapter 12* means an over-the-counter option contract that is *issued and guaranteed by the carrying broker-dealer and* not traded on a national securities exchange *or issued and guaranteed by the Clearing Corporation* [and is issued and guaranteed by the carrying broker-dealer].

(b)–(n) No change.

* * * * *

Rule 12.4—Portfolio Margin

Rule 12.4. As an alternative to the transaction/position specific margin requirements set forth in Rule 12.3 of this Chapter 12, a TPH organization may require margin for all margin equity securities (as defined in Section 220.2 of Regulation T), listed options, unlisted derivatives, security futures products, and index warrants in accordance with the portfolio margin requirements contained in this Rule 12.4.

In addition, a TPH organization, provided it is a Futures Commission Merchant (''FCM'') and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this Rule 12.4 to combine a customer's related instruments (as defined below), listed index options, unlisted derivatives, options on exchange traded funds, index warrants, and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

Application of the portfolio margin provisions of this Rule 12.4 to IRA accounts is prohibited.

(a) Definitions.

(1) The term ''listed option'' *for purposes of this Rule* shall mean any equity (or equity index-based) option traded on a registered national securities exchange or automated facility of a registered national securities association *or issued and guaranteed by the Clearing Corporation and shall include OCC cleared OTC options contracts.*

(2)–(3) No change.

(4) The term ''unlisted derivative'' *for purposes of this Rule* means any equity-based (or equity index-based) unlisted option, forward contract or swap that can be valued by a theoretical pricing model approved by the Securities and Exchange Commission *and does not include OCC cleared OTC options contracts.*

(5)–(11) No change.

(b)–(j) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its margin requirements rules to treat OTC options contracts that are issued and guaranteed by the OCC (''OCC cleared OTC option contracts'') consistent with FINRA Rule 4210 (Margin Requirements).[3] Specifically, the Exchange proposes a definition of OCC cleared OTC option contract in Rule 1.1(ppp) and, for margin purposes, proposes to amend the definitions of the terms ''listed'' in Rule 12.3(a)(9) and ''listed option'' in Rule 12.4(a)(1) to include OCC cleared OTC option contracts. The Exchange also proposes, for margin purposes, to amend the definitions of the terms ''OTC'' in Rule 12.3(a)(14) and ''unlisted derivative'' in Rule 12.4(a)(4) to exclude OCC cleared OTC option contracts. The Exchange's proposal is materially based on, and substantially similar to, changes made by FINRA to its margin requirements rules under FINRA Rule 4210.[4] The Exchange believes that a consistent margin treatment regime with respect to OCC cleared OTC option contracts will make margin requirements rules easier for market participants to understand and that the proposal is in the best interest of investors.

On April 25, 2014, the OCC launched central clearing services for bilaterally negotiated OTC equity index options contracts on the S&P 500 Index. Under OCC By-laws, the OCC may, under limited circumstances, clear OTC options on the S&P 500 Index. Such contracts must be of a term between four months and five years and have minimum notional values of either 500,000 or 100,000 times the value of the S&P 500 Index. In clearing these options, the OCC becomes both the issuer and guarantor of the OTC contract.

In response to rules adopted by the OCC permitting the OCC to issue and guarantee these particular OTC option contracts and responsive rules adopted by FINRA regarding OCC cleared OTC option contracts, the Exchange proposes to adopt a definition of OCC cleared OTC option contract and make certain changes to its margin rules. The Exchange proposes to define the term OCC cleared OTC option contract to carve-out OCC cleared OTC option contracts from the definition of ''option contract'' reflecting the fact that the Rules are intended to control transactions in options contracts traded at the Exchange. Specifically, the Exchange proposes changes to Rule 1.1(m) defining ''option contract'' and the adoption of Rule 1.1(ppp) to define the term ''OCC cleared OTC option contract'' in the Rules.

Under Rule 1.1(m), an ''option contract'' is defined as ''a put or a call issued, or subject to issuance, by the [Options] Clearing Corporation pursuant to the rules of the [Options] Clearing Corporation.'' OCC cleared OTC option contracts are option contracts that are subject to issuance by the OCC. Accordingly, the Exchange proposes to amend Rule 1.1(m) to exclude OCC cleared OTC option contracts. Proposed Rule 1.1(ppp) would define OCC cleared OTC option contracts as over-the-counter option contracts that are issued and guaranteed by the Clearing Corporation. The proposed definition would also provide that except as otherwise indicated in the Rules, OCC cleared OTC option contracts are not ''options contracts'' under the Rules. Thus, consistent with the proposed changes to Rule 1.1(m), proposed Rule 1.1(ppp) would make clear that OCC cleared OTC option contracts are not Exchange-traded products and that the Rules, unless otherwise indicated, are not intended to extend to OCC cleared OTC options contracts.

The Exchange also proposes changes to its margin treatment rules with respect to OCC cleared OTC options contracts. In general, the margin requirements for options listed on an exchange (and cleared and guaranteed by the OCC) are lower than the margin requirement for OTC options (not cleared or guaranteed by the OCC). This is because the clearing and guaranteeing functions performed by the OCC greatly reduce the counterparty risk present on exchange-traded option contracts. Thus, for margin requirements and securities setoff purposes, the Exchange requires less initial and maintenance margin for listed options positions than for OTC options positions.[5] The reasons underlying the more favorable margin treatment for listed (and OCC cleared and guaranteed) options, however, apply with equal force to OCC cleared OTC options contracts. The clearing and guaranteeing functions performed by the OCC reduce the counterparty credit risk associated with these contracts to levels more commonly associated with listed options contacts. In light of the clearing and guaranteeing functions performed by the OCC, the Exchange proposes to treat OCC cleared OTC options as it treats other cleared and guaranteed options by defining OCC cleared OTC option contracts as ''listed'' option contracts for margin purposes only. Notably, the Exchange proposes to treat OCC cleared OTC options as listed options only after such contracts have been accepted for clearing and guaranteed by the OCC.

Exchange Rules 12.3 (Margin Requirements) and 12.4 (Portfolio Margin) describe minimum transaction or position-specific and portfolio margin requirements that Trading Permit Holders (''TPHs'') must require and securities offsets that may be applied for margin requirements purposes. For margin purposes only, the Exchange proposes to modify the definition of the term ''listed'' in Rule 12.3(a)(9) to include OCC cleared OTC options. Similarly, the Exchange proposes changes to Rule 12.4(a)(1) to define the term ''listed option'' to include OCC cleared OTC option contracts for portfolio margin purposes only. These rule changes would allow the Exchange to treat OCC cleared OTC options in the same manner as Exchange-listed options for margin purposes, but make clear that the Rules are not intended to extend to or control transactions involving unlisted option contracts or OTC options contracts. The Exchange also proposes to change the definitions of the terms ''OTC'' in Rule 12.3(a)(14)[6] and

[3] *See* FINRA Rule 4210(f)(2)(A)(xxiv); *see also* FINRA Rules 2360(a)(9), (19), (32), (33) and 4210(g)(2)(A).

[4] *See* Securities Exchange Act Release No. 70619 (October 7, 2013), 78 FR 62722 (October 22, 2013) (Order Granting Approval of Proposed Rule Change Relating to Amendments to FINRA Rules 2360 and 4210 in Connection with OCC Cleared Over-the-Counter Options) (SR–FINRA–2013–027) (''Order'').

[5] *See generally* CBOE Rule 12.3 (Margin Requirements).

[6] The Exchange is also proposing to add the word ''option'' to its definition of ''OTC'' in Rule 12.3(a)(14) to make clear that OTC as used in Chapter 12 would refer to an options contract. Since the current definition already states that that ''OTC'' ''as used with reference to a call or a put option contract means an over-the-counter option contract . . .'', the Exchange believes that the addition of the word ''option'' would simply clarify the language in the Rule without any substantive change to the Rule.

''unlisted derivative'' in Rule 12.4(a)(4) to exclude OCC cleared OTC option contracts for margin purposes. These proposed changes are substantially similar in all material respects to FINRA Rule 4210(f)(2)(A)(xxiv), which the Commission recently approved.[7]

Notably, the Exchange is not proposing changes to Chapter IX of the Rules, particularly Rules 9.7 (Opening of Accounts) or 9.15 (Delivery of Current Options Disclosure Documents) therein. Under Rule 9.7, TPHs are required to furnish the options disclosure documents described in Rule 9.15 to customers at or prior to approving a customer's account for options trading. Because Rules 9.7 and 9.15 relate to disclosures that must be made before a customer's account may be approved for trading in options at the Exchange, no rule changes are needed to accommodate OCC cleared OTC option contracts, which are not Exchange-traded products. In addition, the Exchange echoes FINRA's comments that such delivery requirements are unnecessary because the counterparties to OCC cleared OTC options must be ''eligible contract participants'' as defined in the Act,[8] and thus, are more sophisticated investors who are likely to be aware of the risks associated with trading OTC options.

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.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change will add consistency to the margin treatment rules and make them easier for investors to understand. For purposes of margin treatment, the Exchange believes that the clearing and guaranteeing functions performed by the OCC support a determination to treat OCC cleared OTC option contracts in the same manner as other option contracts that are cleared and guaranteed by the OCC. The Exchange believes that treating OCC cleared OTC option contracts as ''listed'' options for margin purposes is consistent with FINRA rules and the treatment of option contracts cleared and guaranteed by the OCC generally. The Exchange believes that treating OCC cleared OTC option contracts in this manner would protect investors' interests and support a rational regulatory framework, which is in the best interest of investors.

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 Exchange believes that the proposed margin requirements rule changes are consistent with substantially similar rule changes made by FINRA. The Exchange believes that consistency across markets with respect to margin requirements will make it easier for investors to trade options and is in the interests of all investors. Moreover, the Exchange believes that the proposed rule changes are necessary in order to not disadvantage its TPHs who would otherwise be required to maintain additional margin in their accounts, placing TPHs at the Exchange at a competitive disadvantage in the market. Furthermore, because the proposed margin rules would be applied equally to all TPHs, no TPH would be placed at a competitive disadvantage at the Exchange.

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 pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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–CBOE–2014–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE-2014–073. 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

[7] *See* Order, *supra* note 4.

[8] *See* 15 U.S.C. 78c(a)(65) which states that an ''eligible contract participant has the same meaning as in section 1a of the Commodity Exchange Act.'' The Commodity Exchange Act details the requirements for eligibility as an ''eligible contract participant'' which generally require a sufficient regulated status or a specified minimum amount of assets; *see also* 7 U.S.C. 1(a)(18).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

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 a.m. and 3 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–2014–073 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24957 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73365; File No. SR–CME–2014–40]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Its Collateral Acceptance Practices for Its Base Guaranty Fund

October 15, 2014.

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 October 3, 2014, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(4)(ii)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to make certain changes to its collateral acceptance practices. The proposed changes would not impact CME's collateral acceptance practices relating to its CDS Guaranty Fund; the changes would only affect CME's Base Fund. More specifically, CME is introducing a new and limited exemption from CME limits on the value of letters of credit clearing members are eligible to deposit on behalf of qualifying customers in satisfaction of the clearing members' core performance bond requirements with respect to CME's Base Fund (the ''Exemption''). The text of the proposed rule change is immediately below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

Collateral Types Accepted for Futures, Options, Forwards, OTC FX & Commodity Swaps (available at *http://www.cmegroup.com/clearing/financial-and-collateral-management/*)

* * * * *

New		Category 3 & 4 Capped at $7bn Per Firm	
Category 1	Category 2	Category 3*	Category 4**
Cash U.S. Treasuries	IEF5 (Interest Bearing Cash) Letters of Credit.*	U.S. Government Agencies Strips TIPS (capped at $1bn per firm). Select MBS.	IEF2† (Money Market Mutual Funds). Gold (capped at $500mm per firm). Stocks (capped at $1bn per firm). IEF4 (corporate bonds). Foreign Sovereign Debt (capped at $1bn per firm).
	* LOCs are capped at the lesser of 25% of core requirement per currency requirement or $500M per firm. *Clearing members that wish to post additional LOCs on behalf of qualifying commercial end users may be eligible for a limited exemption from this cap.#* LOCs are not permitted to meet house performance bond requirements for financial affiliated clearing members.	* Capped at 40% of core requirement per currency requirement per firm.	** Capped at 40% of core requirement per currency requirement per firm or $5 billion per firm, the lesser of the two. †Not included in the 40% requirement.

* * * * *

Please contact the clearing house at *CreditRisk@cmegroup.com* if you would like to learn more about this exemption.

* * * * *

CME Group Acceptable Performance Bond Collateral for Futures, Options, Forwards, OTC FX, and Commodity Swaps (available at *http://www.cmegroup.com/clearing/files/acceptable-collateral-futures-options-select-forwards.pdf*)

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

Asset class	Requirement type eligibility (core, concentration or Guaranty Fund)	Description	Haircut schedule	Eligible for cleared swaps customer requirements	Eligible for customer segregated requirements	Eligible for house (proprietary) requirements	Notes
Letters of Credit	Core 25% Concentration 100% Guaranty Fund 0%.	• Letters of Credit for Performance Bond.	0%	No	Yes	Yes	• Letters of Credit are not accepted for Forwards and Commodity Swaps. • Capped at the lesser of 25% of core requirement or $500 million per clearing member.# • Category 2 Asset**.

 # Clearing members that wish to post additional LOCs on behalf of qualifying commercial end users may be eligible for a limited exemption from this cap. Please contact the clearing house at CreditRisk@cmegroup.com if you would like to learn more about this exemption.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME 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. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission (''CFTC'') and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME is proposing to make certain changes to its collateral acceptance practices. The proposed changes would not impact CME's collateral acceptance practices relating to its CDS Guaranty Fund; the changes would only affect CME's Base Fund.

More specifically, CME is introducing a new and limited exemption from CME limits on the value of letters of credit clearing members are eligible to deposit on behalf of qualifying customers in satisfaction of the clearing members' core performance bond requirements with respect to CME's Base Fund (the ''Exemption''). The Exemption would be narrowly tailored and would only apply to certain non-financial customers and their clearing members. The Exemption would increase the value of letters of credit a clearing member would be able to post in satisfaction of the clearing member's core requirement to two times the lesser of: (a) 25% of a total clearing member's collateral on deposit for its core requirement; or (b) US$500 million (''Exemption Limit''); provided that, any letter of credit deposits above the Non-exempt Limit would only be able to be used to margin qualifying customers. The current default limits for letters of credit are the lesser of 25% of each clearing member's core performance bond requirement per currency requirement or US$500 million per clearing member. CME notes that letters of credit are not permitted to meet performance bond requirements for credit default swaps.

By way of example, a clearing member with a US$600 million core requirement would normally be able to deposit up to US$150 million in letters of credit as performance bond. Under the Exemption, the clearing member would be able to use up to US$300 million in letters of credit to meet its core requirement so long as all amounts above US$150 million were deposited on behalf of qualifying customers or affiliates of qualifying customers that meet the Exemption requirements. A clearing member with greater than US$2 billion in performance bond on deposit for its core requirement would be limited to two times the US$500 million limit, or US$1 billion under the Exemption.

The allocation of the excess letter of credit capacity to qualifying customers under the Exemption would be at the sole discretion of the clearing member and the Exemption Limit would be capped at two times the clearing member's CME Clearing-designated letter of credit limit, no matter how many qualifying customers utilize the Exemption. CME Clearing, at its sole discretion, would be able to terminate the Exemption upon reasonable notice to the clearing member and its qualifying customer(s).

As highlighted above, the proposed changes in this filing are limited to CME's Base Guaranty Fund and therefore do not impact CME's CDS Guaranty Fund. CME accepts a narrower range of collateral for CDS clearing and does not currently accept letters of credit, stocks or corporate bonds as acceptable collateral for CDS. The proposed rule change in this filing would not impact these current practices. The proposed rule change would become effective immediately but would be operationalized on October 8, 2014.

CME believes the proposed rule change is consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.[5] The proposed changes would amend CME's collateral acceptance practices by introducing a limited exemption from CME limits on the value of letters of credit clearing members are eligible to deposit on behalf of qualifying customers in satisfaction of the clearing members' core performance bond requirements with respect to CME's Base Fund. The proposed Exemption would not impact CME's ability to manage risk in regard to its qualifying customers and their clearing members. CME determined the amount of letters of credit eligible to be posted under the Exemption reflect an appropriate limitation on the

[5] 15 U.S.C. 78q–1.

concentration of assets posted as initial margin. The proposed Exemption is narrowly tailored and will provide CME with flexibility for the operational management of limits for these collateral types and therefore should be seen to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[6]

Furthermore, the proposed changes are limited to CME's Base Guaranty Fund, which means the proposed changes are limited in their effect to products that are under the exclusive jurisdiction of the CFTC. As such, the proposed CME changes are limited to CME's activities as a DCO clearing products that are not security-based swaps. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed changes are limited in their effect to products that are under the exclusive jurisdiction of the CFTC and are therefore offered under CME's authority to act as a DCO, the proposed changes are properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service.

As such, the changes are therefore consistent with the requirements of Section 17A of the Exchange Act[7] and are properly filed under Section 19(b)(3)(A)[8] and Rule 19b–4(f)(4)(ii)[9] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed changes provide a narrowly tailored exemption to certain practices that will provide CME with more flexibility for the operational management of limits for these collateral types. Further, the changes described in the submission relate only to products that fall under the exclusive jurisdiction of the CFTC. As such, these proposed changes do not affect the security-based swap clearing activities of CME in any way and therefore do not impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(4)(ii)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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–CME–2014–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2014–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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–CME–2014–40 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24951 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(4)(ii).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(4)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73368; File No. SR–MSRB–2014–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Proposed Amendments to Rule G–3, on Professional Qualification Requirements, Regarding Continuing Education Requirements

October 15, 2014.

I. Introduction

On July 22, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''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 consisting of proposed amendments to Rule G–3, on professional qualification requirements, regarding continuing education requirements. The proposed rule change was published for comment in the **Federal Register** on August 5, 2014.[3]

The Commission received four comment letters on the proposal.[4] On October 3, 2014, the MSRB submitted a response to these comments.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

1. Proposed Rule Change

According to the MSRB, the purpose of the proposed rule change is to improve the Firm Element continuing education requirement of MSRB Rule G–3(h)(ii) by requiring brokers, dealers and municipal securities dealers (collectively, ''dealers'') to conduct annual municipal securities training for registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities.[6] In addition to such annual securities training, the MSRB has stated that the proposed rule change would also expand the definition of covered registered persons who are required to participate in such training to include registered persons who engage in a variety of municipal securities activities, regardless of whether such activities are customer-facing.[7]

The MSRB believes the proposed rule change addresses concerns that municipal securities professionals may not be receiving adequate training because dealers may not be placing a sufficiently high priority on municipal securities in their needs analysis.[8] The MSRB believes that the municipal securities market possesses unique attributes that require particularized education and training.[9] In addition, the MSRB has stated that dealers engaging in municipal securities activities are subject to, and as a result, must be familiar with MSRB rules that are distinct from the rules of other SROs and that are tailored to address the particularities of the municipal securities market.[10] The MSRB believes that requiring dealers to conduct annual municipal securities training for registered persons who are regularly engaged in or who regularly supervise municipal securities activities would ensure the delivery of municipal securities content to those individuals who are active in the municipal securities market, while allowing dealers sufficient flexibility in delivering such content.[11] According to the MSRB, under the proposed rule change, dealers would continue to determine the nature of the training and would have the discretion as to content based on the specific type of municipal securities activities conducted by the firm and the individual registered person.[12]

2. Technical and Conforming Amendments

According to the MSRB, the proposed rule change includes certain technical amendments to conform other portions of Rule G–3 to the proposed rule change. First, the MSRB stated that the proposed rule change would amend Rule G–3(h)(ii)(C) to clarify that covered registered persons must participate in the Firm Element training as required by the dealer.[13] Second, the MSRB stated that Rule G–3(h)(ii)(B)(1) would be amended to clarify that, under the proposed rule change, supervisory training would be required for any registered principal who regularly supervises municipal securities activities.[14] Lastly, the MSRB stated that Rule G–3(h)(ii)(B)(2) would be amended to explicitly require that a firm's training program include training on the municipal securities products, services and strategies offered by the dealer.[15]

3. Effective Date

The MSRB has proposed January 1, 2015 as the effective date for the proposed rule change to provide dealers with adequate time to include the training requirements of the proposed rule change into their annual needs analysis and written training plan.[16]

III. Summary of Comments Received and the MSRB's Response

As noted previously, the Commission received four comment letters on the proposed rule change and a response letter from the MSRB.[17] The commenters generally support the proposed rule change.[18] However, some commenters asked for further clarification and provided suggestions to the proposed rule change.[19] The MSRB believes the proposed rule change is appropriately tailored and has responded to the commenters, as discussed below.[20]

1. Determination of Who Is Regularly Engaged in Municipal Securities Activities

FSI stated that the phrase ''regularly engage in municipal securities activities'' used to define the covered registered persons subject to the training is less clear than the phrase ''primarily engaged in municipal securities activities'' used in the MSRB's initial proposal.[21] FSI also stated that the use of this phrase will lead to an overly broad application of the Firm Element continuing education requirements.[22]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72705 (July 29, 2014), 79 FR 45529 (August 5, 2014) (the ''Notice'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated August 13, 2014 (''SIFMA Letter''); Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI''), dated August 19, 2014 (''ICI Letter''); Michael Nicholas, Chief Executive Officer, Bond Dealers of America (''BDA''), dated August 26, 2014 (''BDA Letter''); and David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute (''FSI''), dated August 26, 2014 (''FSI Letter'').

[5] *See* Letter to Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated October 3, 2014 (''MSRB Response Letter''), available at *http://www.sec.gov/comments/sr-msrb-2014-05/msrb201405-5.pdf.*

[6] *See supra* note 3.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See supra* notes 4 and 5.

[18] *Id.*

[19] *Id.*

[20] *See* MSRB Response Letter.

[21] *See* FSI Letter.

[22] *Id.*

The MSRB does not agree.[23] The MSRB believes the new phrase provides dealers with the flexibility to determine who must participate in the Firm Element continuing education program, so long as the dealers have a reasonable basis for determining which registered persons regularly engage in or supervise municipal securities activities.[24] Instead of promulgating a prescriptive rule, the MSRB believes that dealers should have the flexibility to tailor their municipal securities training based on their size, organizational structure, and scope of business activities.[25] According to the MSRB, dealers are best suited to evaluate their municipal securities activities and determine who is regularly engaged in such activities and therefore must participate in the annual training.[26]

2. Documenting Methodology To Identify Covered Registered Persons

ICI suggested that the MSRB expressly include in Rule G–3 a requirement that dealers maintain written documentation of their methodology for determining who must participate in the Firm Element continuing education.[27]

The MSRB responded by noting that there is a current requirement in Rule G–3(h)(ii)(B) that dealers conduct a needs analysis and develop a written training plan.[28] The MSRB would expect dealers, as part of such needs analysis, to evaluate their training needs and document in their written training plans their methodology for determining who should be trained.[29]

3. Harmonization of FINRA and MSRB Firm Element Requirements

FSI and SIFMA raised concerns regarding the perceived de-harmonization between the proposed amendments to Rule G–3(h)(ii) and FINRA Rule 1250(b).[30] According to the MSRB, the proposed rule change would differ from FINRA's continuing education rule in that it would require annual municipal securities training for certain registered persons.[31]

The MSRB believes such training is important because, currently, registered representatives who regularly engage in, and municipal securities principals who regularly supervise, municipal securities activities, may receive insufficient or no municipal securities training.[32] According to the MSRB, the proposed rule change will help ensure the delivery of municipal securities content to such registered representatives.[33] In addition, the MSRB believes the proposed rule change would better align the MSRB and FINRA Firm Element continuing education requirements with regard to registered individuals who do not have direct contact with customers.[34] The MSRB stated that the proposed rule change would extend the MSRB Firm Element continuing education requirement to certain registered persons who do not have direct contact with customers, consistent with the approach taken by FINRA.[35]

4. Effective Date of the Proposed Rule Change

SIFMA requested clarification regarding the January 1, 2015 effective date, and in particular whether dealers have until December 2015 to complete the annual training requirement as provided in the proposed rule change.[36]

The MSRB responded by clarifying that while the effective date of the proposed rule change would be January 1, 2015, dealers would be in compliance if they completed their Firm Element continuing education by December 31, 2015 and annually thereafter.[37]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as well as the comment letters. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the proposed rule change is consistent with Section 15B(b)(2)(A) of the Act which provides that the MSRB's rules shall provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.[38] The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(A) in that the proposed rule will ensure that registered persons who regularly engage in municipal securities activities and supervisors who regularly supervise municipal securities activities will receive annual municipal securities training.

Additionally, the proposed rule is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[39] The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because requiring Firm Element continuing education for registered persons who regularly engage in municipal securities activities and supervisors who regularly supervise municipal securities activities is essential for the protection of investors, municipal entities and the public interest. Furthermore, continuing education will help ensure that individuals regularly participating in the municipal securities market will stay abreast of: new municipal securities features, products and risks; changes to applicable regulatory regimes; and innovations in market practices.

In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. Specifically, the Commission does not believe that the proposed rule change would impose any burden on

[23] *See* MSRB Response Letter.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *See* ICI Letter.
[28] *See* MSRB Response Letter.
[29] *Id.*
[30] *See* FSI Letter and SIFMA Letter.
[31] *See* MSRB Response Letter.
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *See* SIFMA Letter.
[37] *See* MSRB Response Letter.
[38] 15 U.S.C. 78o–4(b)(2)(A).
[39] 15 U.S.C. 78o–4(b)(2)(C).

competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers who engage in municipal securities activities. The proposed rule change does nothing more than specify that, in developing an annual training plan based on the firm's need analysis, the dealer must include municipal securities training for those individuals who are regularly engaged in municipal securities activities and supervisors who regularly supervise municipal securities activities. The proposed rule change does not set forth any quantitative or qualitative requirements regarding the training that must be provided and grants dealers flexibility to develop Firm Element training based on the nature of their business activities. In addition, the Commission believes, that the proposed rule change addresses the need to ensure adequate training for municipal securities professionals and would likely improve the municipal securities market and its efficient operation. Furthermore, the Commission believes that the potential burdens created by the proposed rule change are to be likely outweighed by the benefits.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–MSRB–2014–05) be, and hereby is, approved.[41]

For the Commission, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24954 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73363; File No. SR–BATS–2014–038]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Rules 11.9 and 21.1 of BATS Exchange, Inc. To Add Price Adjust Functionality

October 15, 2014.

I. Introduction

On August 26, 2014, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 amend Exchange Rules 11.9 and 21.1 to add Price Adjust functionality to the Exchange's equities and options trading platforms. The proposed rule change was published for comment in the **Federal Register** on September 4, 2014.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend BATS Rule ("Rule") 11.9 to add a new, optional Price Adjust functionality to the Exchange's cash equities trading platform ("BATS Equities").[4] Consistent with its practice of offering similar functionality for the Exchange's equity options trading platform ("BATS Options") as it does for BATS Equities, the Exchange also has proposed to amend Rule 21.1 to add Price Adjust functionality to BATS Options.[5] On both BATS Equities and BATS Options, the Price Adjust functionality would have to be elected by a User[6] in order to be applied by the Exchange.

BATS Equities

Currently, the Exchange offers price sliding to ensure compliance with Regulation NMS and Regulation SHO for BATS Equities, as well as price sliding for BATS Options to ensure compliance with rules analogous to Regulation NMS adopted by the Exchange and other options exchanges. With respect to price sliding offered to ensure compliance with Regulation NMS ("display-price sliding"), under the Exchange's current rules for BATS Equities, if, at the time of entry, a non-routable order would lock or cross a Protected Quotation[7] displayed by another trading center, the Exchange ranks (and in the case of a cross, re-prices) such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers.[8] The Exchange currently offers display-price sliding functionality to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book ("BATS Book"). Specifically, when the Exchange receives an incoming order that could execute against resting displayed liquidity but an execution does not occur because such incoming order is designated as an order that will not remove liquidity (*e.g.,* a BATS Post Only Order), then the Exchange will cancel the incoming order unless it is permitted to remove liquidity upon entry.[9]

Under the proposed Price Adjust process, by contrast, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market or the Exchange will be ranked and displayed at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).[10] Thus, the proposed Price Adjust process differs from the Exchange's current display-price sliding process in two main ways. First, the Price Adjust process would both rank *and* display such an order at one minimum price variation below the current NBO or above the current NBB

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72945 (August 28, 2014), 79 FR 52790 ("Notice").

[4] *See* proposed Rule 11.9(g).

[5] *See* proposed Rules 21.1(i) and (j).

[6] As defined in Rule 1.5(cc), a User is "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

[7] As defined in Rule 1.5(t), applicable to BATS Equities, a "Protected Quotation" is "a quotation that is a Protected Bid or Protected Offer." In turn, the term "Protected Bid" or "Protected Offer" means "a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association." As defined in BATS Rule 27.1, applicable to BATS Options, a "Protected Quotation" is "a Protected Bid or Protected Offer." In turn, the term "Protected Bid" or "Protected Offer" means "a Bid or Offer in an options series, respectively, that: (A) Is disseminated pursuant to the OPRA Plan; and (B) Is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange." An "Eligible Exchange" is defined in Rule 27.1 as means "a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection."

[8] *See* Rule 11.9(g)(1).

[9] The Exchange notes that BATS Post Only Orders are permitted to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. *See* Rule 11.9(c)(6). Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. *See* Rule 11.9(c)(7).

[10] *See* proposed Rule 11.9(g)(2)(A).

(rather than ranking the order at the locking price). Second, Price Adjust would be based on Protected Quotations at external markets and at the Exchange (rather than just Protected Quotations at external markets).

Because the Exchange will route orders to external markets with locking or crossing quotations, the Exchange notes that the Price Adjust process would only be applicable to non-routable orders, including BATS Only Orders, BATS Post Only Orders and Partial Post Only at Limit Orders. In turn, because BATS Only Orders will execute against locking or crossing interest on the Exchange (including both Protected Quotations as well as any non-displayed interest), the fact that Price Adjust would be based on Protected Quotations at the Exchange is only relevant for BATS Post Only Orders and Partial Post Only at Limit Orders. The Price Adjust process would adjust, as described above, the price of a display-eligible BATS Post Only Order or Partial Post Only at Limit Order that would lock or cross a Protected Quotation displayed by the Exchange unless such order is permitted to remove liquidity as described in Rules 11.9(c)(6) and (c)(7), respectively,[11] whereas the display-price sliding process would cancel such order back to the User unless it is permitted to remove liquidity under Rules 11.9(c)(6) or (c)(7).

In addition, the Exchange has proposed that, in the event the NBBO changes such that an order subject to Price Adjust would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the price that originally locked the NBO (for bids) or NBB (for offers) on entry.[12] All orders that are re-ranked and re-displayed pursuant to Price Adjust would retain their priority as compared to other orders subject to Price Adjust based upon the time such orders were initially received by the Exchange.[13] Further, as proposed, following the initial ranking and display of an order subject to Price Adjust, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price.[14] In order to offer multiple-price sliding to Exchange Users that select Price Adjust, the Exchange also has proposed that the ranked and displayed prices of an order subject to Price Adjust may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.[15] Multiple-price sliding pursuant to Price Adjust would be optional and would have to be explicitly selected by a User before it will be applied (the same is true for display-price sliding). Orders subject to multiple price sliding for Price Adjust would be permitted to move all the way back to their most aggressive price, whereas orders subject to Price Adjust without an explicit selection of multiple price sliding may not be adjusted to their most aggressive price, depending upon market conditions and the limit price of the order upon entry.

Further, the Exchange has proposed that in the event the NBBO changes such that display-eligible orders subject to display-price sliding and Price Adjust would not lock or cross a Protected Quotation and are eligible to be displayed at a more aggressive price, the System will first display all orders subject to display-price sliding at their ranked price followed by orders subject to Price Adjust, which will be re-ranked and re-displayed as set forth in proposed Rule 11.9(g)(2).[16] The Exchange believes it is reasonable to un-slide orders subject to display-price sliding before it un-slides orders subject to Price Adjust because Price Adjust is a less aggressive form of price sliding than display-price sliding, in that an order submitted by a User that elects Price Adjust will be displayed and ranked at the same price rather than ranked at the locking price and displayed at a less aggressive price.

The Exchange currently applies display-price sliding to Non-Displayed Orders that cross Protected Quotations of external markets. The Exchange is not proposing to change its handling of Non-Displayed Orders other than by updating the language of its rule to reflect that it will handle Non-Displayed Orders for which a User has selected Price Adjust in the same way as it currently handles Non-Displayed Orders for which a User has selected display-price sliding.[17] As such, Non-Displayed Orders that are subject to Price Adjust (or display-price sliding) would be ranked at the locking price on entry.[18] The proposed rule also would state that price sliding for Non-Displayed Orders is functionally equivalent to the handling of displayable orders except that such orders will not have a displayed price and will not be re-priced again unless such orders cross a Protected Quotation of an external market (*i.e.,* such orders are not un-slid).[19]

Lastly, the Exchange does not propose to modify its current short sale price sliding functionality, which is designed to ensure compliance with Regulation SHO, and proposes to apply that functionality to orders for which Price Adjust is chosen. As a result, orders for which a User selects either display-price sliding or Price Adjust will be subject to the Exchange's existing short sale price sliding functionality.[20]

BATS Options—Price Adjust

In order to maintain consistency between analogous processes offered by BATS Equities and BATS Options, the Exchange has proposed to amend Rule 21.1 to add Price Adjust functionality to BATS Options, largely in conformance with the changes described above related to the Price Adjust process on BATS Equities. BATS Options currently offers display-price sliding (including multiple display-price sliding) to ensure compliance with locked and crossed market rules relevant to participation on BATS Options. The proposed Price Adjust functionality for BATS Options, as described in proposed Rules 21.1(i) and (j), is similar to the proposed functionality for BATS Equities, with the exception that it omits language related to applying Price Adjust to non-displayed orders because BATS Options does not have non-displayed orders.

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which requires, among other things, that the rules of an exchange be designed 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.

The Exchange believes that its proposal to offer Price Adjust functionality is consistent with Section

[11] *See* proposed Rule 11.9(g)(2)(D).

[12] *See* proposed Rule 11.9(g)(2)(B).

[13] *Id.*

[14] *Id.*

[15] *See* proposed Rule 11.9(g)(2)(C).

[16] *See* proposed Rule 11.9(g)(3).

[17] *See* proposed Rule 11.9(g)(4).

[18] *Id.*

[19] *Id.*

[20] *See* proposed Rule 11.9(g)(6).

[21] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(5).

6(b)(5) of the Act,[23] as well as Rule 610 of Regulation NMS [24] and Rule 201 of Regulation SHO.[25] The Exchange notes that it is not modifying the overall functionality of price sliding, which, to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions, displays orders at permissible prices while retaining a price at which the User is willing to buy or sell, in the event display at such price or an execution at such price becomes possible.[26] Instead, the Exchange is making changes to adopt an optional form of price sliding, Price Adjust, which will rank orders at their displayed price rather than, as with the current display-price sliding process, at the locking price. The exchange notes that, as a result, while subject to Price Adjust sliding, an order is ranked at a less aggressive price than it would be under the display-price sliding process, which may be preferable to certain Users that wish to provide liquidity but do not wish to cross the spread (*i.e.,* if buying, do not wish to trade at the NBO or if selling, do not wish to trade at the NBB).[27]

In addition, as noted above, in contrast to display-price sliding, which is based solely on Protected Quotations at equities markets and options exchanges other than the Exchange, the proposed Price Adjust process would be based on Protected Quotations at external markets and at the Exchange. According to the Exchange, applying the Price Adjust process to orders that, upon entry, cannot be executed or displayed at their limit price should contribute to more displayed liquidity on the Exchange than if such orders were cancelled back to the User.[28] Therefore, the Exchange believes the proposal to apply the Price Adjust process to orders that cannot be displayed because they would lock or cross displayed contra-side interest on the Exchange (and not just external markets) will 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.[29] The Exchange also states that the proposed Price Adjust process will enable the System to avoid displaying a locking or crossing quotation in order to ensure compliance with Rule 610(d) of Regulation NMS.[30]

Further, the Exchange believes it is reasonable to un-slide display-price sliding orders before it un-slides Price Adjust orders because Price Adjust is a less aggressive form of price sliding than display-price sliding, in that an order submitted by a User would be displayed and ranked at the same price rather than ranked at the locking price and displayed at a less aggressive price.[31] Because orders subject to display-price sliding are ranked at and subject to execution at higher prices when buying and lower prices when selling, the Exchange believes that such orders should be re-displayed before orders subject to Price Adjust orders in response to changes to the NBBO.[32]

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.'' [33] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit . . . members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.'' [34] The Exchange believes that the proposed Price Adjust functionality for BATS Equities as well as BATS Options will assist Users by displaying orders at permissible prices.[35] Similarly, Rule 201 of Regulation SHO [36] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange represents that its short sale price sliding will continue to operate the same for Users that select Price Adjust as it does for Users that select the display-price sliding process currently offered by the Exchange.[37]

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act, including Section 6(b)(5) of the Act,[38] which requires, among other things, that the rules of an exchange be designed to 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, protect investors and the public.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change, SR–BATS–2014–038, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24949 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[23] *Id.*

[24] 17 CFR 242.610.

[25] 17 CFR 242.201.

[26] *See* Notice, *supra,* note 3 at 52793.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] 17 CFR 242.610(d).

[34] *Id.*

[35] *See* Notice, *supra,* note 3 at 52793.

[36] 17 CFR 242.201.

[37] *See* Notice, *supra,* note 3 at 52793.

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73352; File No. SR–NYSE–2014–50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 15 To Specify That Exchange Systems Can Publish Pre-Opening Indications and To Extend the Time Order Imbalance Information Is Disseminated When an Opening is Delayed

October 15, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 6, 2014, New York Stock Exchange LLC (''NYSE'' 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 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 15 to specify that Exchange systems can publish pre-opening indications and to extend the time order imbalance information is disseminated when an opening is delayed. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Rule 15 to specify that Exchange systems can automatically publish pre-opening indications utilizing the same guidelines set forth in Rule 15 for manual publications by Designated Market Makers (''DMM''). The Exchange also proposes to amend Rule 15 to extend the time order imbalance information is disseminated when an opening is delayed from the current 9:35 a.m. to the time the security opens for trading. Finally, the Exchange proposes to correct a typographical error in subsection (b)(2) of the Rule.

Rule 15 currently provides that an Exchange DMM, in arranging an opening transaction on the Exchange in any security, shall issue a pre-opening indication whenever the DMM anticipates that the opening transaction will be at a price that represents a change of more than the ''applicable price change'' specified in the Rule from either:

- The security's last reported sale price on the Exchange;[4] or
- the security's offering price in the case of an initial public offering (''IPO''); or
- the security's last reported sale price on the securities market from which the security is being transferred to the Exchange, on the security's first day of trading on the Exchange (a ''transferred security'').[5]

The ''applicable price changes'' governing pre-opening indications represent a numerical or percentage change from the security's closing price per share, as follows:

Exchange closing price	Applicable price change (more than)
Under $20.00	$0.50
$20–$49.99	$1.00
$50.00–$99.99	$2.00
$100–$500	$5.00
Above $500	1.5%

Pre-opening indications pursuant to this rule are published on the Exchange's proprietary data feeds.

The Exchange proposes to amend Rule 15 to add that either the DMM or the Exchange shall issue a pre-opening indication, but not change any of the applicable parameters for publishing a pre-opening indication. To reflect that the Exchange may be publishing these pre-opening indications, the Exchange proposes to delete the following phrase at the beginning of section (a) of the rule, ''Whenever an Exchange DMM, in arranging an opening transaction on the Exchange in any security anticipates that,'' and state instead that ''If the opening transaction on the Exchange is anticipated to be at a price that represents a change from. . . .'' The Exchange further proposes to add that the DMM or the Exchange shall issue the pre-opening indication, and specify that such pre-opening indication shall include the security and the price range within which the opening transaction is anticipated to occur.

The Exchange would publish automatic indications when the Opening Imbalance Information in Exchange systems indicates an opening price that would be more than the applicable price range away from the defined reference price. Because Exchange systems would not have access to orally-represented interest in the trading crowd, the Exchange believes that a pre-opening indication entered by a DMM would likely be based on information not available to Exchange systems, and therefore a DMM-entered pre-opening indication should have priority over an Exchange-generated pre-opening indication. Accordingly, the Exchange further proposes that if a DMM issues a pre-opening indication or a mandatory indication pursuant to Rule 123D(1),[6] the Exchange would not publish a pre-opening indication in that security.

The Exchange also proposes to amend Rule 15 to permit opening order imbalance publications to continue until a security is opened. Currently, Rule 15 provides that order imbalance information disseminated prior to the opening of a security will be disseminated approximately every five minutes between 8:30 a.m. Eastern Time (''E.T.'') and 9:00 a.m. E.T.; approximately every minute between 9:00 a.m. E.T. and 9:20 a.m. E.T.; and approximately every 15 seconds between 9:20 a.m. E.T. and the opening. If the opening is delayed, Rule 15 provides that order imbalance information will be published until 9:35 a.m. E.T. Under the proposed rule change, order imbalance information would continuously disseminate until the opening of trading in that security and not cease at 9:35 a.m. E.T.

Finally, the Exchange proposes to correct a typographical error in the published text of Rule 15(b)(2), which currently contains the word ''underling'' that should be ''underlying.''

Because of the technology changes associated with the proposed rule change, the Exchange proposes to announce the implementation date via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, because 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 protect investors and the public interest. The Exchange believes that permitting the Exchange to automatically publish pre-opening indications and extending opening order imbalance publications until a security is opened removes impediments to and perfects the

[4] Except for American Depositary Receipts (''ADR''), where the DMM shall use the closing price of the primary foreign market to determine whether the price of such opening transaction represents a change of more than the ''applicable price change.'' *See* Rule 15(b).

[5] A pre-opening indication includes the security and the price range within which the DMM anticipates the opening transaction will occur.

[6] Rule 123D(1) provides that an indication is mandatory for an opening which will result in a ''significant'' price change from the previous close. For securities priced under $10, such indications are mandatory if the price change is one dollar of more; for securities between $10 and $99.99, indications are required for price movements of the lesser of 10% or three dollars; and for securities over $100, indications are required for price movements of five dollars or more. These guidelines are applicable to IPOs based on the offering price.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system by continuing to advance the efficiency and transparency of the opening process and fostering price discovery at the open of trading, thereby minimizing information imbalances in the marketplace. Similarly, the proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by providing customers and the investing public with continuous, automated information for securities where there will likely be a significant price change from the previous day's closing price or for which there is a significant published imbalance. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

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 not intended to address competitive issues but rather technologically augment the current process of providing pre-market information to customers and the investing public.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

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) [11] 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–NYSE–2014–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–50. 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 will also be available for Web site viewing and printing 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–NYSE–2014–50 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24941 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). 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.

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73353; File No. SR–NYSEMKT–2014–89]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Amend Certain of Its Rules To Remove and Replace Obsolete References to Fixed Return Options With the Updated References to Binary Return Derivatives Contracts

October 15, 2014.

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 October 8, 2014, 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 [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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain of its rules to remove and replace obsolete references to Fixed Return Options with the updated references to Binary Return Derivatives contracts (''ByRDs''). The Exchange recently filed and received approval for rule changes related to, among other things, a name change for securities previously known as Fixed Return Options or FROs to reflect a name change to ByRDs.[4] However, several references to FROs remain in Rules 462(d).10, 909ByRDs and 980ByRDs. This rule filing is intended to replace these remaining references to FROs with references to ByRDs, which will clarify Exchange rules and alleviate any investor confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market by making rule text consistent with the new name of the options product (*i.e.,* ByRDs).[7] The Exchange also believes that the proposed clarifying changes and deletions of obsolete references to FROs may reduce potential investor confusion, and protect investors and the public interest.

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 change is not designed to address any competitive issue but rather to revise obsolete or inaccurate rule text, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

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 waiver of this requirement would allow the Exchange to delete or correct outmoded references without delay, which would allow market participants to realize the benefits of the clarified rules. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would eliminate potential investor confusion without delay by amending the Exchange's rules to accurately reflect the name of the options product (ByRDs) and by removing references to its former name (Fixed Return Options). Therefore, the Commission designates the proposed rule change to be operative upon filing.[10]

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)[11] 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–NYSEMKT–2014–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–89. 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

[4] *See* Securities and Exchange Release No. 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR–NYSEMKT–2014–06).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* n. 4.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 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).

[11] 15 U.S.C. 78s(b)(2)(B).

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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–89 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24945 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73367; File No. SR–NYSEMKT–2014–86]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Modifying Its Quote Mitigation Plan and Amending Rule 970NY and Rule 970.1NY

October 15, 2014.

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 October 2, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify its quote mitigation plan and to amend Rule 970NY (Firm Quotes) and Rule 970.1NY(Quote Mitigation). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify its quote mitigation plan and to amend Rule 970NY (Firm Quotes) and Rule 970.1NY (Quote Mitigation). As discussed below, the Exchange believes the modified quote mitigation plan will adequately accommodate the number of quotations sent to the Exchange and the message traffic that the Exchange sends to the Options Price Reporting Authority (''OPRA'').

Rule 970.1NY

In connection with the adoption of the Penny Pilot Program, the Exchange adopted a quote mitigation plan designed to reduce the number of quotations generated by the Exchange for all options traded on the Exchange, not just issues included in the Penny Pilot Program.[4] The current plan reduces the number of messages the Exchange sends to OPRA by only submitting quote messages for ''active'' series. Rule 970.1NY defines active series as: (i) The series has traded on any options exchange in the previous 14 calendar days; or, (ii) the series is solely listed on the Exchange; or (iii) the series has been trading ten days or less, or; (iv) the Exchange has an order in the series. Alternatively, the Exchange may define a series as active on an intraday basis if: (i) The series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for quote from a Customer in that series.

The Exchange believes it no longer needs the quote mitigation provided by Rule 970.1NY because rules adopted since Rule 970.1NY provide sufficient quote mitigation.

Current Market Structure and Controls on the Exchange

In 2010, the Exchange incorporated select provisions of the Options Listing Procedures Plan (''OLPP'') in Rule 903A as a quote mitigation strategy.[5]

The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. From the OLPP, the Exchange incorporated in Rule 903A ''applied uniform standards to the range of options series exercise (or strike) prices available for trading on the [Exchange] as a quote mitigation strategy.''[6] In approving the OLPP provisions, subsequently incorporated in Rule 903A, the Commission indicated that ''adopting uniform standards to the range of options series exercise (or strike) prices available for trading on the [Exchange] should reduce the number of option series available for trading, and thus should reduce increases in the options quote message traffic because market participants will not be submitting quotes in those series.''[7]

One year after adopting select provisions of the OLPP, the Exchange refined the quoting obligations applicable to Market Makers as a quote mitigation strategy.[8] Specifically, the Exchange adopted Commentary .01 to Rule 925.1NY, which states that Specialists' and Market Makers' continuous quoting obligations ''shall not apply to Market Makers with respect to adjusted option series, and series

[4] *See* Securities and Exchange Release No. 59472 (February 29, 2009), 74 FR 9843 (March 6, 2009) (SR–ALTR–2008–14); *see also* Securities and Exchange Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106) (original quote mitigation proposal).

[5] *See* Securities and Exchange Release No. 61978 (April 23, 2010), 75 FR 22886 (April 30, 2010) (SR–NYSEAmex–2010–3). *See also* OLPP, *available at, http://www.theocc.com/clearing/industry-services/olpp.jsp.*

[6] Rule 903A codified Amendment No. 3 to the OLPP. *See* Securities and Exchange Release No. 60531 (August 19, 2009), 74 FR 43173 (File No. 4–443). *See also* Rule 903A.

[7] *Id.,* 74 FR at 43174.

[8] *See* Securities and Exchange Release No. 65572 (October 14, 2011), 76 FR 65310 (October 20, 2011) (NYSEAmex–2011–61).

with a time to expiration of nine months or greater, for options on equities and Exchange Traded Fund Shares, and series with a time to expiration of twelve months or greater for Index options.'' [9] Because there are no Market Maker quoting obligations associated with adjusted options series, there is a reduction in quote traffic that is sent to OPRA. Indeed, in approving Commentary .01 to Rule 925.1NY, the Commission noted, ''. . . the Exchange's proposal would reduce the burden on market makers to submit continuous quotes that the Exchange may not submit to OPRA.'' [10]

The Exchange believes that reliance on the OLPP, via Rule 903A, together with the refined Market Maker quoting obligations, pursuant to Commentary .01 to Rule 925.1NY, is sufficient as a quote mitigation strategy and obviates the need for Rule 970.1NY. The Exchange believes that limiting the number of series listed on the Exchange is preferable to suppressing quotes of inactive series, as required under current Rule 970.1NY, because all quotes sent by Market Makers are actionable even if not displayed.

The Exchange believes that both its own systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the deletion of Rule 970.1NY. The Exchange has already successfully conducted testing to ensure that its internal systems are equipped to handle any increase in quote traffic as a result of the proposed rule change. Further, the Exchange continually assesses its capacity needs and ensures that the capacity that it requests from OPRA is not only sufficient but also compliant with the requirements established in the OPRA Capacity Guidelines.[11] In submitting its capacity requests, the Exchange has factored in the impact on capacity if all series currently subject to Rule 970.1NY were to become active and therefore sent to OPRA.[12]

In addition, the Exchange has in place the following measures that it believes serve as additional safeguards against excessive quoting:

—Monitoring: The Exchange actively monitors the quotation activity of its Market Makers. When the Exchange detects that a Market Maker is disseminating an unusual number of quotes, the Exchange contacts that Market Maker and alerts it to such activity. Such monitoring may reveal that the Market Maker may have internal system issues or has incorrectly set system parameters that were not immediately apparent. Alerting a Market Maker to the heightened levels of activity will usually result in a change that reduces the number of quotes sent to the Exchange by the Market Maker.

—New Listings: The Exchange has a business plan with respect to the listing of options on new underlying securities that is designed to help ensure that any new listings are sufficiently active to avoid listing options on underlying securities that generate quote volume without the offsetting benefit of trading volume.[13]

—Excessive Bandwidth Utilization Fees: The Exchange imposes Excessive Bandwidth Utilization Fees, which are designed to encourage efficient quoting.[14] The Excessive Bandwidth Utilization Fees are comprised of Order To Trade Ratio Fees and Messages to Contracts Traded Ratio Fees.[15]

In connection with the foregoing, the Exchange proposes to amend paragraphs (b)(1) and (b)(2) of Rule 970NY to delete references to the ''Quote Mitigation Plan,'' which refer to the plan set forth in Rule 970.1NY. In addition, the Exchange proposes to delete Rule 970.1NY in its entirety, as it contains a discussion of the current quote mitigation plan.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update to be published no later than 60 days following the effective date of this filing. The implementation date will be no later than 60 days following the issuance of the Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [16] in general and furthers the objectives of Section 6(b)(5) of the Act [17] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that the proposed modifications to the quote mitigation plan, including the continued reliance on Rule 903A and Commentary .01 to Rule 925.1NY, together with the other safeguards mentioned above, would promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market as it would increase transparency and enhance price discovery as all Market Maker quotes would be reflected in the market. Specifically, the Exchange believes that deleting Rule 970.1NY will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will enable all actionable Market Maker quotes to be displayed, including in inactive series. The Exchange believes this would also protect investors and the public interest because available Market Maker liquidity in all series would be publicly displayed, thereby putting investors on notice of such liquidity. The Exchange further believes that the market structure initiatives adopted in recent years serve to reduce the potential for excessive quoting because the OLPP limits the number of series eligible to be listed, which reduces the number of series for which a Market Maker would be obligated to quote, and therefore reduces quote traffic.

As discussed above, the Exchange believes that both its own systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the proposed rule change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[9] An ''adjusted series'' is ''an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.'' *See* Commentary .01 to Rule 925.1NY.

[10] *See supra* n. 8, 79 FR at 65311.

[11] *See* the OPRA Capacity Guidelines, *available here, http://www.opradata.com/pdf/capacity_guidelines.pdf.*

[12] OPRA has delegated certain functions pertaining to planning the capacity of the OPRA System to an Independent System Capacity Advisor (''ISCA'') that ''may provide less than all of the capacity that has been requested if it determines (a) that the capacity requests of one or more of the parties are unreasonable, or (b) that it is not reasonable to develop or maintain a System that has capacity sufficient to satisfy the requests of the parties.'' *See id.* The Exchange has never been informed by the ISCA that the capacity it has requested cannot be met for any reason, including because the ISCA had deemed the request to be unreasonable. Thus, the Exchange believes that any increase in quote traffic that might be sent to OPRA as a result of the current proposal should not impact any other exchange's capacity at OPRA.

[13] *See* Commentary .09(b) to Rule 15.

[14] *See* NYSE Amex Options fee schedule, *available here, https://www.theice.com/publicdos/nyse/market/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

[15] *Id.*

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, as discussed above, the Exchange believes that any increase in quote traffic that might be sent to OPRA as a result of the proposed rule change should not impact any other exchange's capacity at OPRA.[18]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–86. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–86, and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24953 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra.* n. 12.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73356; File No. SR–BATS–2014–045]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.16 of BATS Exchange, Inc.

October 15, 2014.

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 October 7, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 filed a proposed rule change to amend paragraph (f) of Rule 11.16 to provide Members[3] with additional time within which to submit a written claim for compensation for ''losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming or the negligent acts or omissions of its employees'' (''Exchange Systems Issues''). In addition, the Exchange proposes to add a new paragraph (g) to Rule 11.16 to permit the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through its affiliated routing broker-dealer, BATS Trading, Inc. (''BATS Trading''), to Trading Centers[4] where such losses are claimed by the Member to have resulted directly from a malfunction of the physical equipment, devices and/or programming, or the negligent acts or omissions of the employees, of such Trading Centers (''Trading Center Systems Issue'').

The proposed rule change is substantially similar to the existing functionality on EDGX Exchange, Inc. (''EDGX'') and EDGA Exchange, Inc. (''EDGA'').[5] The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.'' *See* Exchange Rule 1.5(n).

[4] Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), defines a ''Trading Center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' *See also* Exchange Rule 2.11(a).

[5] *See* EDGA Rules 11.12(d)(3) and (e); EDGX Rules 11.12(d)(3) and (e). *See also* Securities Exchange Act Release Nos. 71061 (December 12, 2013), 78 FR 76685 (December 18, 2013) (SR–EDGA–2013–36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12, Limitations of Liability); and 71062 (December 12, 2013), 78 FR 76693 (December 18, 2013) (SR–EDGX–2013–45) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.12, Limitations of Liability). The Exchange notes that proposed Rule 11.16(g)(4) refers [sic] the liability limits under BATS Rule 11.16(d)(1)–(3), which differ from the

Continued

designated the proposed rule change as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.16 to: (i) Amend paragraph (f) to provide Members with additional time within which to submit a written claim for compensation for Exchange Systems Issues; and (ii) add a new paragraph (g) permitting the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through BATS Trading to Trading Centers where such losses are claimed by the Member to have resulted directly from a *Trading Center Systems Issue.*

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. (''BYX'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BATS, BYX, EDGA and EDGX, the ''BGM Affiliated Exchanges'').[7] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to align the requirements for Member reimbursements with that of EDGX and EDGA in order to provide consistent requirement for users of the BGM Affiliated Exchanges.[8]

Extension of Deadline To Submit Claims

Rule 11.16 currently states that, except as provided in subsection (d) of the Rule, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Exchange or its use. Exchange Rule 11.16(d) provides a limited exception to its general limitation of liability that allows for the payment of compensation to Members for Exchange Systems Issues, subject to certain conditions. Subsection (d)(1) thru (3) of Rule 11.16 sets forth the aggregate limits of all claims made by market participants related to the use of the Exchange.

Currently, Rule 11.16(f) requires Members to submit claims for compensation to the Exchange by the opening of trading on the business day following the day on which the Member's use of the Exchange gave rise to the claim. To be consistent with EDGX and EDGA, the Exchange proposes to extend the deadline to submit a claim to no later than 4:00 p.m. Eastern Time, or 1:00 p.m. in the event of an early market close,[9] on the second business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.16(f). The expansion of time to submit compensation claims should, therefore, increase the likelihood that Members will be able to submit claims to the Exchange in a timely manner. In addition, the proposed extended deadline is identical to that contained in EDGX Rule 11.12(d)(3) and EDGA Rule 11.12(d)(3).[10]

Reimbursement for Losses Sustained at Trading Centers

The Exchange also proposes to amend Exchange Rule 11.16 to add a new paragraph (g) that would authorize the Exchange, subject to express conditions and limitations, to compensate Members for losses relating to orders routed by the Exchange through BATS Trading to Trading Centers that the Member claims resulted directly from a Trading Center Systems Issue. Proposed Rule 11.16(g) is substantially similar to EDGX Rule 11.12(e) and EDGA Rule 11.12(e).[11]

The Exchange believes that the proposed rule change will provide a remedy, not currently available under Rule 11.16, to Members that experience losses due to Trading Center Systems Issues after BATS Trading routed the Members' orders to a Trading Center that experienced such issues. The Exchange's authority to compensate Members for losses under Rule 11.16(d) only covers losses incurred as a result of Exchange Systems Issues, and does not currently extend to Trading Center Systems Issues. Even if the Exchange, via BATS Trading, were to seek and receive compensation on behalf of a Member from a Trading Center relating to a Trading Center Systems Issue, it does not currently have the authority to, in turn, pass such compensation along to the affected Member. The Exchange, therefore, proposes to add a new paragraph (g) to Rule 11.16 as an accommodation to Members, whereby the Exchange, via BATS Trading, would employ reasonable efforts to submit Members' claims for compensation on such Members' behalf to a Trading Center, and pass along to such Members the full amount of compensation, if any, obtained by BATS Trading from such Trading Center.[12]

Under proposed Rule 11.16(g), the Exchange would undertake to accept claims for losses submitted by Members, which claims must contain representations from such Members as to the accuracy of the information contained therein and that any losses incurred were the direct result of a Trading Center Systems Issue.[13] The

existing EDGA and EDGX monthly liability limit of $500,00 referenced under EDGA and EDGX Rules 11.12(e)(4) and set forth under EDGA and EDGX Rules 11.12(d)(1). The Exchange understands that both EDGA and EDGX intend to submit a proposed rule change to harmonize its liability limits with those of BATS and BYX.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[8] The Exchange understands that BYX is to file a proposed rule change with the Commission to adopt similar requirements.

[9] Regular trading hours for days when the markets close early are typically 9:30 a.m. to 1:00 p.m. Eastern Time on the day after Thanksgiving and on Christmas Eve, unless Christmas Eve happens to fall on a weekend. *See, e.g.,* BATS Exchange Trading Hours *available at http://batstrading.com/support/hours/.*

[10] *See supra* note 5.

[11] *See supra* note 5.

[12] BATS Trading is considered a facility of the Exchange, and, therefore, claims for compensation due to an Exchange Systems Issue experienced by BATS Trading must be submitted in accordance with Exchange Rule 11.16(d).

[13] Members receive reports from the Exchange shortly after a trade is consummated indicating whether their order, or a portion thereof, was executed at a Trading Center. The report will

Exchange would employ reasonable efforts to submit such claims, via BATS Trading, to the Trading Center in question. If and to the extent that BATS Trading were to receive compensation from a Trading Center in response to a claim submitted on behalf of a Member, the full amount of such compensation would be passed through to the Member.

Proposed Rule 11.16(g)(1) would require that a Member seeking compensation for a loss due to a Trading Center Systems Issue must submit its claim to the Exchange in writing. The proposed rule would not include a specific deadline by which Members must submit claims for compensation. The Exchange notes that Trading Centers that are national securities exchanges impose different deadlines by which their Members must submit claims for compensation,[14] and that many Trading Centers that are not national securities exchanges either do not impose any deadline or otherwise handle requests for compensation on a case-by-case basis. It is, therefore, incumbent on, and the sole responsibility of, the Member to submit claims to the Exchange in a timely manner so that the Exchange may then forward such claim, via BATS Trading, in advance of any deadline required by that Trading Center. Upon receipt of a Member's claim, the Exchange would only verify that a valid order was submitted by the Member and accepted and acknowledged by the Exchange, that the Member's order or a portion of the order was routed by the Exchange via BATS Trading to a Trading Center, and that the Member represented that it incurred a loss as a result of a Trading Center Systems Issue. The Exchange would then use reasonable efforts to forward the claim, via BATS Trading, to such Trading Center.

Proposed Rule 11.16(g)(2) would state that the Exchange would pass along to the Member the full amount of any compensation that the Exchange, via BATS Trading, received from a Trading Center as a result of a claim submitted on behalf of the Member. Any compensation paid to the Member would be paid solely from the compensation, if any, recovered from that Trading Center and not from any other source.

Proposed Rule 11.16(g)(3) would account for the circumstance where more than one Member submitted a claim for loss resulting from the same Trading Center Systems Issue and the total amount of compensation received from the Trading Center is insufficient to fully satisfy the claims of all such Members. In such case, the Exchange would proportionally allocate the total amount received from the Trading Center, if any, among all such Members' claims based on the proportion that each such claim bears to the sum of all such claims. The Exchange believes that this provision will provide for equitable compensation among all Members that submit a valid claim related to a Trading Center Systems Issue by ensuring that Members are compensated on a pro rata basis.

The payment of claims submitted in response to an Exchange Systems Issue would be separate and apart from any pass-through of compensation paid due to a Trading Center Systems Issue. Proposed Rule 11.16(g)(4) would state that any pass-through of compensation to a Member in accordance with Rule 11.16(g) would be unrelated to any other claims for compensation that are made due to an Exchange Systems Issues under Exchange Rule 11.16(d). Accordingly, proposed Rule 11.16(g)(4) would state that any compensation paid to Members from reimbursement recovered from a Trading Center would not count against the Exchange's liability limits set forth in Rule 11.16(d), nor any applicable insurance maintained by the Exchange.

Notwithstanding the foregoing, the Exchange is not proposing to undertake or assume any responsibility to: (1) Independently validate information submitted by a Member in connection with a claim for compensation for loss arising out of a Trading Center Systems Issue, other than the ticker, size and side of the affected orders and the Trading Center to which the affected orders were routed and alleged to have experienced a Trading Center Systems Issue; (2) ascertain or comply with any mandatory deadlines within which to submit claims for compensation to a Trading Center; (3) guarantee that any compensation will be procured from a Trading Center; (4) negotiate agreements with any Trading Centers to require compensation under any circumstances; or (5) take any additional steps with respect to a Trading Center Systems Issue if such Trading Center denies or fails to respond to any claim for compensation, in whole or in part. In other words, the Exchange will, upon receipt of a claim for compensation from a Member for loss resulting from a Trading Center Systems Issue, reasonably endeavor to submit such claim, via BATS Trading, to the applicable Trading Center as soon as reasonably practicable, and if BATS Trading in turns receives an accommodation from such Trading Center, such accommodation will be passed along to the Member via the Exchange. Neither the Exchange nor BATS Trading will be under any obligation to know any Trading Center's rules, procedures and/or customs, to the extent any exist, for the submission of claims for compensation, nor to dispute a Trading Center's denial of a claim, whether in whole or in part, nor to take any further actions with respect to such claim in the event that the Trading Center does not respond at all to the claim. Accordingly, with this proposed rule change, the Exchange is not assuming any additional liability to Members for losses claimed to have resulted from Trading Center Systems Issues; rather, it proposes to serve a purely ministerial role, given the contractual privity that exists between BATS Trading and Trading Centers, in the submission of Members' claims for compensation to such Trading Centers on their behalf. To that end, proposed Rule 11.16(g)(5) would make clear that under no circumstances will the Exchanges' inability to procure compensation from a Trading Center, in whole or in part, for whatever reason, give rise to a claim for compensation from the Exchange pursuant to paragraph (d) of Rule 11.16 as a ''negligent act or omission of an Exchange employee.'' Proposed Rule 11.16(g)(5) would further state that the Exchange would not be liable should the Trading Center deny such claim made pursuant to proposed Rule 11.16(g), in whole or in part, for any reason.

The Exchange believes that the provisions outlined in the above paragraph are equitable because any claim submitted under the proposed Rule 11.16(g) would be subject to the rules, procedures, and discretion of the Trading Center in question. It is the Trading Center, and not the Exchange or BATS Trading, that ultimately decides whether to approve or deny a Member's claim, or even whether to act on such request at all. For example, the Exchange has no discretion over or responsibility for the information provided by the Member in its claim, and no discretion over or responsibility for whether such information is sufficient for the Trading Center to

indicate the size and price of the execution on the Trading Center.

[14] *See* Nasdaq Stock Market LLC Rule 4626 (requiring claims for compensation to be submitted by 12:00 p.m. Eastern Time on T+1). *See also* NYSE Arca, Inc. Options Rule 14.2, NYSE MKT LLC Rule 905NY, Chicago Board Options Exchange, Incorporated Rule 6.7 (requiring claims for compensation to be submitted by the open of regular trading hours on T+1).

provide compensation. In addition, any claim submitted under the proposal would be subject to compensation only to the extent that the Trading Center provided such compensation to BATS Trading. Accordingly, because it is the Trading Center, and not the Exchange or BATS Trading, that ultimately decides whether a claim for compensation would be granted, the Exchange believes the proposal is fair and just in limiting the Exchange's liability in the event a Trading Center determines, for any reason, to deny a claim, in whole or in part, or even not to respond to such claim.

Implementation Date

The Exchange intends to implement the proposed rule changes as soon as practicable and will announce its availability via a trading notice to be posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [15] and furthers the objectives of Section 6(b)(5) of the Act,[16] in that it is designed 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, protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The proposed rule change is substantially similar to the existing rules of EDGX and EDGA.[17] The proposed rule change is intended to add certain requirements for Member reimbursements currently offered by EDGA and EDGX in order to provide a consistent rules across the BGM Affiliated Exchanges. Consistent rules, in turn, will simplify the regulatory requirements for Members of the Exchange that are also participants on EDGA and EDGX. The proposed rule change would provide greater harmonization between Exchange and EDGX and EDGA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Extension of Deadline To Submit Claims

Extending the deadline by which claims for compensation are submitted to the Exchange is designed to increase the likelihood that Members will be able to submit claims in a timely manner. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.16(f). Therefore, the Exchange believes the proposed rule change is equitable and will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue.

Reimbursement for Losses Sustained at Other Trading Centers

Like EDGX Rule 11.12(e) and EDGA Rule 11.12(e),[18] proposed Rule 11.16(g) would enable the Exchange to pass through to Members any compensation that the Exchange is able to procure, via BATS Trading, from a Trading Center for losses claimed by Members to have resulted from a Trading Center Systems Issue. The proposal specifies a standardized method for Members to submit claims for compensation from a Trading Center, and for the Exchange to pass through to its Members any such compensation obtained, if and to the extent the Exchange, via BATS Trading, is able to obtain such compensation from the Trading Center. Furthermore, any compensation obtained by the Exchange from a Trading Center would be passed on to the Member who requested such reimbursement. If the amount received by the Exchange from the Trading Center was insufficient to satisfy all claims, it would be allocated among the claimants proportionally based on the percentage that each claimant's claim in relation to the sum of all claims received by the Exchange. In addition, the proposed pro-rata allocation methodology that the Exchange would employ would provide for equitable compensation among all Members who submit a claim related to a Trading Center Systems Issue and deter the risk of preferential treatment of certain Members by the Exchange. Therefore, the Exchange believes that the proposed rule change would protect investors and the public interest by potentially providing Members with a remedy not currently available to them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change would not impose any burden on competition. The proposed rule change is designed to promote fairness in the marketplace by increasing the time within which a Member is to submit claims for Exchange System Issues and to be compensated for losses that result from Trading Center Systems Issues. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same deadline to submit a claim for Exchange Systems Issues and be able to submit claims for reimbursement for certain losses incurred due to Trading Center System Issues. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization among Exchange and EDGA and EDGX rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members of the BGM Affiliated Exchanges.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See supra* note 7.

[18] *See supra* note 5.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

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 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–BATS–2014–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–045. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–045 and should be submitted on or before November 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–24943 Filed 10–20–14; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–September 30, 2014.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Regulatory Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR § 806.22(f):

1. WPX Energy Appalachia, LLC, Pad ID: Knosky Pad Site, ABR–20090915.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.999 mgd; Approval Date: August 4, 2014.
2. Citrus Energy Corporation, Pad ID: Procter & Gamble Mehoopany Plant 2 1H, ABR–20091104.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: August 4, 2014.
3. SWEPI LP, Pad ID: Courtney 129 1H–2H, ABR–20090729.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 4, 2014.
4. SWEPI LP, Pad ID: 212 1H, ABR–20090727.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 4, 2014.
5. SWEPI LP, Pad ID: 235A 1H, ABR–20090728.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 4, 2014.
6. SWEPI LP, Pad ID: Courtney H 255–1H, ABR–20090730.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 4, 2014.
7. SWEPI LP, Pad ID: Neal 134D, ABR–20090731.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 4, 2014.
8. SWEPI LP, Pad ID: Kipferl 261–1H, ABR–20090732.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 4, 2014.
9. Talisman Energy USA Inc., Pad ID: DCNR 587 02 018, ABR–20100219.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 4, 2014.
10. Talisman Energy USA Inc., Pad ID: DCNR 587 02 008, ABR–20100220.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 4, 2014.
11. Talisman Energy USA Inc., Pad ID: Putnam 01 077, ABR–20100212.R1, Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 6, 2014.
12. Talisman Energy USA Inc., Pad ID: Lutz 01 015, ABR–20100213.R1, Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 6, 2014.
13. Talisman Energy USA Inc., Pad ID: Longnecker 03 008, ABR–20100223.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 6, 2014.
14. Talisman Energy USA Inc., Pad ID: Harvest Holdings 01 036, ABR–20100225.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 6, 2014.
15. Talisman Energy USA Inc., Pad ID: Barrett 03 009, ABR–20100230.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 6, 2014.
16. Talisman Energy USA Inc., Pad ID: Boor 03 015, ABR–20100232.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 6, 2014.
17. Talisman Energy USA Inc., Pad ID: Putnam 01 076, ABR–20100233.R1, Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: August 6, 2014.
18. Chesapeake Appalachia, LLC, Pad ID: Hunter, ABR–201408001, Meshoppen Township, Wyoming

County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 8, 2014.

19. Chesapeake Appalachia, LLC, Pad ID: Kent, ABR–20090726.R1, Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 12, 2014.

20. Chesapeake Appalachia, LLC, Pad ID: Hershberger, ABR–20090739.R1, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 12, 2014.

21. Cabot Oil & Gas Corporation, Pad ID: LaRueC P3, ABR–20100138.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: August 12, 2014.

22. Cabot Oil & Gas Corporation, Pad ID: Baker P1, ABR–20100149.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: August 12, 2014.

23. Seneca Resources, Pad ID: CRV Pad C09–G, ABR–201408002, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 12, 2014.

24. Chesapeake Appalachia, LLC, Pad ID: Fitzsimmons, ABR–20090809.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 15, 2014.

25. Chesapeake Appalachia, LLC, Pad ID: Bacorn, ABR–201408003, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 15, 2014.

26. Cabot Oil & Gas Corporation, Pad ID: ChudleighW P2, ABR–20100137.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: August 15, 2014.

27. Cabot Oil & Gas Corporation, Pad ID: CarlsonW P1, ABR–20100145.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: August 15, 2014.

28. Cabot Oil & Gas Corporation, Pad ID: ColwellA P1, ABR–201408004, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: August 18, 2014.

29. Chesapeake Appalachia, LLC, Pad ID: Farr, ABR–20090907.R1, Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 18, 2014.

30. Chesapeake Appalachia, LLC, Pad ID: Sharer, ABR–20090913.R1, Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 18, 2014.

31. Chesapeake Appalachia, LLC, Pad ID: Welles 2, ABR–20090940.R1, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 18, 2014.

32. Chesapeake Appalachia, LLC, Pad ID: Martin, ABR–20090906.R1, Granville Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 19, 2014.

33. Southwestern Energy Production Company, Pad ID: NR–23–FOUR BUCKS–PAD, ABR–201408005, Great Bend Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: August 19, 2014.

34. Chief Oil & Gas, LLC, Pad ID: Kupscznk Drilling Pad #1, ABR–20100224.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: August 19, 2014.

35. Chief Oil & Gas, LLC, Pad ID: PA Woodlands Drilling Pad, ABR–201408006, Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 2.500 mgd; Approval Date: August 19, 2014.

36. Chief Oil & Gas, LLC, Pad ID: Stone Drilling Pad #1, ABR–20100228.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: August 19, 2014.

37. SWEPI LP, Pad ID: Thomas 503R, ABR–201408007, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 25, 2014.

38. SWEPI LP, Pad ID: Pazzaglia 506, ABR–201408008, Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 25, 2014.

39. Chesapeake Appalachia, LLC, Pad ID: Hunsinger, ABR–20090905.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: August 25, 2014.

40. SWEPI LP, Pad ID: Becker 404, ABR–20090909.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 25, 2014.

41. SWEPI LP, Pad ID: Knight 271–1H, ABR–20090912.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 25, 2014.

42. SWEPI LP, Pad ID: Empson 235–1H, ABR–20090914.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 25, 2014.

43. SWEPI LP, Pad ID: Bowers 408, ABR–20090919.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 25, 2014.

44. SWEPI LP, Pad ID: Cole 236, ABR–20090936.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: August 25, 2014.

45. Cabot Oil & Gas Corporation, Pad ID: FontanaC P1, ABR–201408009, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: August 26, 2014.

46. Cabot Oil & Gas Corporation, Pad ID: DysonW P1, ABR–201408010, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: August 26, 2014.

47. Cabot Oil & Gas Corporation, Pad ID: LernerG P1, ABR–201408011, Ararat Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: August 27, 2014.

48. SWEPI, LP, Pad ID: Smith 253 1H, ABR–20090825.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 7, 2014.

49. SWEPI, LP, Pad ID: Sampson 147 1H–3H, ABR–20090824.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 8, 2014.

50. SWEPI, LP, Pad ID: Wheeler 268–1H, ABR–20090829.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 8, 2014.

51. SWEPI, LP, Pad ID: White 262–1H, ABR–20090910.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 8, 2014.

52. SWEPI, LP, Pad ID: Stefanowich 269–1H, ABR–20090911.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 8, 2014.

53. SWEPI, LP, Pad ID: Sherman 234–1H, ABR–20090935.R1, Sullivan Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 8, 2014.

54. Chief Oil & Gas LLC, Pad ID: Phelps B Drilling Pad, ABR–201409001, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.500 mgd; Approval Date: September 9, 2014.

55. Cabot Oil & Gas Corporation, Pad ID: Diaz Family P1, ABR–201409002, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: September 11, 2014.

56. Chief Oil & Gas LLC, Pad ID: Sechrist Drilling Pad #1, ABR–20100337.R1, Canton Township, Bradford County, Pa.; Consumptive Use

of Up to 2.000 mgd; Approval Date: September 12, 2014.

57. Chesapeake Appalachia, LLC, Pad ID: Gowan, ABR–20091001.R1, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: September 22, 2014.

58. Chesapeake Appalachia, LLC, Pad ID: Doss, ABR–20091109.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: September 22, 2014.

59. Chesapeake Appalachia, LLC, Pad ID: CSI, ABR–20091112.R1, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: September 22, 2014.

60. Chesapeake Appalachia, LLC, Pad ID: Jayne, ABR–20091201.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: September 22, 2014.

61. Chesapeake Appalachia, LLC, Pad ID: Roger, ABR–20091209.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: September 22, 2014.

62. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–10H, ABR–20090901.R1, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.500 mgd; Approval Date: September 22, 2014.

63. Samson Exploration, LLC, Pad ID: Pardee & Curtin Lumber Co. C–09H, ABR–20091103.R1, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.500 mgd; Approval Date: September 22, 2014.

64. Southwestern Energy Production Company, Pad ID: RU–51–WHITEHEAD–PAD, ABR–201409003, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: September 22, 2014.

65. SWEPI, LP, Pad ID: Benson 130D, ABR–20091012.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 29, 2014.

66. Talisman Energy USA Inc., Pad ID: Morgan 01 074, ABR–20100302.R1, Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: September 29, 2014.

67. Talisman Energy USA Inc., Pad ID: DCNR 587 02 013, ABR–20100308.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: September 29, 2014.

68. Talisman Energy USA Inc., Pad ID: DCNR 587 02 014, ABR–20100309.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: September 29, 2014.

69. Talisman Energy USA Inc., Pad ID: Moretz 03 036, ABR–20100347.R1, Wells Township, Bradford County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: September 29, 2014.

70. Talisman Energy USA Inc., Pad ID: DCNR 587 02 005, ABR–20100354.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: September 29, 2014.

71. Talisman Energy USA Inc., Pad ID: DCNR 587 02 006, ABR–20100355.R1, Ward Township, Tioga County, Pa.; Consumptive Use of Up to 6.000 mgd; Approval Date: September 29, 2014.

72. Cabot Oil & Gas Corporation, Pad ID: BerryD P1, ABR–20100215.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: September 29, 2014.

73. Chief Oil & Gas LLC, Pad ID: Kingsley Drilling Pad #1, ABR–20100336.R1, Monroe Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: September 29, 2014.

74. Chief Oil & Gas LLC, Pad ID: Duane Jennings Drilling Pad #1, ABR–20100334.R1, Granville Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: September 29, 2014.

75. Chief Oil & Gas LLC, Pad ID: Kuziak B Drilling Pad, ABR–201409004, Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.500 mgd; Approval Date: September 29, 2014.

76. Cabot Oil & Gas Corporation, Pad ID: StraussE P1, ABR–201409005, Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.250 mgd; Approval Date: September 30, 2014.

77. Cabot Oil & Gas Corporation, Pad ID: RussoB P1, ABR–20100231.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.575 mgd; Approval Date: September 30, 2014.

78. Seneca Resources, Pad ID: Wolfinger Pad A, ABR–20108064.R1, Shippen Township, Cameron County; and City of St. Marys, Elk County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 30, 2014.

79. Seneca Resources, Pad ID: DNCR Tract 007 1V, ABR–20100613.R1, Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: September 30, 2014.

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: October 14, 2014.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2014–24998 Filed 10–20–14; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2014–0011–N–20]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the renewal Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on August 5, 2014 (79 FR 45585).

DATES: Comments must be submitted on or before November 20, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 5, 2014, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICR that the agency is seeking OMB approval. *See* 79 FR 45585. FRA

received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection request (ICR) and the expected burden. The revised request is being submitted for clearance by OMB as required by the PRA.

Title: Safety and Health Requirements Related to Camp Cars.

OMB Control Number: 2130–0595.

Abstract: To carry out a 2008 Congressional rulemaking mandate, FRA issued new regulations on October 31, 2011. See 76 FR 67073. New subpart E of part 228 prescribed minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees (covered-service employees) and individuals employed to maintain its right of way.

Under separate but related statutory authority, FRA also amended its regulations at 49 CFR part 228, subpart C regarding construction of employee sleeping quarters. In particular, FRA's existing guidelines with respect to the location, in relation to switching or humping of hazardous material, of a camp car that is occupied exclusively by individual's employed to maintain a railroad's right of way are being replaced with regulatory amendments prohibiting a railroad from positioning such a camp car in the immediate vicinity of the switching or humping of hazardous material.

Finally, FRA made miscellaneous changes to part 228, clarifying its provision on applicability, removing an existing provision on the pre-emptive effect of part 228 as unnecessary, and moving, without changing, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

The information collected under this rule is used by FRA to ensure that railroads operating camp cars comply with all the requirements mandated in this regulation in order to protect the health and safety of camp car occupants.

Type of Request: Revision of a currently approved information collection.

Affected Public: Businesses (Railroads).

Form(s): N/A.

Annual Estimated Burden: 1,043 hours.

Addressee: Send comments regarding this information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Rebecca Pennington,

Chief Financial Officer.

[FR Doc. 2014–24987 Filed 10–20–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Intent To Prepare an Environmental Impact Statement for the Clifton Corridor Transit Initiative in DeKalb and Fulton Counties, Georgia

AGENCY: Federal Transit Administration (FTA), (DOT).

ACTION: Notice of Intent (NOI) To prepare an environmental impact statement (EIS) and section 4(f) evaluation.

SUMMARY: The Federal Transit Administration (FTA) and the Metropolitan Atlanta Rapid Transit Authority (MARTA) issue this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and an evaluation per 49 U.S.C. 303 and 23 CFR 774 (''Section 4(f)'') for a new Light Rail Transit (LRT) line in DeKalb and Fulton Counties, Georgia. The proposed LRT line would extend from Lindbergh MARTA station in the city of Atlanta, Fulton County, Georgia, southeast through the Centers for Disease Control (CDC) headquarters and Emory University and Emory Hospital campuses, to Avondale MARTA station in the City of Decatur, DeKalb County, Georgia. The EIS and Section 4(f) Evaluation will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA), Section 4(f), as well as FTA's regulations and guidance implementing NEPA (40 CFR parts 1500 through 1508 and 23 CFR 771.105).

The purpose of this NOI is to: (1) Advise the public and agencies that FTA is preparing an EIS for the proposed project; (2) provide project information including previous planning studies and decisions, the project purpose and need, and alternatives being considered; and, (3) invite public and agency participation in the EIS process, which includes a review and written comments on the scope of the EIS.

DATES: *Scoping Meeting Dates:* Public scoping meetings will be held from 6:00 p.m. to 8:00 p.m. Eastern Time on December 4 and 9, 2014 at locations within the study area. The scoping meeting locations are accessible by transit and to persons with disabilities. Confirmed times and locations will also be published in local notices and on the project Web site at *http://www.itsmarta.com/Clifton-Corr.aspx.*

The dates, times, and locations of scoping meetings are:

- *Scoping Meeting 1:* Thursday, December 4, 2014 at the Westminster Presbyterian Church located at 1438 Sheridan Rd. NE., Atlanta, GA 30324. The meeting will be held from 6:00 p.m.–8:00 p.m. Directional signage will be posted outside of the building and on the building's interior to inform participants of the meeting room number and location.
- *Scoping Meeting 2:* Tuesday, December 9, 2014 at the Emory University Student Activity and Academic Center (SAAC), Room 316, located at 1946 Starvine Way, Decatur, GA 30033. The meeting will be held from 6:00 p.m.–8:00 p.m. Directional signage will be posted outside of the building and on the building's interior

to inform participants of the meeting room number and location.

All meeting locations are considered private property. With the exception of on-duty law enforcement and/or security officials, weapons will not be allowed on the premises of any meeting location under any circumstances. The meeting locations are accessible to persons with disabilities. If there are questions concerning weapons policies for scoping meeting locations or if translation, signing services, or other special accommodations are needed, please contact MARTA's Office of External Affairs, Toni Thornton at *tthornton@itsmarta.com* or 404–848–5423 at least one week before the scoping meetings. *Comment Due Date:* Written comments on the scope of the EIS should be sent to Tameka Wimberly, AICP, MARTA Project Manager, by January 9, 2015. The address information for written comments and times and locations for all meetings are listed under **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION:

Written Comments: Written or electronic mail (email) comments should be sent to Tameka Wimberly, Project Manager, MARTA, 2424 Piedmont Road NE., Atlanta, GA 30324–3330 or by email to *twimberly@itsmarta.com*. If submitting an email comment, please type ''*Scoping Meeting Comment for MARTA*'' in the subject line of the email. MARTA maintains a Facebook page for the Clifton Corridor project and will notify Facebook followers, in conjunction with publication of this notice, to submit comments to the aforementioned email address as well.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Mitchell, Environmental Protection Specialist, FTA Region IV, 230 Peachtree Street NW., Suite 800, Atlanta, GA 30303 or email: *stanley.a.mitchell@dot.gov,* telephone 404–865–5643.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and MARTA will undertake a scoping process that will allow the public and interested agencies to comment on the scope of the environmental review process. Scoping is the process of determining the scope, focus, and content of an EIS. NEPA scoping has specific objectives, identifying issues that will be examined in detail during the EIS, while at the same time limiting consideration and development of issues that are not truly significant to the purpose and need for the project. FTA and MARTA invite all interested individuals, members of the public, Native American tribes, and Federal, State, and local agencies to review and comment on the scope of the Draft EIS. To facilitate public and agency comment, a Scoping Information Packet will be prepared for review and will be available before each scoping meeting and for handout at each scoping meeting. This packet will include draft descriptions of the project purpose and need for the project, the alternatives considered, impacts to be assessed, early alternatives that are currently not being considered, and the public outreach and agency coordination process.

II. Study Area Description

The project study area is located in both DeKalb and Fulton Counties, Georgia, including a small portion of the city of Atlanta. The project study area extends approximately 8.8 miles from Lindbergh MARTA station southeastward through central DeKalb County to Avondale MARTA station and encompassing the CDC and Emory University and Emory Hospital campuses.

III. Purpose and Need for the Proposed Project

FTA and MARTA invite comments on the following preliminary statement of the project's purpose and need:

The purpose of the Clifton Corridor Project is to provide reliable, high-capacity transit service with competitive travel times to, from, and within the Clifton Corridor, which is home to Emory University and the Centers for Disease Control and Prevention (CDC). The CDC is the largest employment center not served by the MARTA rail system or other high-capacity mode of transportation. Currently, significant volumes of trips are made through the Clifton Corridor as well as on connecting roadways; therefore, high-capacity transit service would help accommodate the high trip volumes within an already constrained roadway network. Consequently, a high-capacity transit service would also help enhance and support land use initiatives that help foster economic development and neighborhood revitalization.

The following needs for the proposed project stem from existing conditions and deficiencies in the project study area:

(1) Need to provide a high-capacity transit service for the under-served yet growing employment center and population in the Clifton Corridor study area.

(2) Need to provide an alternative transportation mode to vehicular travel that provides reliable and competitive travel times.

(3) Need for fixed-guideway transit service that provides regional connectivity.

(4) Need to provide a transit service that improves mobility of residents and employees in the Clifton Corridor.

(5) Need to provide a transportation mode that helps reduce vehicle miles traveled (VMT) and related vehicular emissions.

(6) Need to provide a transportation alternative that helps spur economic development and maximizes land use densities.

(7) Need to provide a transportation mode that enables the evacuation of Federal employees and local area residents during an emergency at the CDC facilities.

V. Alternatives Analysis and Results

In 2009, MARTA and Clifton Corridor Transportation Management Association (CCTMA) partnered to conduct the Clifton Corridor Transit Initiative—Alternatives Analysis (AA) study. The AA study process identified ways to enhance transportation choices, improve transit services and access to job and activity centers for the commuters and residents in the Clifton Corridor. MARTA and the study partners examined a broad range of alternatives for fixed-guideway transit investments that would connect Lindbergh City Center (Lindbergh MARTA station) with employment and activity centers along Clifton Road and the city of Decatur. Over the course of the AA study, the set of potentially viable alternatives was reduced through a multilayered screening methodology that eventually established the technical basis for the selection of the locally preferred alternative (LPA) for the Clifton Corridor project. The AA process also documented public and agency support and endorsement for the LPA.

The AA study process resulted in the selection of a new LRT alignment from Lindbergh MARTA station through central DeKalb County to Avondale MARTA station. The MARTA Board of Directors adopted the LRT transit concept as the LPA for the Clifton Corridor on April 9, 2012. The LRT alternative received the strongest public support throughout the study process due to its ability to better integrate into the topography and the existing communities within the Clifton Corridor. The results of the AA study are available at *http://www.itsmarta.com/clifton-corr-documents.aspx,* under ''Locally Preferred Alternative Report.''

VI. EIS Alternatives Considered

Based on previous planning work and studies and previous feedback received from the public and stakeholders regarding the Clifton Corridor, the following proposed alternatives, along with a brief description for each, will be evaluated during the EIS:

No-Build Alternative: The No-Build Alternative includes all transportation improvement projects within the Clifton Corridor project area that are programmed in the Atlanta Regional Commission's Regional Transportation Plan (RTP) with the exception of the Clifton Corridor LRT project. The No-Build Alternative serves as a comparison baseline for the project build alternatives.

Build Alternative 1: Build Alternative 1 is a new LRT line that was previously referred to as the LPA following the 2009 AA study and includes segments that are at-grade, tunnel, and on aerial structure. From Lindbergh MARTA station, the alignment for Build Alternative 1 would parallel the existing MARTA heavy rail transit (HRT) line to the CSX railroad corridor, then continues eastward adjacent to the CSX railroad right-of-way, then along Clifton Road, adjacent to and under the CSX railroad corridor and Clairmont Road. The alignment would then proceed along Scott Boulevard, North Decatur Road, DeKalb Industrial Way, and North Arcadia Avenue to Avondale MARTA station.

Build Alternative 2: Build Alternative 2 is a new LRT line that includes at-grade and aerial segments only. From Lindbergh MARTA station, the alignment would parallel the existing MARTA HRT line to the CSX railroad corridor, then continues adjacent to the CSX railroad right-of-way and then along Clifton Road, N. Decatur Road, DeKalb Industrial Way, and North Arcadia Avenue and finally on to Avondale MARTA station.

VII. Potential Effects

FTA and MARTA will evaluate project-specific direct, indirect, and cumulative effects, including benefits, to the existing human and natural environmental setting in which the Build Alternatives could be located. The permanent or long-term effects to be investigated during this study include effects to public parks and recreation lands (Section 4(f) Evaluation), traffic and transportation, land use and socioeconomic, visual character and aesthetics, noise and vibration, historical and archaeological resources, community effects, and natural resources. Temporary effects during construction may include effects to transportation and traffic, air quality, water quality, noise and vibration, natural resources and encounters with hazardous materials and contaminated soils.

The analysis will be undertaken in conformity with Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include but are not limited to NEPA, Council on Environmental Quality (CEQ) regulations, FTA guidance and relevant environmental planning guidelines, Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the Department of Transportation Act, Executive Order 12898 regarding minority and low-income populations, Executive Order 11990 regarding the protection of wetlands, the Clean Water Act, the Endangered Species Act of 1973, and the Clean Air Act of 1970 along with other applicable Federal, state, and local laws and regulations. Opportunities for review and comment on the potential effects will be provided to the public and agencies. Comments received will be considered in the development of the final scope and content of the EIS. The final scope and content of the EIS will be documented in the Scoping Summary Report and the Annotated Outline for the EIS.

VIII. FTA's Public and Agency Involvement Procedures

The regulations implementing NEPA and FTA guidance call for public involvement in the EIS process. In accordance with these regulations and guidance, FTA and MARTA will: (1) Extend an invitation to other Federal and non-Federal (state and/or local) agencies and Native American Tribes that may have an interest in the proposed project to become participating agencies (any interested agency that does not receive an invitation can notify any of the contact persons listed earlier in this NOI); (2) provide opportunity for involvement by participating agencies and the public to help define the purpose and need for the proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process.

Input on a Public Involvement Plan will be solicited at the scoping meeting and on the project Web site. The documents will outline public and agency involvement for the project. Once completed, these documents will be available on the project Web site or through written request to the MARTA Project Manager.

IX. Paperwork Reduction Act

The Paperwork Reduction Act seeks, in part, to minimize the cost of the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with the principles of economy and efficiency in government, it is FTA's policy to limit, insofar as possible, distribution of complete printed sets of NEPA documents. Accordingly, unless a specific request for a complete printed set is received before the document is printed, FTA and its grant applicants (including MARTA) will only distribute electronic copies of the NEPA document. A complete printed set of the environmental documents produced for this project will be available for review at the grant applicant's office (MARTA Headquarters office listed in **ADDRESSES** above) and in other possible locations within the project corridor. An electronic copy of the complete environmental documents will be available on the grant applicant's project Web site at *http://www.itsmarta.com/Clifton-Corr.aspx.*

X. Summary and next steps?

With the publication of this NOI, the scoping process and the public comment period for the project begins allowing the public to offer input on the scope of the EIS until January 9, 2015. In accordance with the Federal regulations, this date is at least 45 days following the publication of this NOI. Public comments will be received through those methods explained earlier in this NOI and will be incorporated into a Scoping Summary Report. The Scoping Summary Report will detail the scope of the EIS and the potential environmental effects that will be considered during the study period. After the completion of the Draft EIS, a public and agency review period will allow for input on the Draft EIS and these comments will be incorporated into the Final EIS for this project. In accordance with Section 1319 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), *Accelerated Decision-making in Environmental Reviews,* FTA may consider the use of errata sheets attached to the DEIS in place of a traditional Final EIS and/or development a single environmental decision document that consists of a Final EIS and a Record of Decision (ROD), if certain conditions exist following the conclusion of the public

and agency review period for the project's Draft EIS.

Yvette G. Taylor,

Regional Administrator, FTA Region IV.

[FR Doc. 2014–24923 Filed 10–20–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Department of the Treasury's Federal Advisory Committee on Insurance will convene a meeting on Thursday, November 6, 2014, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 1:00 to 4:00 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Thursday, November 6, 2014, from 1:00 to 4:00 p.m. Eastern Time.

ADDRESSES: The Federal Advisory Committee on Insurance meeting will be held in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/v4qbz1?ct=6128d144-9ad5-45f5-910c-c7b44560aae0&RefID=FACI+General+Registration* and fill out a secure online registration form. A valid email address will be required to complete online registration.

(**Note:** online registration will close at 5:00 p.m. Eastern Time on Monday, November 3, 2014.)

2. Contact the Federal Insurance Office, at (202) 622–3277, by 5:00 p.m. Eastern Time on Wednesday, November 5, 2014, and provide registration information.

FOR FURTHER INFORMATION CONTACT: Michael J. Newman, Senior Policy Advisor to the Federal Insurance Office, Room 1317, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–3277 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Federal Advisory Committee on Insurance are invited to submit written statements by any of the following methods:

Electronic Statements

• Send electronic comments to *faci@treasury.gov.*

Paper Statements

• Send paper statements in triplicate to the Federal Advisory Committee on Insurance, c/o Michael J. Newman, Room 1317, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The Department of the Treasury will post all statements on its Web site *http://www.treasury.gov/initiatives/fio/Pages/faci.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is a periodic meeting of the Federal Advisory Committee on Insurance. In this meeting, the Federal Advisory Committee on Insurance will discuss developments in the market for cyber insurance and the National Institute of Standards and Technology Cybersecurity Framework, issues related to affordability of personal automobile insurance, and an update on work relating to international supervisory standards for insurers.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2014–24990 Filed 10–20–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Orders 13660, 13661 and 13662

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is providing additional notice of the following actions, which were taken between March 20, 2014 and October 6, 2014 to address the national emergency declared by the President with respect to situation in Ukraine: (1) Blocking of property and interests in property of certain persons pursuant to Executive Orders (E.O.s) 13660 or 13661 (the names of these persons have been added to OFAC's Specially Designated Nationals and Blocked Persons List (SDN List)); (2) sectoral determinations by the Secretary of the Treasury pursuant to E.O. 13662; (3) Original Directive 1 (July 16, 2014) under E.O. 13662 and determinations that certain persons are subject to Original Directive 1 (the names of these persons have been added to the Sectoral Sanctions Identifications List (SSI List)) (this directive has been superseded as noted below and is being provided for historical reference purposes only); (4) Original Directive 2 (July 16, 2014) under E.O. 13662 and a determination that certain persons are subject to Original Directive 2 (the names of these persons have been added to the SSI List) (this directive has been superseded as noted below and is being provided for historical reference purposes only); (5) Directive 1 (as amended) (September 12, 2014) under E.O. 13662 and a determination that certain persons are subject to Directive 1 (as amended) (the names of these persons have been added to the SSI List); (6) Directive 2 (as amended) (September 12, 2014) under E.O. 13662 and a determination that certain persons are subject to Directive 2 (as amended) (the names of these persons have been added to the SSI List); (7) Directive 3 (September 12, 2014) under E.O. 13662 and a determination that certain persons are subject to Directive 3 (the names of these persons have been added to the SSI List); (8) Directive 4 (September 12, 2014) under E.O. 13662 and a determination that certain persons are subject to Directive 4 (the names of these persons have been added to the SSI List); (9) General License 1 (July 16, 2014) (this general license has been

superseded as noted below and is being provided for historical reference purposes only); (10) General License 1A (September 12, 2014); (11) General License 2 (September 12, 2014) (this general license was time limited, has expired as noted below, and is being provided for historical reference purposes only); and (12) General License 3 (October 6, 2014).

DATES: The blockings of the property and interests in property of the individuals and entities identified in this notice were effective on July 16, 2014, July 29, 2014, and September 12, 2014 as specified below. Original Directives 1 and 2 were effective on July 16, 2014 until they were superseded by amended Directives 1 and 2 on September 12, 2014. The determinations that the persons identified in this notice were subject to Original Directive 1 or 2 were effective on July 16, 2014 and July 29, 2014, as specified below. Amended Directives 1 and 2, Directives 3 and 4, and the determinations that the persons identified in this notice are subject to such directives were effective on September 12, 2014. General License 1 was effective on July 16, 2014 until it was superseded by General License 1A on September 12, 2014. General Licenses 1A was effective on September 12, 2014. General License 2 was effective on September 12, 2014, but was time limited and expired on September 26, 2014. General License 3 was effective on October 6, 2014.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–6746, Assistant Director for Regulatory Affairs, tel.: 202/622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*). A complete listing of persons determined to be subject to one or more directives under E.O. 13662, as discussed in detail in this Notice, can be found in the SSI List at *http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx.* Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On March 6, 2014, the President issued E.O. 13660 pursuant to, *inter alia,* the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706 (IEEPA). In E.O. 13660, the President declared a national emergency to address the threat to the national security and foreign policy of the United States constituted by the actions and policies of persons, including persons who have asserted governmental authority in the Crimean region without authorization of the Government of Ukraine, that undermine democratic processes and institution in Ukraine, that threaten Ukraine's peace, security, stability, sovereignty, and territorial integrity, and that contribute to the misappropriation of Ukraine's assets. E.O. 13660 blocks, with certain exceptions, all property and interests in property that are in or that come within the United States or the possession or control of United States persons of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet certain criteria set forth in E.O. 13660.

On March 16, 2014, the President issued E.O. 13661 pursuant to, *inter alia,* IEEPA, to expand the national emergency declared in E.O. 13660 in order to address the actions and polices of the Government of the Russian Federation with respect to Ukraine, including the deployment of Russian Federation military forces in the Crimea region of Ukraine. E.O. 13661 blocks, with certain exceptions, all property and interests in property that are in or that come within the United States or the possession or control of United States persons of persons listed on the Annex to E.O.13661 or that are determined by the Secretary of the Treasury, in consultation with the Secretary of State, to meet certain criteria set forth in E.O. 13661.

On March 20, 2014, the President issued E.O. 13662, pursuant to, *inter alia,* IEEPA, to further expand the national emergency declared in E.O. 13660 in order to address the continued actions and policies of the Government of the Russian Federation, including its purported annexation of Crimea and its use of force in Ukraine. E.O. 13662 blocks, with certain exceptions, all property and interests in property that are in or that come within the United States or the possession or control of United States persons of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, or to meet certain other criteria set forth in E.O. 13662.

Pursuant to E.O. 13660, E.O. 13661, and E.O. 13662, the following actions were taken between March 20, 2014, and October 6, 2014, by the Secretary of the Treasury or the Director of the Office of Foreign Assets Control, in consultation with the Department of State:

Blocking of Property and Interests in Property Pursuant to E.O. 13660 or E.O. 13661

On July 16, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following individual and three entities meet one or more of the criteria set forth in E.O. 13660 and the property and interests in property of these persons therefore are blocked pursuant to E.O. 13660:

Individual

BORODAI, Aleksandr (a.k.a. BORODAI, Alexander); DOB 25 Jul 1972; nationality Russia [UKRAINE]

Entities

1. LUHANSK PEOPLE'S REPUBLIC (a.k.a. LUGANSK PEOPLE'S REPUBLIC; a.k.a. PEOPLE'S REPUBLIC OF LUHANSK), Luhansk Region, Ukraine [UKRAINE]
2. DONETSK PEOPLE'S REPUBLIC, Donetsk Region, Ukraine [UKRAINE]
3. FEODOSIYA ENTERPRISE (a.k.a. FEODOSIA OIL PRODUCTS SUPPLY CO.; a.k.a. FEODOSIYA ENTERPRISE ON PROVIDING OIL PRODUCTS; a.k.a. FEODOSIYSKE COMPANY FOR THE OIL; a.k.a. THEODOSIYA OIL TERMINAL), Feodosiya, Geologicheskaya str. 2, Crimea 98107, Ukraine; Feodosia, Str. Geological 2, Crimea 98107, Ukraine [UKRAINE]

On July 16, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following four individuals and eight entities meet one or more of the criteria set forth in E.O. 13661 and the property and interests in property of these persons therefore are blocked pursuant to E.O. 13661:

Individuals

1. BESEDA, Sergey (a.k.a. BESEDA, Sergei; a.k.a. BESEDA, Sergei Orestovoch); DOB 1954; Commander of the Fifth Service of

the FSB; Commander of the Service for Operational Information and International Communications of the FSB; FSB Colonel General; Colonel-General [UKRAINE–EO13661]

2. NEVEROV, Sergei Ivanovich (a.k.a. NEVEROV, Sergei; a.k.a. NEVEROV, Sergey); DOB 21 Dec 1961; POB Tashtagol, Russia; Deputy Chairman of the State Duma of the Russian Federation; Member of the State Duma Committee on Housing Policy and Housing and Communal Services [UKRAINE–EO13661]
3. SAVELYEV, Oleg Genrikhovich; DOB 27 Oct 1965; POB St. Petersburg, Russia; Minister for Crimean Affairs [UKRAINE–EO13661]
4. SHCHEGOLEV, Igor (a.k.a. SHCHYOGOLEV, Igor Olegovich); DOB 10 Nov 1965; POB Vinnitsa, Ukraine; alt. POB Vinnytsia, Ukraine; Aide to the President of the Russian Federation [UKRAINE–EO13661]

Entities

1. FEDERAL STATE UNITARY ENTERPRISE STATE RESEARCH AND PRODUCTION ENTERPRISE BAZALT (a.k.a. FEDERAL STATE UNITARY ENTERPRISE, STATE RESEARCH AND PRODUCTION ENTERPRISE BAZALT; a.k.a. FSUE SRPE BAZALT; a.k.a. STATE RESEARCH AND PRODUCTION ENTERPRISE BAZALT), 32 Velyaminovskaya, Moscow 105318, Russia; Web site *www.bazalt.ru;* Email Address *moscow@bazalt.ru* [UKRAINE–EO13661]
2. JOINT STOCK COMPANY CONCERN RADIO–ELECTRONIC TECHNOLOGIES (a.k.a. CONCERN RADIO–ELECTRONIC TECHNOLOGIES; a.k.a. ''KRET''), 20/1 Korp. 1 ul. Goncharnaya, Moscow 109240, Russia; Web site *http://www.kret.com;* Registration ID 1097746084666 [UKRAINE–EO13661]
3. JOINT STOCK COMPANY CONCERN SOZVEZDIE (a.k.a. JSC CONCERN SOZVEZDIE), 14 Plekhanovskaya Street, Voronezh, Russia; 14 ul. Plekhanovskaya, Voronezh, Voronezhskaya obl. 394018, Russia; Registration ID 1053600445337 [UKRAINE–EO13661]
4. JOINT STOCK COMPANY MILITARY–INDUSTRIAL CORPORATION NPO MASHINOSTROYENIA (a.k.a. JOINT STOCK COMPANY MILITARY INDUSTRIAL CONSORTIUM NPO MASHINOSTROYENIA; a.k.a. JSC MIC NPO MASHINOSTROYENIA; a.k.a. MIC NPO MASHINOSTROYENIA JSC; a.k.a. MIC NPO MASHINOSTROYENIYA JSC; a.k.a. MILITARY INDUSTRIAL CORPORATION NPO MASHINOSTROENIA OAO; a.k.a. OPEN JOINT STOCK COMPANY MILITARY INDUSTRIAL CORPORATION SCIENTIFIC AND PRODUCTION MACHINE BUILDING ASSOCIATION; a.k.a. VOENNO–PROMYSHLENNAYA KORPORATSIYA NAUCHNO–PROIZVODSTVENNOE OBEDINENIE MASHINOSTROENIYA OAO; a.k.a. VPK NPO MASHINOSTROENIYA), 33, Gagarina St., Reutov-town, Moscow Region 143966, Russia; 33 Gagarin Street, Reutov, Moscow Region 143966, Russia; 33 Gagarina ul., Reutov, Moskovskaya obl 143966, Russia; Web site *www.npomash.ru;* Email Address *export@npomash.ru;* alt. Email Address *vpk@npomash.ru;* Registration ID 1075012001492 (Russia); Tax ID No. 5012039795 (Russia); Government Gazette Number 07501739 (Russia) [UKRAINE–EO13661]
5. JOINT–STOCK COMPANY CONCERN ALMAZ–ANTEY (a.k.a. ALMAZ–ANTEY CORP; a.k.a. ALMAZ–ANTEY DEFENSE CORPORATION; a.k.a. ALMAZ–ANTEY JSC; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO KONTSERN PVO ALMAZ ANTEI), 41 ul.Vereiskaya, Moscow 121471, Russia; Web site almaz-antey.ru; Email Address *antey@almaz-antey.ru* [UKRAINE–EO13661]
6. KALASHNIKOV CONCERN (a.k.a. CONCERN KALASHNIKOV; a.k.a. IZHEVSKIY MASHINOSTROITEL'NYI ZAVOD OAO; f.k.a. IZHMASH R&D CENTER; f.k.a. JSC NPO IZHMASH; f.k.a. NPO IZHMASH OAO; a.k.a. OJSC CONCERN KALASHNIKOV; f.k.a. OJSC IZHMASH; f.k.a. SCIENTIFIC PRODUCTION ASSOCIATION IZHMASH JOINT STOCK COMPANY), 3, Derjabin Pr., Izhevsk, Udmurt Republic 426006, Russia; Registration ID 1111832003018 [UKRAINE–EO13661]
7. KONSTRUKTORSKOE BYURO PRIBOROSTROENIYA OTKRYTOE AKTSIONERNOE OBSHCHESTVO (a.k.a. INSTRUMENT DESIGN BUREAU; a.k.a. JSC KBP INSTRUMENT DESIGN BUREAU; a.k.a. KBP INSTRUMENT DESIGN BUREAU; a.k.a. KBP INSTRUMENT DESIGN BUREAU JOINT STOCK COMPANY; a.k.a. ''KBP OAO''), 59 Shcheglovskaya Zaseka ul., Tula 300001, Russia; Web site *www.kbptula.ru;* Email Address *kbkedr@tula.net;* Registration ID 1117154036911 (Russia); Government Gazette Number 07515747 (Russia) [UKRAINE–EO13661]
8. URALVAGONZAVOD (a.k.a. NAUCHNO–PROIZVODSTVENNAYA KORPORATSIYA URALVAGONZAVOD OAO; a.k.a. NPK URALVAGONZAVOD; a.k.a. NPK URALVAGONZAVOD OAO; a.k.a. OJSC RESEARCH AND PRODUCTION CORPORATION URALVAGONZAVOD; a.k.a. RESEARCH AND PRODUCTION CORPORATION URALVAGONZAVOD; a.k.a. RESEARCH AND PRODUCTION CORPORATION URALVAGONZAVOD OAO; a.k.a. URALVAGONZAVOD CORPORATION; a.k.a. ''UVZ''), 28, Vostochnoye shosse, Nizhni Tagil, Sverdlovsk region 622007, Russia; 28 Vostochnoe shosse, Nizhni Tagil, Sverdlovskaya oblast 622007, Russia; 40, Bolshaya Yakimanka Street, Moscow 119049, Russia; Vistochnoye Shosse, 28, Nizhny Tagil 622007, Russia; Web site *http://www.uvz.ru/;* alt. Web site *http://uralvagonzavod.com/;* Email Address *web@uvz.ru* [UKRAINE–EO13661]

On July 29, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following entity meets one or more of the criteria set forth in E.O. 13661 and the property and interests in property of this entity therefore are blocked pursuant to E.O. 13661:

Entity

UNITED SHIPBUILDING CORPORATION (a.k.a. OBEDINENNAYA SUDOSTROITELNAYA KORPORATSIYA OAO; a.k.a. OJSC UNITED SHIPBUILDING CORPORATION; a.k.a. UNITED SHIPBUILDING CORPORATION JOINT STOCK COMPANY; a.k.a. ''OSK OAO''), 90, Marata ul., St. Petersburg 191119, Russia; 11, Sadovaya-Kudrinskaya str., Moscow 123242, Russia; Web site *http://www.oaoosk.ru/;* Email Address *info@oaoosk.ru* [UKRAINE–EO13661]

On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following five entities meet one or more of the criteria set forth in E.O. 13661 and the property and interests in

property of these entities therefore are blocked pursuant to E.O. 13661:

Entities

1. OAO 'DOLGOPRUDNY RESEARCH PRODUCTION ENTERPRISE' (a.k.a. DOLGOPRUDNENSKOYE NPP OAO; a.k.a. DOLGOPRUDNY; a.k.a. DOLGOPRUDNY RESEARCH PRODUCTION ENTERPRISE; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO DOIGOPRUDNENSKOE NAUCHNO PROIZVODSTVENNOE PREDPRIYATIE), 1 Pl. Sobina, Dolgoprudny, Moskovskaya obl. 141700, Russia; Proshchad Sobina 1, Dolgoprudny 141700, Russia; Email Address *dnpp@orc.ru;* Registration ID 1025001202544; Tax ID No. 5008000322; Government Gazette Number 07504318 [UKRAINE–EO13661]
2. KALININ MACHINE PLANT JSC (a.k.a. KALININ MACHINE-BUILDING PLANT OPEN JOINT-STOCK COMPANY; a.k.a. KALININ MACHINERY PLANT–BRD; a.k.a. MASHINOSTROITEL'NYI ZAVOD IM. M.I. KALININA, G. YEKATERINBURG OAO; a.k.a. MZIK OAO; a.k.a. OPEN-END JOINT-STOCK COMPANY 'KALININ MACHINERY PLANT. YEKATERINBURG'; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO MASHINOSTROITELNY ZAVOD IM.M.I.KALININA, G.EKATERINBURG), 18 prospekt Kosmonavtov, Ekaterinburg, Sverdlovskaya obl. 620017, Russia; Email Address *info@zik.ru* [UKRAINE–EO13661]
3. MYTISHCHINSKI MASHINOSTROITELNY ZAVOD, OAO (a.k.a. JSC MYTISHCHINSKI MACHINE-BUILDING PLANT; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO 'MYTISHCHINSKI MASHINOSTROITELNY ZAVOD'), 4 ul. Kolontsova Mytishchi, Mytishchinski Raion, Moskovskayaobl 141009, Russia; UL. Koloncova, d.4, Mytishi, Moscow region 141009, Russia; Web site *www.mmzavod.ru;* Email Address *mmzavod@mail.ru;* Registration ID 1095029003860 (Russia); Government Gazette Number 61540868 (Russia) [UKRAINE-EO13661]
4. JSC V. TIKHOMIROV SCIENTIFIC RESEARCH INSTITUTE OF INSTRUMENT DESIGN (a.k.a. JSC NIIP; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO NAUCHNO ISSLEDOVATELSKI INSTITUT PRIBOROSTROENIYA IMENI V.V. TIKHOMIROVA), 3 Ul. Gagarina, Zhukovski, Moskovskaya Obl 140180, Russia; Gagarin Str, 3, Zhukovsky 140180, Russia; Web site *http://www.niip.ru;* Email Address *niip@niip.ru;* Registration ID 1025001627859; Government Gazette Number 13185231 (Russia) [UKRAINE-EO13661]
5. JOINT STOCK COMPANY ALMAZ-ANTEY AIR DEFENSE CONCERN MAIN SYSTEM DESIGN BUREAU NAMED BY ACADEMICIAN A.A. RASPLETIN (a.k.a. A.A. RASPLETIN MAIN SYSTEM DESIGN BUREAU; a.k.a. ALMAZ-ANTEY GSKB; a.k.a. ALMAZ-ANTEY GSKB IMENI ACADEMICIAN A.A. RASPLETIN; a.k.a. ALMAZ-ANTEY MSDB; a.k.a. ALMAZ-ANTEY PVO 'AIR DEFENSE' CONCERN LEAD SYSTEMS DESIGN BUREAU OAO 'OPEN JOINT-STOCK COMPANY' IMENI ACADEMICIAN A.A. RASPLETIN; a.k.a. GOLOVNOYE SISTEMNOYE KONSTRUKTORSKOYE BYURO OPEN JOINT-STOCK COMPANY OF ALMAZ-ANTEY PVO CONCERN IMENI ACADEMICIAN A.A. RASPLETIN; a.k.a. JSC 'ALMAZ-ANTEY' MSDB; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO NAUCHNO PROIZVODSTVENNOE OBEDINENIE ALMAZ IMENI AKADEMIKA A.A. RASPLETINA; a.k.a. ''GSKB''), 16–80, Leningradsky Prospect, Moscow 125190, Russia; Web site *http://www.raspletin.ru/;* Email Address *info@raspletin.ru;* alt. Email Address *almaz_zakupki@mail.ru* [UKRAINE–EO13661]

Sectoral Determinations by the Secretary of the Treasury Pursuant to E.O. 13662

July 16, 2014 Determination pursuant to Section 1(a)(i) of E.O. 13662: On July 16, 2014, the Secretary of the Treasury made the following determination:

Section 1(a) of Executive Order 13662 of March 20, 2014 (''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'') (E.O. 13662) imposes economic sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to operate in such sectors of the Russian Federation economy as may be determined, pursuant to section 1(a)(i) of the order, by the Secretary of the Treasury, in consultation with the Secretary of State.

To further address the extraordinary threat to the national security and foreign policy of the United States described in E.O. 13662, and in consultation with the Secretary of State, I hereby determine that section 1(a)(i) shall apply to the financial services and energy sectors of the Russian Federation economy. Any person I or my designee subsequently determine, in consultation with the Secretary of State, operates in such sectors shall be subject to sanctions pursuant to section 1(a)(i).

September 12, 2014 Determination pursuant to Section 1(a)(i) of E.O. 13662: On September 12, 2014, the Secretary of the Treasury made the following determination:

Section 1(a) of Executive Order 13662 of March 20, 2014 (''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'') (E.O. 13662) imposes economic sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to operate in such sectors of the Russian Federation economy as may be determined, pursuant to section 1(a)(i) of the order, by the Secretary of the Treasury, in consultation with the Secretary of State.

To further address the extraordinary threat to the national security and foreign policy of the United States described in E.O. 13662, and in consultation with the Secretary of State, I hereby determine that section 1(a)(i) shall apply to the defense and related materiel sector of the Russian Federation economy. Any person I or my designee subsequently determine, in consultation with the Secretary of State, operates in this sector shall be subject to sanctions pursuant to section 1(a)(i).

Original Directive 1 (July 16, 2014) Under E.O. 13662 and the Names of Persons Determined To Be Subject to Original Directive 1

Note to Original Directive 1: On September 12, 2014, Original Directive 1 under E.O. 13662 was superseded by an amended version of Directive 1, which is included later in this **Federal Register** Notice. The text of, and actions taken pursuant to, Original Directive 1 are included here for historical reference purposes only.

Original Directive 1 (July 16, 2014): On July 16, 2014, the Director of OFAC, in consultation with the Department of State, made the following determination:

Pursuant to sections 1(a)(i), 1(b), and 8 of Executive Order 13662 of March 20, 2014, and 31 CFR part 589 and following the Secretary of the Treasury's determination under Section 1(a)(i) of Executive Order 13662 with respect to the financial services sector of the Russian Federation economy, I hereby determine that the persons on the

attached list operate in the Russian financial services sector. The following transactions by U.S. persons or within the United States are hereby prohibited: transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity for these persons, their property, or their interests in property. All other transactions with these persons or involving any property in which one or more of these persons has an interest are permitted, provided such transactions do not otherwise involve property or interests in property of a person blocked pursuant to Executive Orders 13660, 13661, or 13662, or any other sanctions programs implemented by the Office of Foreign Assets Control.

Entities determined on July 16, 2014 to be subject to Original Directive 1: On July 16, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following persons operate in the financial services sector of the Russian Federation economy and that they shall be subject to the prohibitions of Original Directive 1:

1. GAZPROMBANK OAO (a.k.a. GAZPROMBANK GAS INDUSTRY OJSC; a.k.a. GAZPROMBANK OJSC; a.k.a. GAZPROMBANK OPEN JOINT STOCK COMPANY; a.k.a. GAZPROMBANK OTKRYTOE AKTSIONERNOE OBSHCHESTVO; a.k.a. GPB, OAO; a.k.a. GPB, OJSC), 16, Building 1, Nametkina St., Moscow 117420, Russia; 63, Novocheremushkinskaya St., Moscow 117418, Russia; SWIFT/BIC GAZPRUMM; Web site *www.gazprombank.ru;* Email Address *mailbox@gazprombank.ru;* Registration ID 1027700167110; Tax ID No. 7744001497; Government Gazette Number 09807684 [UKRAINE–EO13662]
2. VNESHECONOMBANK (a.k.a. BANK FOR DEVELOPMENT AND FOREIGN ECONOMIC AFFAIRS (VNESHECONOMBANK) STATE CORPORATION; a.k.a. BANK RAZVITIYA I VNESHNEEKONOMICHESKOI DEYATELNOSTI (VNESHEKONOMBANK) GOSUDARSTVENNAYA KORPORATSIYA; a.k.a. ''VEB''), 9 Akademika Sakharova prospekt, Moscow 107996, Russia; SWIFT/BIC BFEA RU MM; Web site *http://www.veb.ru;* Email Address *info@veb.ru;* BIK (RU) 044525060; [UKRAINE–EO13662]

Entities determined on July 29, 2014 to be subject to Original Directive 1: On July 29, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following persons operate in the financial services sector of the Russian Federation economy and that they shall be subject to the prohibitions of Original Directive 1:

1. BANK OF MOSCOW (f.k.a. AKTSIONERNY KOMMERCHESKI BANK BANK MOSKVY, OTKRYTOE AKTSIONERNOE OBSCHCHESTVO; a.k.a. JOINT STOCK COMMERCIAL BANK—BANK OF MOSCOW, OPEN JOINT STOCK COMPANY), 8/15 Korp. 3 ul. Rozhdestvenka, Moscow 107996, Russia; Bld 3 8/15, Rozhdestvenka St., Moscow 107996, Russia; SWIFT/BIC MOSW RU MM; Web site *www.bm.ru;* Email Address *holmogorov_ss@mmbank.ru;* alt. Email Address *info@mmbank.ru;* BIK (RU) 044525219; Registration ID 1027700159497; Government Gazette Number 29292940 [UKRAINE–EO13662]
2. RUSSIAN AGRICULTURAL BANK (f.k.a. OTKRYTOE AKTSIONERNOE ROSSISKI SELSKOKHOZYAISTVENNY BANK; a.k.a. ROSSELKHOZBANK; a.k.a. ROSSIYSKI SELSKOKHOZYAISTVENNY BANK OAO; a.k.a. RUSSIAN AGRICULTURAL BANK OAO), 3, Gagarinsky Pereulok, Moscow 119034, Russia; 3 Gagarinsky per., Moscow 119034, Russia; SWIFT/BIC RUAG RU MM; Web site *http://www.rshb.ru;* Email Address *office@rshb.ru;* Registration ID 1027700342890; Government Gazette Number 52750822 [UKRAINE–EO13662]
3. VTB BANK OAO (f.k.a. BANK VNESHNEY TORGOVLI ROSSIYSKOY FEDERATSII, CLOSED JOINT-STOCK COMPANY; f.k.a. BANK VNESHNEY TORGOVLI RSFSR; f.k.a. BANK VNESHNEY TORGOVLI, JOINT-STOCK COMPANY; f.k.a. BANK VNESHNEY TORGOVLI, OPEN JOINT-STOCK COMPANY; a.k.a. BANK VTB OAO; a.k.a. BANK VTB, OPEN JOINT-STOCK COMPANY; a.k.a. JSC VTB BANK; f.k.a. VNESHTORGBANK; f.k.a. VNESHTORGBANK ROSSII, CLOSED JOINT-STOCK COMPANY; a.k.a. VTB BANK, OPEN JOINT-STOCK COMPANY), 29, Bolshaya Morskaya str., St. Petersburg 190000, Russia; 37 Plyushchikha ul., Moscow 119121, Russia; 43, Vorontsovskaya str., Moscow 109044, Russia; SWIFT/BIC VTBRRUMM; Web site *www.vtb.com;* Registration ID 1027739609391 (Russia); Tax ID No. 7702070139 (Russia); Government Gazette Number 00032520 (Russia); License 1000 (Russia) [UKRAINE–EO13662]

Original Directive 2 (July 16, 2014) Under E.O. 13662 and the Names of Persons Determined To Be Subject to Original Directive 2

Note to Original Directive 2: On September 12, 2014, Original Directive 2 under E.O. 13662 was superseded by an amended version of Directive 2, which is included later in this **Federal Register** Notice. The text of, and actions taken pursuant to, Original Directive 2 are included here for historical reference purposes only.

Original Directive 2 (July 16, 2014): On July 16, 2014, the Director of OFAC, in consultation with the Department of State, made the following determination:

Pursuant to sections 1(a)(i), 1(b), and 8 of Executive Order 13662 of March 20, 2014, and 31 CFR part 589 and following the Secretary of the Treasury's determination under Section 1(a)(i) of Executive Order 13662 with respect to the energy sector of the Russian Federation economy, I hereby determine that the persons on the attached list operate in the Russian energy sector. The following transactions by U.S. persons or within the United States are hereby prohibited: transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity for these persons, their property, or their interests in property. All other transactions with these persons or involving any property in which one or more of these persons has an interest are permitted, provided such transactions do not otherwise involve property or interests in property of a person blocked pursuant to Executive Orders 13660, 13661, or 13662, or any other sanctions programs implemented by the Office of Foreign Assets Control.

Entities determined on July 16, 2014 to be subject to Original Directive 2: On July 16, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following persons operate in the energy sector of the Russian Federation economy and that they shall be subject to the prohibitions of Original Directive 2:

1. OAO NOVATEK (a.k.a. FINANSOVO-INVESTITSIONNAYA KOMPANIYA NOVAFININVEST OAO; a.k.a. NOVATEK), 2, Udaltsova Street, Moscow 119415, Russia; 22 A, Pobedy Street, Tarko-

Sale, Yamalo-Nenets Autonomous District 629580, Russia; 22a Pobedy ul., Tarko-Sale, Purovski raion, Tyumenskaya Oblast 629850, Russia; Email Address *novatek@novatek.ru;* Registration ID 1026303117642 (Russia); Government Gazette Number 33556474 (Russia) [UKRAINE–EO13662]

2. OPEN JOINT-STOCK COMPANY ROSNEFT OIL COMPANY (a.k.a. OAO ROSNEFT OIL COMPANY; a.k.a. OIL COMPANY ROSNEFT; a.k.a. OJSC ROSNEFT OIL COMPANY; a.k.a. ROSNEFT; a.k.a. ROSNEFT OIL COMPANY), 26/1 Sofiyskaya Embankment, Moscow 115035, Russia; Web site *www.rosneft.com;* alt. Web site *www.rosneft.ru;* Email Address *postman@rosneft.ru;* Registration ID 1027700043502 (Russia); Tax ID No. 7706107510 (Russia); Government Gazette Number 00044428 (Russia) [UKRAINE–EO13662]

Directive 1 (as Amended) (September 12, 2014) Under E.O. 13662 and the Names of Persons Determined To Be Subject to Directive 1 (as Amended)

Note to Directive 1 (as amended): Original Directive 1, which was issued on July 16, 2014, and which is superseded by this version, prohibited these same activities but involving debt of longer than 90 days maturity or equity if that debt or equity was issued on or after the date a person was determined to be subject to Original Directive 1. This amended version of Directive 1 also reflects technical and other non-substantive changes.

Directive 1 (as amended) (September 12, 2014): Pursuant to sections 1(a)(i), 1(b), and 8 of Executive Order 13662 of March 20, 2014 ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (the Order) and 31 CFR 589.802, and following the Secretary of the Treasury's determination under section 1(a)(i) of the Order with respect to the financial services sector of the Russian Federation economy, the Director of the Office of Foreign Assets Control has determined, in consultation with the Department of State, that the following activities by a U.S. person or within the United States are prohibited, except to the extent provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control: (1) All transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity or new equity of persons determined to be subject to this Directive, their property, or their interests in property; and (2) all activities related to debt or equity issued before the date of this Directive 1 (as amended) that would have been prohibited by the prior version of this Directive 1. All other activities with these persons or involving their property or interests in property are permitted, provided such activities are not otherwise prohibited pursuant to Executive Orders 13660, 13661, or 13662 or any other sanctions program implemented by the Office of Foreign Assets Control.

Except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, the following are also prohibited: (1) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in this Directive; and (2) any conspiracy formed to violate any of the prohibitions in this Directive.

Entities determined on September 12, 2014 to be subject to Directive 1 (as amended): On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following persons, who had previously been determined to operate in the financial services sector of the Russian Federation economy, shall be subject to the prohibitions of Directive 1 (as amended):

1. RUSSIAN AGRICULTURAL BANK (f.k.a. OTKRYTOE AKTSIONERNOE ROSSISKI SELSKOKHOZYAISTVENNY BANK; a.k.a. ROSSELKHOZBANK; a.k.a. ROSSIYSKI SELSKOKHOZYAISTVENNY BANK OAO; a.k.a. RUSSIAN AGRICULTURAL BANK OAO), 3, Gagarinsky Pereulok, Moscow 119034, Russia; 3 Gagarinsky per., Moscow 119034, Russia; SWIFT/BIC RUAG RU MM; Web site *http://www.rshb.ru;* Email Address *office@rshb.ru;* Registration ID 1027700342890; Government Gazette Number 52750822 [UKRAINE–EO13662]

2. VTB BANK OAO (f.k.a. BANK VNESHNEY TORGOVLI ROSSIYSKOY FEDERATSII, CLOSED JOINT-STOCK COMPANY; f.k.a. BANK VNESHNEY TORGOVLI RSFSR; f.k.a. BANK VNESHNEY TORGOVLI, JOINT-STOCK COMPANY; f.k.a. BANK VNESHNEY TORGOVLI, OPEN JOINT-STOCK COMPANY; a.k.a. BANK VTB OAO; a.k.a. BANK VTB, OPEN JOINT-STOCK COMPANY; a.k.a. JSC VTB BANK; f.k.a. VNESHTORGBANK; f.k.a. VNESHTORGBANK ROSSII, CLOSED JOINT-STOCK COMPANY; a.k.a. VTB BANK, OPEN JOINT-STOCK COMPANY), 29, Bolshaya Morskaya str., St. Petersburg 190000, Russia; 37 Plyushchikha ul., Moscow 119121, Russia; 43, Vorontsovskaya str., Moscow 109044, Russia; SWIFT/BIC VTBRRUMM; Web site *www.vtb.com;* Registration ID 1027739609391 (Russia); Tax ID No. 7702070139 (Russia); Government Gazette Number 00032520 (Russia); License 1000 (Russia) [UKRAINE–EO13662]

3. GAZPROMBANK OAO (a.k.a. GAZPROMBANK GAS INDUSTRY OJSC; a.k.a. GAZPROMBANK OJSC; a.k.a. GAZPROMBANK OPEN JOINT STOCK COMPANY; a.k.a. GAZPROMBANK OTKRYTOE AKTSIONERNOE OBSHCHESTVO; a.k.a. GPB, OAO; a.k.a. GPB, OJSC), 16, Building 1, Nametkina St., Moscow 117420, Russia; 63, Novocheremushkinskaya St., Moscow 117418, Russia; SWIFT/BIC GAZPRUMM; Web site *www.gazprombank.ru;* Email Address *mailbox@gazprombank.ru;* Registration ID 1027700167110; Tax ID No. 7744001497; Government Gazette Number 09807684 [UKRAINE–EO13662]

4. VNESHECONOMBANK (a.k.a. BANK FOR DEVELOPMENT AND FOREIGN ECONOMIC AFFAIRS (VNESHECONOMBANK) STATE CORPORATION; a.k.a. BANK RAZVITIYA I VNESHNEEKONOMICHESKOI DEYATELNOSTI (VNESHEKONOMBANK) GOSUDARSTVENNAYA KORPORATSIYA; a.k.a. ''VEB''), 9 Akademika Sakharova prospekt, Moscow 107996, Russia; SWIFT/BIC BFEA RU MM; Web site *http://www.veb.ru;* Email Address *info@veb.ru;* BIK (RU) 044525060 [UKRAINE–EO13662]

5. BANK OF MOSCOW (f.k.a. AKTSIONERNY KOMMERCHESKI BANK BANK MOSKVY, OTKRYTOE AKTSIONERNOE OBSCHCHESTVO; a.k.a. JOINT STOCK COMMERCIAL BANK—BANK OF MOSCOW, OPEN JOINT STOCK COMPANY), 8/15 Korp. 3 ul. Rozhdestvenka, Moscow 107996, Russia; Bld 3 8/15, Rozhdestvenka St., Moscow 107996, Russia; SWIFT/BIC MOSW RU MM; Web site *www.bm.ru;* Email Address *holmogorov_ss@mmbank.ru;* alt. Email Address *info@mmbank.ru;* BIK (RU)

044525219; Registration ID 1027700159497; Government Gazette Number 29292940 [UKRAINE–EO13662]

On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following person (a) operates in the financial services sector of the Russian Federation economy and (b) shall be subject to the prohibitions of Directive 1 (as amended):

SBERBANK OF RUSSIA (f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO SBERBANK ROSSII; a.k.a. SBERBANK ROSSII; f.k.a. SBERBANK ROSSII OAO), 19 ul. Vavilova, Moscow 117997, Russia; SWIFT/BIC SABRRUMM; Web site *www.sberbank.ru;* Email Address *sbrf@sbrf.ru* [UKRAINE–EO13662]

Directive 2 (as Amended) (September 12, 2014) Under E.O. 13662 and the Names of Persons Determined To Be Subject to Directive 2 (as Amended)

Note to Directive 2 (as amended): Original Directive 2, which was issued on July 16, 2014, and which is superseded by this version, prohibited these same activities for debt issued on or after July 16, 2014. This amended version of Directive 2 also reflects technical and other non-substantive edits.

Directive 2 (as amended) (September 12, 2014): Pursuant to sections 1(a)(i), 1(b), and 8 of Executive Order 13662 of March 20, 2014 ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (the Order) and 31 CFR 589.802, and following the Secretary of the Treasury's determination under section 1(a)(i) of the Order with respect to the energy sector of the Russian Federation economy, the Director of the Office of Foreign Assets Control has determined, in consultation with the Department of State, that the following activities by a U.S. person or within the United States are prohibited, except to the extent provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control: (1) All transactions in, provision of financing for, and other dealings in new debt of longer than 90 days maturity of persons determined to be subject to this Directive, their property, or their interests in property; and (2) all activities related to debt issued before the date of this Directive 2 (as amended) that would have been prohibited by the prior version of this Directive 2. All other activities with these persons or involving their property or interests in property are permitted, provided such activities are not otherwise prohibited pursuant to Executive Orders 13660, 13661, or 13662 or any other sanctions program implemented by the Office of Foreign Assets Control.

Except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, the following are also prohibited: (1) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in this Directive; and (2) any conspiracy formed to violate any of the prohibitions in this Directive.

Entities determined on September 12, 2014, to be subject to Directive 2 (as amended): On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following persons, who had previously been determined to operate in the energy sector of the Russian Federation economy, shall be subject to the prohibitions of Directive 2 (as amended):

1. OPEN JOINT-STOCK COMPANY ROSNEFT OIL COMPANY (a.k.a. OAO ROSNEFT OIL COMPANY; a.k.a. OIL COMPANY ROSNEFT; a.k.a. OJSC ROSNEFT OIL COMPANY; a.k.a. ROSNEFT; a.k.a. ROSNEFT OIL COMPANY), 26/1 Sofiyskaya Embankment, Moscow 115035, Russia; Web site *www.rosneft.com;* alt. Web site *www.rosneft.ru;* Email Address *postman@rosneft.ru;* Registration ID 1027700043502 (Russia); Tax ID No. 7706107510 (Russia); Government Gazette Number 00044428 (Russia) [UKRAINE–EO13662]
2. OAO NOVATEK (a.k.a. FINANSOVO-INVESTITSIONNAYA KOMPANIYA NOVAFININVEST OAO; a.k.a. NOVATEK), 2, Udaltsova Street, Moscow 119415, Russia; 22 A, Pobedy Street, Tarko-Sale, Yamalo-Nenets Autonomous District 629580, Russia; 22a Pobedy ul., Tarko-Sale, Purovski raion, Tyumenskaya Oblast 629850, Russia; Email Address *novatek@novatek.ru;* Registration ID 1026303117642 (Russia); Government Gazette Number 33556474 (Russia) [UKRAINE–EO13662]

On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following persons (a) operate in the energy sector of the Russian Federation economy and (b) shall be subject to the prohibitions of Directive 2 (as amended):

1. OJSC GAZPROM NEFT (a.k.a. GAZPROM NEFT OAO; a.k.a. JSC GAZPROM NEFT; a.k.a. OPEN JOINT-STOCK COMPANY GAZPROM NEFT; f.k.a. SIBIRSKAYA NEFTYANAYA KOMPANIYA OAO), Let. A. Galernaya, 5, ul, St. Petersburg 190000, Russia; Ul. Pochtamtskaya, 3–5, St. Petersburg 190000, Russia; 3–5 Pochtamtskaya St., St. Petersburg 190000, Russia; 125 A. Profsoyuznaya Street, Moscow 117647, Russia; Web site *http://www.gazprom-neft.com/;* Email Address *info@gazprom-neft.ru;* alt. Email Address *pr@gazprom-neft.ru;* alt. Email Address *shareholders@gazprom-neft.ru;* alt. Email Address *ir@gazprom-neft.ru;* Registration ID 1025501701686; Tax ID No. 5504036333; Government Gazette Number 42045241 [UKRAINE–EO13662]
2. AK TRANSNEFT OAO (a.k.a. AKTSIONERNAYA KOMPANIYA PO TRANSPORTUNEFTI TRANSNEFT OAO; a.k.a. OAO AK TRANSNEFT; a.k.a. OIL TRANSPORTING JOINT-STOCK COMPANY TRANSNEFT; a.k.a. TRANSNEFT; a.k.a. TRANSNEFT OJSC; a.k.a. TRANSNEFT, JSC), 57 B. Polyanka ul., Moscow 119180, Russia; 57 Bolshaya. Polyanka, Moscow 119180, Russia; Web site *www.transneft.ru;* Email Address *transneft@ak.transneft.ru;* Registration ID 1027700049486; Tax ID No. 7706061801; Government Gazette Number 00044463 [UKRAINE–EO13662]

Directive 3 (September 12, 2014) Under E.O. 13662 and the Names of Persons Determined To Be Subject to Directive 3

Directive 3 (September 12, 2014): Pursuant to sections 1(a)(i), 1(b), and 8 of Executive Order 13662 of March 20, 2014 ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (the Order) and 31 CFR 589.802, and following the Secretary of the Treasury's determination under section 1(a)(i) of the Order with respect to the defense and related materiel sector of the Russian Federation economy, the Director of the Office of Foreign Assets Control has determined, in consultation with the Department of State, that the following activities by a U.S. person or within the United States are prohibited, except to the extent provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control: all transactions in, provision of

financing for, and other dealings in new debt of longer than 30 days maturity of persons determined to be subject to this Directive, their property, or their interests in property. All other activities with these persons or involving their property or interests in property are permitted, provided such activities are not otherwise prohibited pursuant to Executive Orders 13660, 13661, or 13662 or any other sanctions program implemented by the Office of Foreign Assets Control.

Except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, the following are also prohibited: (1) any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in this Directive; and (2) any conspiracy formed to violate any of the prohibitions in this Directive.

Entity determined on September 12, 2014, to be subject to Directive 3: On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following person (a) operates in the defense and related materiel sector of the Russian Federation economy and (b) shall be subject to the prohibitions of new Directive 3:

ROSTEC (a.k.a. ROSTEC STATE CORPORATION; a.k.a. RUSSIAN TECHNOLOGIES; a.k.a. RUSSIAN TECHNOLOGIES STATE CORPORATION FOR ASSISTANCE TO DEVELOPMENT, PRODUCTION AND EXPORT OF ADVANCED TECHNOLOGY INDUSTRIAL PRODUCT; a.k.a. STATE CORPORATION FOR ASSISTANCE TO DEVELOPMENT, PRODUCTION AND EXPORT OF ADVANCED TECHNOLOGY INDUSTRIAL PRODUCT ROSTEKHNOLOGII; a.k.a. STATE CORPORATION ROSTECHNOLOGII; a.k.a. STATE CORPORATION ROSTEKHNOLOGII), 24 Usacheva ul., Moscow 119048, Russia; 21 Gogolevsky Blvd., Moscow 119991, Russia; Web site *www.rostec.ru;* Email Address *info@rostec.ru;* Registration ID 1077799030847 (Russia); Tax ID No. 7704274402 (Russia); Government Gazette Number 94137372 (Russia) [UKRAINE–EO13662].

Directive 4 (September 12, 2014) Under E.O. 13662 and the Names of Persons Determined To Be Subject to Directive 4

Directive 4 (September 12, 2014): Pursuant to sections 1(a)(i), 1(b), and 8 of Executive Order 13662 of March 20, 2014 ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (the Order) and 31 CFR 589.802, and following the Secretary of the Treasury's determination under section 1(a)(i) of the Order with respect to the energy sector of the Russian Federation economy, the Director of the Office of Foreign Assets Control has determined, in consultation with the Department of State, that the following activities by a U.S. person or within the United States are prohibited, except to the extent provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control: the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person determined to be subject to this Directive, its property, or its interests in property.

Except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, the following are also prohibited: (1) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions contained in this Directive; and (2) any conspiracy formed to violate any of the prohibitions in this Directive.

Entities determined on September 12, 2014, to be subject to Directive 4: On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following person, who had previously been determined to operate in the energy sector of the Russian Federation economy, shall be subject to the prohibitions of Directive 4:

OPEN JOINT-STOCK COMPANY ROSNEFT OIL COMPANY (a.k.a. OAO ROSNEFT OIL COMPANY; a.k.a. OIL COMPANY ROSNEFT; a.k.a. OJSC ROSNEFT OIL COMPANY; a.k.a. ROSNEFT; a.k.a. ROSNEFT OIL COMPANY), 26/1 Sofiyskaya Embankment, Moscow 115035, Russia; Web site *www.rosneft.com;* alt. Web site *www.rosneft.ru;* Email Address *postman@rosneft.ru;* Registration ID 1027700043502 (Russia); Tax ID No. 7706107510 (Russia); Government Gazette Number 00044428 (Russia) [UKRAINE–EO13662]

On September 12, 2014, the Director of OFAC, in consultation with the Department of State, determined that the following persons (a) Operate in the energy sector of the Russian Federation economy and (b) shall be subject to the prohibitions of Directive 4:

1. OJSC GAZPROM NEFT (a.k.a. GAZPROM NEFT OAO; a.k.a. JSC GAZPROM NEFT; a.k.a. OPEN JOINT-STOCK COMPANY GAZPROM NEFT; f.k.a. SIBIRSKAYA NEFTYANAYA KOMPANIYA OAO), Let. A. Galernaya, 5, ul, St. Petersburg 190000, Russia; Ul. Pochtamtskaya, 3–5, St. Petersburg 190000, Russia; 3–5 Pochtamtskaya St., St. Petersburg 190000, Russia; 125 A. Profsoyuznaya Street, Moscow 117647, Russia; Web site *http://www.gazprom-neft.com/;* Email Address *info@gazprom-neft.ru;* alt. Email Address *pr@gazprom-neft.ru;* alt. Email Address *shareholders@gazprom-neft.ru;* alt. Email Address *ir@gazprom-neft.ru;* Registration ID 1025501701686; Tax ID No. 5504036333; Government Gazette Number 42045241 [UKRAINE–EO13662]
2. LUKOIL OAO (a.k.a. LUKOIL; a.k.a. LUKOIL OIL COMPANY; a.k.a. NEFTYANAYA KOMPANIYA LUKOIL OOO; a.k.a. NK LUKOIL OAO), 11 Sretenski boulevard, Moscow 101000, Russia; Web site *www.lukoil.ru;* Email Address *info@lukoil.ru;* Registration ID 1027700035769; Tax ID No. 7708004767; Government Gazette Number 00044434 [UKRAINE–EO13662]
3. OPEN JOINT STOCK COMPANY GAZPROM (a.k.a. GAZPROM OAO; a.k.a. OAO GAZPROM), 16 Nametkina St., Moscow, Russia GSP–7, 117997, Russia; 16 Nametkina ul., Moscow 117991, Russia; Web site *www.gazprom.ru;* Email Address *gazprom@gazprom.ru;* Registration ID 1027700070518 (Russia); Tax ID No. 7736050003 (Russia); Government Gazette Number 00040778 (Russia) [UKRAINE–EO13662]
4. SURGUTNEFTEGAS (a.k.a. OPEN JOINT STOCK COMPANY SURGUTNEFTEGAS; a.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO SURGUTNEFTEGAZ; a.k.a.

SURGUTNEFTEGAS OAO; a.k.a. SURGUTNEFTEGAS OJSC; a.k.a. SURGUTNEFTEGAZ OAO), ul. Grigoriya Kukuyevitskogo, 1, bld. 1, Khanty-Mansiysky Autonomous Okrug—Yugra, the city of Surgut, Tyumenskaya Oblast 628415, Russia; korp. 1 1 Grigoriya Kukuevitskogo ul., Surgut, Tyumenskaya oblast 628404, Russia; Street Kukuevitskogo 1, Surgut, Tyumen Region 628415, Russia; Web site *www.surgutneftegas.ru;* Email Address *secretary@surgutneftegas.ru* [UKRAINE–EO13662]

General License No. 1 (Superseded on September 12, 2014)

Note to General License No. 1: On July 16, 2014, OFAC issued General License 1 authorizing certain transactions involving certain derivative products that were otherwise prohibited by Original Directives 1 or 2 under E.O. 13662. On September 12, 2014, General License No. 1 was replaced and superseded in its entirety by General License No. 1A, which is included later in this **Federal Register** Notice. The text of General License No. 1 is included here for historical reference purposes only.

General License No. 1: Authorizing Certain Transactions Related to Derivatives Under Directive 1 and Directive 2 of Executive Order 13662: (a) All transactions by U.S. persons, wherever they are located, and transactions within the United States involving derivative products whose value is linked to an underlying asset that constitutes (1) debt with a maturity of longer than 90 days or equity issued on or after July 16, 2014 by a person identified in Directive 1 pursuant to Executive Order 13662 or (2) debt with a maturity of longer than 90 days issued on or after July 16, 2014 by a person identified in Directive 2 pursuant to Executive Order 13662, are authorized.

(b) This general license does not authorize the holding, purchasing, or selling of underlying assets otherwise prohibited by Directive 1 and Directive 2 pursuant to Executive Order 13662 by U.S. persons, wherever they are located, or within the United States.

General License No. 1A

Note to General License No. 1: A prior version of this license, General License 1, which was issued in July 16, 2014, and which is superseded by this version, authorized certain transactions involving certain derivative products that were otherwise prohibited by Original Directives 1 or 2 under E.O. 13662. This amended version, General License 1A, which OFAC issued on September 12, 2014, updates this authorization to cover the amended versions of Directives 1 and 2 as well as Directive 3 and also reflects technical and other non-substantive changes.

General License No. 1A: Authorizing Certain Transactions Related to Derivatives Prohibited by Directives 1, 2, and 3 Under Executive Order 13662: (a) All transactions by U.S. persons, wherever located, and transactions within the United States involving derivative products whose value is linked to an underlying asset that constitutes (1) new debt with a maturity of longer than 30 days or new equity issued by a person subject to Directive 1 under Executive Order 13662, (2) new debt with a maturity of longer than 90 days issued by a person subject to Directive 2 under Executive Order 13662, or (3) new debt with a maturity of longer than 30 days issued by a person subject to Directive 3 under Executive Order 13662, are authorized.

(b) This general license does not authorize the holding, purchasing, or selling of underlying assets otherwise prohibited by Directives 1, 2, or 3 under Executive Order 13662 by U.S. persons, wherever they are located, or within the United States.

(c) Effective September 12, 2014, General License No. 1, dated July 16, 2014, is replaced and superseded in its entirety by this General License No. 1A.

General License No. 2

Note to General License No. 2: On September 12, 2014, OFAC issued General License No. 2 authorizing certain transactions otherwise prohibited by Directive 4 under E.O. 13662. Under the terms of General License No. 2, the authorization contained therein expired at 12:01 a.m. eastern daylight time on September 26, 2014. General License No. 2, therefore, is no longer effective, and its text is included here for historical reference purposes only.

General License No. 2: Authorizing Certain Activities Prohibited by Directive 4 Under Executive Order 13662 Necessary To Wind Down Operations: (a) Except as provided in paragraph (b) of this general license, all activities prohibited by Directive 4 under Executive Order 13662 of March 20, 2014, that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving persons determined to be subject to Directive 4 under Executive Order 13662 and that were in effect prior to September 12, 2014, are authorized through 12:01 a.m. eastern daylight time, September 26, 2014.

(b) This general license does not authorize any new provision, exportation, or reexportation of goods, services (except for financial services), or technology except as needed to cease operations involving projects covered by Directive 4 under Executive Order 13662. This general license does not authorize any transactions or dealings otherwise prohibited by any other Directive under Executive Order 13662 or any part of 31 CFR Chapter V.

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the wind-down activities conclude, to file a detailed report, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

General License No. 3

On October 6, 2014, OFAC issued General License No. 3, which authorizes certain transactions otherwise prohibited by Directive 1 under E.O. 13662.

General License No. 3: Authorizing Transactions Involving Certain Entities Otherwise Prohibited by Directive 1 Under Executive Order 13662: (a) Except as provided in paragraph (b), all transactions prohibited by Directive 1 under Executive Order 13662 for a financial institution named in paragraph (c), or any entity in which such financial institution owns, directly or indirectly, a 50 percent or greater interest, are authorized.

(b) This general license does not authorize otherwise prohibited transactions with other persons subject to any Directive under Executive Order 13662, or any other transactions prohibited pursuant to any part of 31 CFR Chapter V.

(c) The financial institution(s) are: DenizBank A.Ş.

Dated: October 14, 2014.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2014–24988 Filed 10–20–14; 8:45 am]

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